ANALYSING EFFECTIVENESS OF THE INDUSTRIAL RELATIONS COURT IN LABOUR DISPUTE SETTLEMENT

MASTER OF ARTS (HUMAN RESOURCES MANAGEMENT AND INDUSTRIAL RELATIONS) THESIS

BY

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DECLARATION

I, the undersigned, declare that this thesis is my own original work which has not been submitted to any other institution for similar purposes. Where I have used other authors work, I have made the necessary acknowledgements.

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APPROVAL/CERTIFICATION

The undersigned certify that this thesis represents the student's own work and it has been submitted with our approval.

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DEDICATION

I dedicate this paper to my parents – Skaliveni and Chrissie Kanyatula - for inculcating the spirit of hard work and humility in me;

To my family – Regina and Princess Kanyatula - for the moral support throughout this academic journey as well as their understanding of my many hours away from them;

To my employer – Deloitte Malawi- for the financial support); and

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ABSTRACT

The study was aimed at analyzing the effectiveness of the Industrial Relations Court of Malawi in labour dispute settlement. More specifically, it explored the extent to which the Court complies with legal provisions and set standards in its work; analyzed the labour dispute settlement process; explored the challenges the Court faces in fulfilling its legal mandate of hearing and determining labour disputes; and explored the Court users' perception. The study was conducted in Blantyre and Lilongwe. It used a qualitative approach and through purposive sampling, fifteen (15) respondents were selected for the collection of primary qualitative data; while desk research was used to collect secondary data. The study population was the three IRCs: Blantyre, Lilongwe and Mzuzu; and study sample under this study were three (3) judicial officers, two (2) Court clerks; four (4) panelists, five (5) court users and one (1) lawyer. Secondary data was collected from the Court cases; IRC publications (the Status Reports & Case Returns); the Employment Act (2000); Labour Relations Act (1996); and the Industrial Relations Court (Procedure) Rules (1999). The study found out that the Court's legal compliance is below average because the Court failed to comply with the legal provisions as most judgements delay for years. With regard to the dispute settlement process, the Court has set sufficient safeguards such as penalties, default judgments and case dismissals to achieve orderliness and fairness in the process; but some stakeholders abuse the process because of some gaps in the LRA; and this affects the effectiveness of the dispute settlement process. Furthermore, the study established that a myriad of challenges has frustrated the Court from effectively discharging its legal mandate and these include shortage of judicial personnel; inadequate court infrastructure; unavailability of panelists; problematic legal representation; and poor government funding; and as a result, the court users have had their trust in the Court greatly eroded. The study concludes by suggesting that amendment of the LRA, increased number of judicial officers; increased number of incentivized panelists; more court infrastructure at district level; improved quality of legal representation; and increased government funding can go a long way in reversing the accumulating backlog of cases at the Court and the resultant delayed justice; and ultimately effective settlement of labour disputes can be achieved.

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CHAPTER ONE

INTRODUCTION AND BACKGROUND

1.0 Introduction

This chapter introduces the study. Specifically, it explores the key concepts of the study by looking at scholarly comments around the labour dispute settlement as well as presenting a snapshot on how labour dispute settlement has obtained in various jurisdictions across the globe; then it provides a background to the study; then presents the research questions, study objectives, the problem statement and justification of the study; and it ends with a conclusion.

1.1 Labour Dispute Settlement

Industrial relations (IR) and human resource management (HRM) are symbiotic concepts in the dispute settlement discourse. According to the Business Lab (2018), IR is about establishing relationships among stakeholders and a process of control over work relations while HRM is about managing and utilizing human resources for the achievement of organizational goals. IR starts with a legally binding employment agreement between the employer and the employee where the employee accepts to exchange work with a pre-determined compensation and the employer makes pledges to pay the said compensation; provide a positive, safe and friendly work environment; and ensure compliance with the law throughout the contract duration. Keator (2011) agrees that HRM is the effective and optimal utilization of human resources for the achievement of organizational objectives. While HRM has principally two parties, the IR adds two more parties (Trade Unions and government) to the employment relationship to enhance or support compliance with the tenets of the agreement between both parties. Therefore, IR is part of HRM. Keator (ibid) states that conflicts are inherent in this relationship such that any bad decision by the employer regarding any element of this employment relationship creates a conflict. To buttress this, Burns (1997) agrees that by nature of any conflict, the two sides are fundamentally opposed to the success of the other party such

that each party will not compromise their interests and values at the risk of allowing the other party to achieve any slightest victory over them.

As argued by Tonder, Havenga and Visagie (2008), conflict is pervasive across the private-public sector divide. The turbulence to an organization's ability to achieve its goals and objectives largely depends on that entity's ability to engage in prevention of conflicts measures; ability to detect and dissect a conflict; and the ability to find an effective resolution or settlement of the said conflict in order to limit the negative effects of the conflict to its operations. According to Hart (2019), there are many causes of conflicts or disputes in organizations such as conflicting needs (resulting from scarce resources, lack of recognition and power exercise); conflicting styles of approach to leadership in project implementation or problem solving; conflicting perspectives or perception to an issue; conflicting goals and values between the organization and its employees; conflicting pressures in term of prioritization of issues at both organizational and individual employee levels; conflicting roles resulting from lack of clarity in terms of job descriptions; and inconsistent application of policies. Keator (2011) adds that conflicts or disputes may arise from differences of opinion on matters of fact and law; breached legitimate rights and interests; different professional opinions on a matter; and broken professional or personal relationships.

For the avoidance or minimization of the disruptions of conflicts to the achievement of organizational objectives, organizations can employ various mechanism of resolving conflicts. According to Disini Jr. et al (2002), organizations may (according to the nature and complexity of a conflict) employ conflict resolution mechanism such as negotiation, conciliation, mediation, arbitration and litigation/adjudication in order to resolve the conflicts. Katz and McNulty (1994) advise that strategies such as collaboration (win/win), compromise (mini-win/mini-lose), accommodation (lose/win), controlling (win/lose) and avoidance (lose/lose) to resolve conflicts although the later results in the abandonment of the conflict which compromises the desired positive outcomes and hence the relationship is broken.

Keator (2011) defines conflict resolution as a process of identifying causal factors of a conflict and finding ways to deal with them; and conflict settlement as a process aimed at ending a dispute as quickly and amicably as possible. A dispute escalates into a conflict if left unchecked. However, for purposes of this study, dispute and conflict as well as dispute settlement and conflict resolution are interchangeably used.

According to Olatunji, Issah and Lawal (2015), disputes are a natural consequence of social living and are as old as human existence; whereas Orifowomo (2008) agrees that conflict is inherent in human nature. Albert (2000) confirms that conflicts pervade human existence. Consequently, disputes or conflicts between parties to an employment relationship in an organization are inevitable. As a result, conflict prevention and management have created a focus of interest in disciplines such as Political Science, Sociology and Industrial Relations (Olatunji et al, 2015).

Orifowomo (2008) contends that the employer-employee relationship is inherently conflictual because of the different and largely opposing interests between the two parties. While the employer primarily wants to expand the bottom line - by increasing profits; the employee wants more benefits which potentially eat into the profits. Again, Atilola and Dugeri (2012) state that the employer-employee relationship is virtually an opposing one with each party striving to churn a vintage point in an employment relationship. As a result, a conflict arises and hence the need for systems and structures such as the Industrial Relations Court to systematically manage and resolve those conflicts or disputes.

Although some of the industrial disputes in various organizations have been resolved through alternative dispute resolution mechanisms such as conciliation and mediation, most disputes are resolved through adjudication in the labour courts across the globe (Olatunji et al, 2015). The establishment of labour courts in many jurisdictions (such as Nigeria and Malawi) are meant to promote the orderly and expeditious dispute settlement conducive to social justice and economic development as the decisions influence the employer-employee relationship for better work conditions and general industrial

harmony (Thomson, 2002). However, Atiola and Dugeri (2012) argue that in most cases the existing dispute settlement mechanisms are not effective enough to foster industrial harmony and national development since the dispute settlement process takes too long thereby negating the essence of a fair judicial process envisaged at the establishment of the labour courts. As discussed below, the dispute resolution mechanism in some jurisdictions have failed to bring desired results.

1.2 Background of the Study

The Constitution of Malawi (under Section 40) guarantees everyone the right of access to justice and effective remedy. The Industrial Relation Court is established under Section 110(2) of the Constitution. Prior to the enactment of the Labour Relations Act (which operationalized the IRC), there was no tribunal to determine labour matters such that all labour matters were being taken directly to the High Court. According to Sikwese (2019), there was need for creation of a specialized labour tribunal in order to fulfil the legislative intentions of the Constitution which include: the desire for a procedure which avoids the formality of ordinary courts; the need for a new social policy for speedy, cheap and decentralized determination of individual matters; the need for expertise and specialized knowledge which general jurisdiction courts do not require; and the fact that legal professionals do not have a monopoly of representation of people who appear before the tribunal.

Following the enactment of the Labour Relations Act in 1996, the Industrial Relations Court (IRC) was established in 1999 as a court subordinate to the High Court to hear and determine labour and employment disputes. The IRC has a specific mandate to promote and protect labour rights to enable the realization of the right to economic development of all Malawians (IRC Strategic Plan, 2005 -2009). The IRC has three registries: Principal Registry in Blantyre; Lilongwe Registry and Mzuzu Registry. The authorized establishment of IRC is 59 members of staff: 7 judicial officers and 52 support staff. The Chairperson and Deputy Chairperson are mandated to hear and determine disputes at the court. The Chairperson and one Deputy Chairperson attend to matters at the Principal Registry and 8 circuit courts in the Eastern and Southern Region; whereas the other 2

Deputy Chairpersons attend to Lilongwe and Mzuzu Registries with 10 circuit courts (State of the Judiciary Report, 2009-2010).

1.3 The Industrial Relations Court of Malawi

Section 110 (2) of the Constitution of the republic; and the Sections 64 and 65 of the Labour Relations Act (LRA) establish the Industrial Relations Court as a *court with original jurisdiction over labour dispute settlement*. Prior to the establishment of the IRC, labour disputes were being taken directly to the High Court or to the Resident Magistrate courts (Sikwese, 2019). The creation of IRC underscores the importance Malawi government attaches to having a specialised system of labour disputes settlement for the sake of industrial harmony.

However, any system is as good as the people who use it (Olatunji et al, 2015). There is a strong need to do a soul searching in order to find out the factors militating against the anticipated effectiveness if the system like the IRC which is failing to produce the anticipated outcomes in view of the increasing backlog of cases. According to Mahapatro (2010), effectiveness is the ability to fulfil organisational mission. The undesired level of compliance to the law and the delays in settlement of disputes have the effect of eroding the trust of litigants in the Court. Mahapatro (2010) agrees that this creates the risk of losing important memory-based evidence through time passage and death of witnesses.

1.4 Legal Mandate and Actual Work of IRC

According to the Labour Relations Act (1996) which is the principal law for this study, the rationale of this law is "*to promote sound labour relations through the protection and promotion of freedom of association, the encouragement of effective collective bargaining and the* ***promotion of orderly and expeditious dispute settlement****, conducive to social justice and economic development [****emphasis****]."* The constitution and operation of the IRC are under Sections 63 to 75 of the Labour Relations Act (1996) but the specific mandate of the court is under Sections 63 to 65 of the same Act.

However, although the IRC is a court with original jurisdiction mandated to hear and determine labour and employment disputes, labour matters can also be commenced at the High Court (Sikwese, 2019). This is consistent with Section 108 (1) gives the High Court unlimited original jurisdiction over all (including labour) matters.

The figure below depicts the dispute resolution structure in Malawi with regard to matters that come to the Industrial Relations Court:

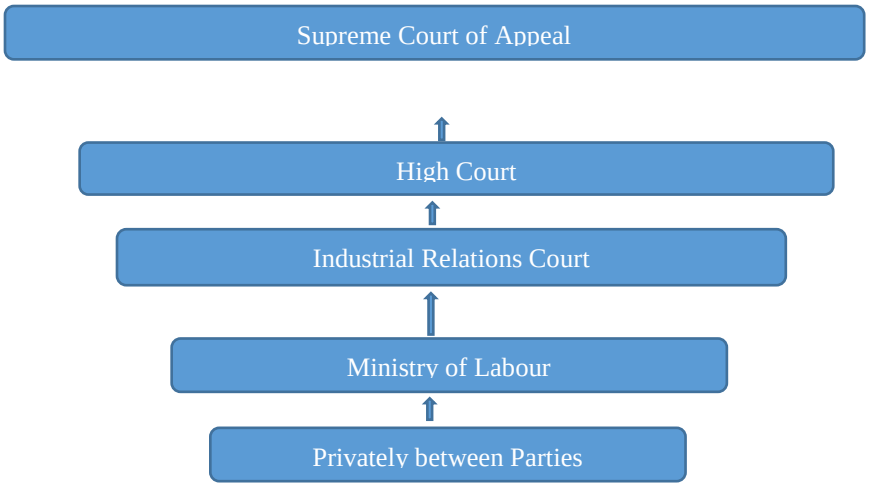


Figure 1: Labour Dispute Resolution Structure[1] (with regard to IRC)

Source: IRC Annual Report – 2007-2008

From above figure, it is envisaged that parties to a labour or employment dispute need to attempt to settle the matter through negotiations before resorting to the state machinery; where parties do not reach an amicable solution, the matter can be lodged to a Regional or District Labour Officer who will mediate the matter; where mediation fails, the matter is referred to the IRC. When the matter gets to IRC as a referral from the Labour Officer, a complaint is registered by the Court; and within the IRC, the matter is first mediated upon before the Registrar of the Court; and where the Court mediation fails, the matter goes into full trial before either the Chairperson or the Deputy Chairperson sitting with

member panelists. If a party is dissatisfied with IRC determination, it has a right to appeal to the High Court within 30 days from the IRC determination; and further appeal on the decision of the High Court to the Supreme Court of Appeal within 30 days for final determination of the matter.

Furthermore, the LRA underscores (under Section 44 and 45) that if a dispute is reported to the Principal Secretary (PS) for Labour for conciliation; or to a conciliator agreed upon by both parties in the case of a public entity (government ministry or a parastatal) being party to the dispute; or to an independent arbitrator appointed by the IRC; and the dispute has not been resolved within twenty one (21) days as per Section 44 (4) of the LRA; the PS can deem the dispute unresolved if a party fails to attend a conciliation meeting or parties fail to reach agreement on the dispute settlement; and either party may apply to the IRC for determination of the dispute. From the foregoing, it is abundantly clear that the legal mandate to settle labour dispute is placed in the hands of the IRC as a court of original jurisdiction.

However, the Workers Compensation Act (2000) gives Resident Magistrate courts jurisdiction over labour matters largely related to occupational injuries and diseases, but any labour matter can be taken to these courts. While people are urged to begin labour matters at the labour office, the IRC does not turn back people when they directly commence their matter at this court.

Atilola and Dugeri (2012) argue that effective settlement of labour disputes ensures industrial harmony which is an essential pre-requisite for national social and economic development. Furthermore, industrial adjudication of labour disputes at the court plays a critical role in improving the working conditions of the employees (through court determinations and awards) when the pre-trial mechanisms for resolving employment related conflicts do not bring the desired results; and the aggrieved party takes the matter to court as a consequence. According to Mahapatro (2010), adjudication has helped to avert some work stoppages and protecting interests of the weaker section of the employer-employee power imbalance for purposes of fairer bargaining.

A judicial system is deemed effective based on *inter alia* the reasonable speed with which it deals with matters brought before it and the resultant constituency (court users) satisfaction thereof. However, most judicial systems experience backlog of labour cases for various reasons (Hui and Mohammed, 2006). As argued by Thomson (2002), when a dispute takes too long to settle, fairness and orderliness (in the treatment of individuals within the ambit of industrial relations) are compromised.

The IRC has the same serious problem of backlog and accumulation of cases. Against the prescribed 21 days of judgement, some cases have taken 6 years to be dealt with (IRC Status Report, 2011 – 2016). People take labour matters to court based on their conviction, confidence and trust that the courts would handle their matters in a proficient, dignified and credible manner (Sikwese, 2019). Therefore, delays in adjudicating labour matters has the potential of eroding public trust in Court.

From the foregoing, the hypothesis of this study was that the IRC inherent structural inefficiencies are to blame for the ineffective settlement of labour disputes in Malawi. In the study, the effectiveness of IRC was examined by analysing the extent to which the Court complied with the legal provisions and set standards; analysing the process used in dispute settlement; unearthing the challenges the IRC faces in its pursuit of effective delivery of justice; and finding out the implications of the Court's effectiveness or lack thereof on the public perception regarding the IRC. The study findings contested the researcher's hypothesis that the ever-increasing backlog of cases should not be wholly blamed on the structural ineffectiveness and inefficiencies of the Court; and that instead, consistent with the Systems Theory, rather so many external environmental factors affect the Court from delivering labour justice effectively.

1.5 Problem Statement

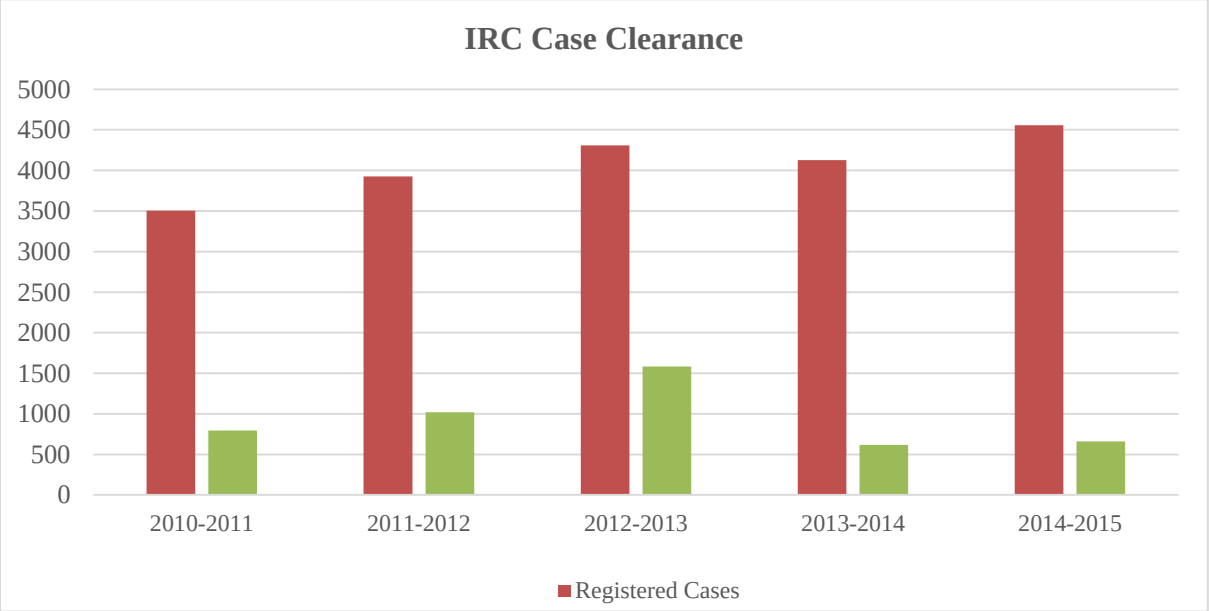
As the saying goes, *justice delayed is justice denied*. In Malawi, Section 110 (2) of the Malawi Constitution provides for the creation of the IRC. This Court was given effect through the enactment of the Labour Relations Act (1996) as a "court with original jurisdiction to hear and determine all labour disputes and other employment related issues

assigned to it". According to the LRA, being a Court of first instance, the mission of IRC is "to promote and protect labour and employment rights through timely adjudication of disputes and provide litigants with appropriate remedies" (LRA S.64).

As argued in a ruling by Judge Gordon Hewart (1870-1943), it is a cardinal principle in the judiciary that justice should not only be done but should manifestly and undoubtedly be seen to be done (**in *Rex v Sussex Justices ex parte McCarthy (1 KB 256 [1924]***). In the opinion of the researcher, on the part of litigants, justice will be seen to have been done only when their matter brought before the court is completed within reasonable/specified time and the due process thereof is both fair and satisfactory.

The IRC operations are guided by its core values one of which is "*Efficiency, Speed and Timeliness*." The efficacy of this core value depends on the IRC being adequately resourced – financial and human resources and that the court discharges its legal mandate in an effective manner. Timely settlement of disputes and satisfaction of the court users entail effectiveness of the court. Increase in the number of cases registered at IRC is primarily an expression of trust and confidence litigants have in IRC. However, the backlog of cases caused by various factors has the serious effect of eroding public trust and denying Malawians the sought labour justice. According to the IRC Status Report (2011-2016), 1, 400 cases were being registered per year; 25% of these could not be concluded within a year; and hence they accumulated over the years to create a backlog. Hereunder is a depiction of the problem:

Bar Chart 1: Case Clearance Rate 2010 -2015 (Source: IRC Case Returns)



The figure above depicts how serious the backlog of cases is at IRC. In 2010-2011, there were 3,505 registered cases with 796 cases concluded; in 2011-2012, there were 3906 cases registered with only 1,020 cases concluded; in 2012-2013, there were 4,310 cases with 1,583 cases concluded; in 2013-2014, there were 4,128 cases with 617 cases concluded; and in 2014-2015, there were 4,557 cases with 661 cases concluded. This trend shows that the backlog of cases at the court has been increasing over the time.

This is what motivated this study in order to understand the factors causing the ever-rising backlog of cases by focusing on how effective the IRC settles labour disputes. As argued by Sikwese (2019), delays have a serious bearing on the labour (and other) rights of the litigants who are dependent on their employment. However, the literature reviewed in this study shows a gap. Much as some authors have written about factors which pose a challenge to proper functioning of labour courts, at global, regional or local level (as discussed earlier in this chapter), no author has extensively written about the effectiveness of labour courts to explain the ever-growing backlog; particularly on Industrial Relations Court of Malawi.

Several studies on labour courts were conducted across the globe. Studies in Australia and South Africa revealed some success in labour dispute resolution as the Fair Work Australia (FWA) resolved disputes expeditiously whereas the use of ADR in South Africa had the effect of reducing caseload for the labour court. Conversely, studies in India, Malaysia and Bangladesh revealed that labour dispute resolution was not a success as the dispute resolution systems was characterised by delays whereas in the USA, the use of ADR made the labour dispute resolution system too "private" for many court users.

In Malawi, this researcher came across two studies on the IRC (which are unpublished hence not part of the references' list for this thesis). One study (by Felix Thawe) looked at the shared jurisdiction on labour matters between the IRC and the High Court as courts of first instance in trying to clear the dichotomy thereof. This was a law student thesis and the focus falls outside the scope of the current study. The other study (by Annie Chipaka) looked at the analysis of the general functioning of the IRC particularly by only focusing on the financial and human resource challenges. This study was narrow as it did not consider other explanations of IRC challenges which affect its effective delivery of labour justice. It can thus be noted from above that the two studies only focused on the inputs and outputs to the proper functioning of the IRC as a system. This study focused on the actual court processes (Case registration, Pre-hearing, Full Hearing and Judgement) in settling labour matters brought before it. The current study extensively looked at the Court's compliance with legal provision, looking at the due process of labour dispute settlement, analysing the challenges impeding the Court's effective delivery of justice and how this affects the court users' perception against the Court. Therefore, this study compliments the two Malawian studies and hence fill the gap in deeper knowledge surrounding the effectiveness of the IRC in labour dispute settlement at global and regional levels.

1.6 Research Questions

This study answers the main research question regarding how effective the IRC fulfils its legal mandate of settling labour disputes. This is achieved by answering the following research questions:

- To what extent does the IRC comply with the legal provisions and set standards?
- How effective is the IRC labour dispute settlement process?
- What challenges does IRC face in fulfilling its legal mandate?
- What is the court users' perception on the effectiveness of the IRC?

1.7 Study Objectives

1.7.1 Main Objective

To analyse the effectiveness of the IRC in labour dispute settlement.

1.7.2 Specific Objectives

The specific objectives of this exploratory study were:

- To analyse the extent to which the IRC complies with the legal provisions and set standards.
- To analyse the effectiveness of the IRC process of settling labour disputes.
- To identify challenges the IRC faces in fulfilling its legal mandate.
- To assess the court users' perception on the effectiveness of the IRC.

1.8 Study Justification

The backlog of cases at the IRC has been rising over the time. From a backlog of 3, 505 in 2010-2011, the backlog rose to 4, 557 by 2014-2015 (IRC Status Report, 2011-2016). This trend is an issue worth studying because the increasing backlog of cases at the IRC has the effect of eroding the court users' confidence in the IRC in order to explore what causes this and hence expand knowledge on this phenomenon. The study reflects on the IRC by looking at the legal provisions within which the Court operates; the process it

uses to settle labour disputes; and challenges it faces in its legal mandate; and the resultant public perception created by its ineffectiveness.

In order to increase the knowledge around labour dispute settlement, the researcher undertook this study because there was nominal research on this particular topic. Two local studies were conducted on the IRC which focused on other areas. One study (for a law Diploma course at Chancellor College law school) by Felix Thawe focused on the duality of jurisdiction between the IRC and the High Court on labour matters; while the other one (for an HRMIR Course at Chancellor College PAS Department) by Annie Chipaka narrowly focused on the implication of financial and human resource challenges the IRC faces in the fulfilment of its legal mandate respectively. With reference to the Systems Theory, the two studies looked at the inputs only.

However, this study focused on the effectiveness of the entire IRC process from case registration to judgement; unearthing the challenges thereof; and finding out the implications of the said challenges on the perceptions of the court users on the IRC. Therefore, this study fills the gap which existed in the body of knowledge surrounding this phenomenon.

1.9 Chapter Conclusion

This chapter presented the background information to the study of analyzing the effectiveness of Industrial Relations Court of Malawi. In addition, the chapter presented the problem statement; questions of the study; main and specific objectives of the study; and the justification of the study. The next chapter presents the literature review.

CHAPTER TWO

LITERATURE REVIEW

2.0 Introduction

This chapter provides a review of some of the scholarly works by other authors and researchers in the area of labour dispute settlement and the concept of effectiveness about labour courts or tribunals. The chapter starts by giving a general overview then it critically reviews failures and successes in labour dispute settlement in various jurisdictions. Then the chapter discusses the legislative instruments for labour dispute settlement in selected jurisdictions and the concept of effectiveness before it zeroes in on the Industrial Relations Court of Malawi. The chapter ends with the theoretical framework underpinning the study.

2.1 General Perspective

The prevalence of labour disputes in any jurisdiction is a reflection of the existence or lack of a strong legal framework to regulate the employer-employee relationship and institutional structures through which disputes should be settled; the density and activities or lack of the trade unions in relation to the other social partners in the industrial relations; the strength or weakness of the alternative dispute resolution (ADR) system; and the effectiveness of labour courts in disputes settlement (Olatunji et al, 2015). These factors influence the caseload at all the institutions (including the labour courts).

At the global level, standards for employer-employee relationship within the industrial relations domain; the legal and institutional frameworks; and the dispute settlement mechanisms under the collective bargaining realm are set for various jurisdictions for

internal best practices' benchmarking purposes. The International Labour Organisation (ILO) sets minimum standards for labour rights through various conventions (such as Convention 98 on Collective Bargaining) which are ratified and domesticated by UN member countries to regulate work conditions (Sengenberger, 2013). Consequently, in order to protect the rights of workers, various countries have enacted statutes to establish labour courts. How effective the legal and institutional framework is in settling labour disputes depends on various factors and the general status of the industrial relation in a country.

As stated by Olatunji et al (2015), industrial relations as a body of knowledge is primarily focused on dispute prevention and management in order to achieve industrial peace resultant from the harmonious relationship between employers and employees. Consequently, legal frameworks and institutions are set up to aid in the industrial relations intent. However, the mere promulgation of labour laws and establishment of institutional industrial relations is not sufficient to achieve industrial peace. The perceived and actual employers' propensity to abuse power in the employment relationship; the environmental factors influencing trade union activities; lack of commitment towards implementation of collective agreements negatively affect the efficacy of well-intended labour laws and the effectiveness of the dispute settlement institutions (Anyim, Chidi and Ogunyomi, 2012).

A vibrant trade unionism with relevant labour laws can enhance fair and just treatment of workers by employers through effective collective bargaining agreements; and this may create a conducive environment for industrial harmony. However, a too strong trade unionism characterised by high degree of insensitivity to the concerns of the employers might lead to industrial conflicts and consequent loss of employment. In the 1990s, the Republic of Korea had a vibrant trade unionism and the economy was doing well. The employers were willing to trade off profits for the sake of workers' better working conditions; and this led to less labour disputes. However, when worker lay-offs were legalised coupled with the effects of globalisation and democratisation, many people lost jobs. The unions have become passive as unemployment ate into their membership base

and the negotiation power weakened; leaving the workers to pursue individual fights for labour justice (ILO, 1999).

Various countries have established labour courts or tribunals to play an independent referee role in resolving labour disputes; and labour laws to provide the legal authority on the labour courts or tribunals to adjudicate labour disputes. As argued earlier, often, the established labour courts or tribunals have not been as effective as expected thereby rendering employee interests and rights vulnerable and unprotected (Adebisi, 2013).

From the above discussion, it is arguable that labour dispute settlement has two prongs: it falls under IR because the aim is to settle a disagreement in order to maintain a relationship but also falls under HRM because the said disagreements emanate from employer perceived and real breaches of the employment contract through various HR mishaps to employee legitimate expectations (Keator, 2011).

2.2 Snapshot of Labour Dispute Resolution in Various Jurisdictions

In Australia, the Fair Work Australia (FWA) which is a public tribunal has made some recognizable contribution to harmonious industrial relations by resolving labour disputes expeditiously. Forsyth (2012) notes that the FWA resolves labour disputes with speed and efficiency such that any employment termination or dismissal matter brought to it is finalized within 87 days; and an industrial action matter is heard within 2 days. In South Africa, the use of alternative dispute resolution (ADR) has registered some success as it has helped in decongesting the formal labour courts. As a result, South Africa's aggrieved employees can approach the appropriate institution of justice set up for purposes of resolving labour dispute and commence an action against employers even without the assistance of lawyers (Animashaun, Kola and Novondwe, 2014).

However, in India, a study revealed that the labour dispute resolution system has always failed to bring the desired outcomes as cases delayed for as long as 16 years contrary to the country's Code of Discipline. Certainly, this has a frustrating effect on the court users as their access to justice is delayed and hence denied (Arputharaj and Gayatri, 2014).

Studies in Malaysia and Bangladesh have revealed that the judicial systems continued to experience an increasing backlog of cases due to the numerous challenges they face (Hui and Mohammed, 2006; Alam, 2014). According to Colling (2004) and Dickens (2009), the United Kingdom's Employment Tribunals (ETs) have failed on the effectiveness test since they do not provide "cheap, accessible, non-legalistic, expert and speedy" route to justice in employment disputes. The same is said about the United States of America's ADR dispute resolution scheme where the shift from dispute resolution from the courts to privately owned entities (ADR) meant that the disputes resolution had been "privatized" such that the societal issues like employment discrimination were shielded from public scrutiny (Lipsky and Seeber, 2003).

According to the literature the researcher came across, Australia in Europe and South Africa on the African continent have near perfect dispute settlement systems despite facing some challenges. The Industrial Relations Court of Malawi experiences what obtains in India, Malaysia, Bangladesh and United Kingdom where labour cases take far too long to conclude for various reasons to the frustration of many court users.

2.3 Deeper Review of Failures and Successes in Labour Dispute Settlement

The labour related cases have increased in the UK, Japan and India for various reasons. Firstly, the Employment Tribunals (ETs) of Great Britain have been overly legalistic and "juridified" such that they have become too formal with legal norms and adjudication left to lawyers alone as opposed to a mix of lawyers and lay people - a professional judge, a Trade Union Congress (TUC) and another representative of the Confederation of British Industry (BIC). This has entailed the replacement of the collective regulation with legal regulation and labour dispute caseload increased since the tribunals became less speedy and they are very expensive. The ETs could initially take 1.5 days to hear a matter but now it takes 26 weeks to dispense a case. The morphing of the tribunals from informality made labour justice a commercial commodity accessible by only those with the financial muscle as the duty to run the ETs moved from the government to the court user; and that the decline in union activity in Britain meant that the workers' awareness of their labour

rights, ability to claim the rights when they are breached by the employer and the willingness to claim the rights were heavily affected (Corby, 2015).

In Japan, the way industrial disputes are resolved has drastically changed due to the collapse of the bubble economy (characterised by lower economic growth and high unemployment) and the dwindling union membership. Collective dispute resolution has suffered a major setback such that the pursuance of labour justice has worn an individualistic approach. This led to the decline in the collective industrial action but not the end of industrial conflict. Consequently, more individual labour cases are taken to court leading to higher labour caseload in the labour court. In order to reduce the caseload, the use of Alternative Dispute Resolution (ADR) practices became more prevalent as a way of achieving the settlement of disputes (Benson, 2012).

In India, the heavy-handed government interference in the labour-capital relations premised on the desire to attract foreign direct investment in the IT sector eroded the initial good intentions of regulating labour relations for the sake of industrial harmony through the Industrial Dispute Act (1947), Trade Union Act (1926) and Contract Labour Act (1970). Consequently, the collective bargaining in the IT industry was suffocated and employment contracts were individually crafted and pursued in case of any breaches thereof. As a result, many people resorted to taking individual matters to court as opposed to revolving them through collective bargaining and alternative dispute resolution (ADR) mechanism; thereby increasing the caseload (Andrew and Mosco, 2010).

In Nigeria, several dispute resolution mechanisms are initiated to engender industrial harmony. Adebisi (2013) notes that disputes between employers and employees in Nigeria are prevalent causing a strain on industrial relations and the consequent industrial action such as strikes or lockout, low job morale, labour turnover and social problems such as high criminality. According to Atilora and Dugeri (2012), litigation is often adopted as a means of dispute resolution in most formal work organisations. However, this has not always been the most effective way to resolve conflicts as it has proven to be ineffective due to its legalistic and adversarial nature (Olatunji et al, 2015). Although

efforts have been made to achieve industrial harmony, the prevalence of disputes is a great concern in both the public and private sectors of Nigeria (Anyim et al, 2012). The dispute settlement mechanisms such as judicial arbitration have been largely ineffective as the National Industrial Court (NIC) take 12 months to make a decision known to the disputing parties; and Industrial Arbitration Panel (IAP) takes 42 days to make an award decision. This has led to the erosion of court users' confidence in the system as parties get frustrated. The scenario has been worsened by the government's high-handedness whereby it fails to commit to collective bargaining agreements; and this is exacerbated by the parties' general insincerity, subjectivity and bias in their approach to industrial relation (Anyim et al, 2012; Fashoyin, 1992).

However, in some jurisdictions such as the USA and South Africa, there has been some success in the management of the labour disputes' caseload. In a democracy like United States of America, the courts are an indispensable right for the citizens as they are grantors of justice under employment law. However, the courts are not always necessary and sufficient as they are more often than not difficult, expensive, slow and inefficient. This is why in the United States, most labour disputes are settled through less formal means called Alternative Disputes Resolution (ADR) practices. The ADRs are most prevalent, easier and more cost-effective method of resolving disputes as opposed to formal litigation; and consequently, this has helped in reducing the burden on the formal courts (MacManus and Silverstein, 2011).

In South Africa, the Labour Court was flooded with many labour disputes owing to various forms of labour injustice perpetrated by various employers. The very formal and legalistic nature of justice dispensation process by the Labour Court worked contrary to the rationale behind the creation of the Labour Courts. As argued by Animashaun et al (2014), formal courts' inordinate rigidity, delays, adversarial court trial processes unbearable legal costs meant that the playing field was not level between the well-resourced employer (who can afford best legal representation) and the poor and indigent employee. In order to deal with this problem, the South African government established the Commission for Conciliation, Mediation and Arbitration (CCMA) to provide an

informal but effective labour dispute resolution process characterised by flexibility, user-friendliness, speedy resolution, affordability and cultural relevance (Wojkowska, 2006). Through the Alternative Dispute Resolution (ADR), the CCMA resolves labour disputes using a resolution continuum from conciliation, to mediation up to arbitration. This compulsory ADR in South Africa has reduced the backlog of cases at the Labour Court; and enhanced the access to justice for all regardless of class status for purposes of building a strong democracy which entrenches human development and prevents conflicts in the long term (Wilson, 2001; Selim and Murithi, 2011). Furthermore, Bendeman (2003) notes that the CCMA was later strained with caseload owing to the latent "pathology of conflict and a paternalistic approach to human resources by most South African employers'; the high unemployment and poverty levels; the ease of access to CCMA; and the apparent lack of emphasis on prevention of disputes in the South African dispute resolution system. However, the establishment of the CCMA went a long way in reducing the caseload for the formal labour courts and expedited effective settlement of labour disputes.

2.4 Legislative Instruments in Some Jurisdictions

In most jurisdictions, labour courts have the primary role (court of initial jurisdiction) over labour disputes. In Indonesia, the labour relations courts called Pengadilan Hubungan Industrial (PHI) have primary mandate over labour matters while in Bangladesh, there is the Labour Relations Act (2006) which regulates industrial relations and only the labour court can adjudicate labour matters. In South Africa, the Labour Relations Act (1996) established the Labour Court and the Labour Appeals Court (Bhorat and Westhuizen, 2008); while in Nigeria, the National Industrial Council was established as a tribunal with sole jurisdiction over trade union disputes and has final and binding authority over both parties to a dispute (Essien, 2014).

In Zimbabwe, the Labour Act established the Labour court under Section 92 to hear and determine labour disputes. In order to achieve effectiveness in managing the caseload at the Labour Court, the Advisory Councils, Workers Committees and Employment Committees as social partners have always been vibrant in pre-trial disputes resolution;

and there are many Labour Court Presidents spread across the country in order to deal with the human resource challenges and to achieve access to justice and speedy dispute labour settlement (Labour Act, 1985). Pre-trail dispute settlement is favoured by many jurisdictions as a way of reducing the workload for the Labour Courts and saving litigation costs. Consequently, many countries adopted pre-trial negotiation, conciliation, mediation, arbitration and adjudication as a process for settling disputes (Daemane, 2014). For example, the Advisory, Conciliation and Arbitration Council (ACAS) in the United Kingdom; and the Institute of Mediation, Arbitration and Conciliation (IMAC - in Spain) were established to facilitate pre-trial dispute settlement means: Conciliation, Mediation and Arbitration - which are known as Alternative Dispute Resolution (ADR) mechanisms. According to Armputharaj and Gayatri (2014), in Nigeria and India, labour matters are handled through these ADRs before being referred to the Labour Courts. Furthermore, the ADRs are used as a strategy for reducing the caseload at the labour courts in the United State of America and India.

The literature consulted falls short of providing a broader analysis of how effective labour courts are in achieving the goals intended by the creators of the courts. This study has expanded the literature base by discussing the effectiveness of the Industrial Relations Court (IRC) of Malawi more deeply. The study has analysed the Court's compliance with the legal provisions and the set standards in terms of time within which it has to discharge is legal mandate; and how its failure to comply with the legal provisions and set standards affect the delivery of labour justice. Instead of just looking at the duality of jurisdiction between the IRC and High Court over labour matters; and the loosely discussing the effects of inadequate financial and human resources on the work of the court; this study has gone deeper to demonstrate a clearer picture of how numerous factors (internal and external) militate against the work of the Court.

Furthermore, the above cited authors do not extensively discuss the actual process of the labour dispute settlement from case lodging, actual hearing of the matter though to the settlement to unearth the roadblocks or bottlenecks to the labour courts' inability to achieve the intended efficiency and effectiveness. This study has analysed the labour

dispute settlement process at the IRC and how this process helps or militate against the objectives of Court in the delivery of labour justice. More importantly, the authors consulted do not substantially discuss the challenges labour courts face and this researcher did not come across a study on the IRC which extensively discussed the challenges. This study has extensively discussed several challenges which affect the work of the IRC and the bearing this has on the Court's effectiveness in discharging its legal mandate. Finally, the authors consulted did not assess the study court users' perception in order to understand their level of satisfaction regarding the work of the labour courts. This study assessed the IRC users' perception to gauge their level of satisfaction with delivery of labour justice particularly the long time the Court takes to settle disputes. Therefore, this study has broadened the literature base. However, although the consulted authors displayed the shortfalls discussed above, in their contribution to the body of knowledge in the subject area, the authors underscore the importance of a robust pre-trial dispute settlement which goes a long way in reducing the workload for labour courts and hence making it cost effective.

2.5 Unpacking the Concept of Effectiveness and Its Measurement/Indicators

Various authors have given different definitions of effectiveness. Firstly, Sammons (1996) defines effectiveness as a measure of the extent to which an intervention, a procedure or service does what it is intended to do for a specified population when deployed in the field in routine circumstances. Bernard (1938) agrees with Salmons (1996) by saying that effectiveness is the accomplishment of recognized objectives of cooperative effort and underscores this by stating that the degree of accomplishment entails the degree of effectiveness. Furthermore, Robbins and Coutler (2002) agree that effectiveness is a measure of how well the outputs of a particular policy/program or service achieves the envisaged objectives or desired outcomes.

As correctly argued by Oghojafor, Muo and Aduloju (2012), it is difficult to define the concept of effectiveness because of its variant meaning to different people. Ivancevich and Matterson (2002) agree and go further to say that it is even harder to measure effectiveness but argue that effectiveness entails attention to goals, satisfaction of

constituents and relationship with the environment. It is difficult to define effectiveness with certainty because systems are complex with varying constituents such that to arrive at a unitary view on effectiveness is not only inadequate but also unrealistic. Oghojafor, Muo and Aduloju (2012) underscore this discourse by arguing that the attempt to define effectiveness depends on perspective and frame of reference of the one defining and evaluating it and the reason behind the definition and evaluation of effectiveness.

Just like defining and finding a common meaning of effectiveness, it is also not easy to measure or identify common indicators of effectiveness. Oghojafor, Muo and Aduloju (2012), argue that some measures of effectiveness contradict each other giving an example that a measure cannot be in one direction like giving more rewards to shareholders and at the same time give more compensation to employees. Robbins and Coutler (2002) agree that measuring effectiveness is problematic because it is a function of organization's objectives, dynamics and values and each organization runs its business in such a way that it believes can lead to envisaged effectiveness. There is no common criteria for measuring effectiveness or identifying indicators thereof because every perspective engenders a different angle to the meaning of effectiveness (Ivancevich & Matterson, 2002). According to Oghojafor, Muo and Aduloju (2012), a measure of effectiveness is the percentage of the results in relation to the set objectives or intended goals of an organization. This is consistent with what Steers (1991) espoused as the most popular evaluation criteria of effectiveness, namely adaptability or flexibility, productivity, conformity and constituency satisfaction, compliance rates and enforcement actions that contribute to deterrence.

The overarching objective of the IRC, as a court of original jurisdiction, is to hear and determine labour disputes (Section 64 of the LRA, 1996). Steers (1991) suggested that for a program or a process to be fully effective, it should fully achieve its envisaged results, objectives or goals for purposes of achieving some degree of certainty; and he noted that it is not easy to achieve certainty in behavioral sciences.

For purposes of this study, the effectiveness of the IRC was analyzed in terms of the time taken to settle labour disputes (level of compliance with legal provisions and set standards) and the level of satisfaction from the court users (constituency satisfaction). As advised by Ivancevich and Matteson (2002), the measure of effectiveness can be effective, partial effective, ineffective, counter effective or neutral effective. Consequently, the degree of IRC effectiveness is either effective, partially effective or not effective.

2.6 Theoretical Framework of the Study

A theory is a coherent group of assumptions and propositions which explains a phenomenon. It is an objective proposition consisting of logical and coherent statements that serve as a guide to easy understanding of a phenomenon by linking processes to conclusions (Jaeoba, Ayatunji and Sholesi, 2013). According Salamon (2000), industrial conflict or dispute can be defined as all expressions of dissatisfaction within the employment relationship with regard to the employment contract and collective bargaining agreement.

As noted by Olatunji et al (2015), a dispute is any misunderstanding between and among two individuals, a group of individuals or a social group. Albert (2000) further agrees that a dispute is a struggle over values or claims of status, power and scarce resources with the aim of getting the desired value and to “neutralize, injure or eliminate rivals”. This cements the Karl Marx’s class struggle history of societies. This is characteristic of the employer-employee relationship as espoused in the pluralist theory of industrial relations. Albert (2000) further says that a labour dispute is a dispute relating to employer-employee relationship either as individual employees or in their collective employment relations. As argued by Ubeku (1983), individual disputes if not properly resolved can escalate into a group or collective dispute especially when parties to an employment agreement deviate from collective bargaining agreement terms. Finally, Hayman (1975) argues that labour dispute is inevitable in modern organizations because the nature of modern work relations is on its own a source of disputes. This is the case because organizations are made up of people of different socio-cultural backgrounds; and the

employer and employee have opposing interests with each striving to churn a vantage point in the employment relationship.

Dispute settlement is a systematic process of resolving a dispute or a conflict through negotiation, conciliation, mediation, arbitration or adjudication. Effectiveness of an organisation is a measure of its ability to achieve the desired goals or objectives as professed in its mission. For purposes of industrial harmony, peaceful dispute resolution is the desire for every organisation since the contrary is disruptive to production and the achievement of overall strategic goals (Keator, 2011).

From the above, what is apparent is that disputes in the employer-employee relationship are inevitable; and that for the sake of industrial harmony, there is need for deliberate efforts to manage the disputes to acceptable level so as to avoid the disruption to the operations of the modern work organizations. This can be done through what is known as dispute settlement (Burton, 1990).

The study is anchored by 2 theories: Pluralist Theory of Industrial Relations and Systems Theory.

2.6.1 Pluralist Theory of Industrial Relations

According to the Fox's Frames of Reference, employment or industrial relations (IR) can be viewed from three basic perspectives (Fox, 1974) as presented below.

	Employment relationship	Form of worker representation
Unitary	Based on trust and harmony; managed conflict	Individual voice; employee participation
Pluralist	Divergent interests; need for regulation to solve conflict	Institutional: trade unions, collective bargaining
Radical	Underlying structural inequality; struggle for power and control	Militant unions; extra-institutional: social movements

Source: Adopted from Tapia, Ibsen and Kochan (2015)

As presented in the table above, IR can be viewed from a unitary perspective where the relationship is based on trust and harmony and conflicts are peacefully managed because of mutuality of interests between parties; from a pluralist perspective where the relationship recognizes the divergent interests between parties and hence the need for regulation of the relationship by government to facilitate conflict resolution; and from the radical perspective where parties to the employment relationship is viewed as confrontational with underlying structural inequalities and struggle for power and control over the relationship.

Budd and Bhave (2008) agree that at the radical IR perspective level, the employer and employee are natural agents in the labour market who are driven by egoistic pursuit of self-interest because their interests are incompatible. Tapia, Ibsen and Kochan (2015) confirm that at radical IR perspective calls for more actors (beyond the employer, employee and government) such that trade unions and civil society are alternative employee voice mechanisms for power rebalance in the employment relations. However, for this study, the researcher focussed on the pluralist perspective because IRC is a government regulation institution.

The pluralist IR theory confirms that the employer-employee conflict is inevitable because of the largely conflicting interests in their employment relationship hence the need for some regulation for the sake of near-perfect sustainability of the employment relationship (Budd and Bhave, 2008). As argued by Kaufman (1999) and Wheeler (1985), human beings are not necessarily rational or pure economic agents such that limited or restrained social and psychological fulfilment is bound to cause conflict of interests with the employer and the employee, giving rise to industrial actions such as strikes.

Conflicts are disruptive if left unresolved hence there is a need to deliberately manage conflicts (Salamon, 2000). Premised on this need to manage conflicts to avoid their disruptive nature to production and national development, many countries established

both Alternative Dispute Resolution (ADR) mechanisms as well as industrial or labour courts to settle disputes when ADRs prove futile. In Malawi, the IRC was established for this cause as an original jurisdiction court mandated to settle labour disputes for the sake of industrial peace (in recognition of the inherent conflictual nature of employment relationship) and for national development.

Critics argue that this theory is limited in that it emphasises on the quest for stability, yet this is almost unattainable because the values of people constantly change with time. There will always be disparities even in the organisations which are seemingly near perfect (Jayeoba et al, 2013). Furthermore, one may be inclined to think that this theory presents an inward-looking approach – focused on IRC internal labour disputes and the resolutions thereof. On the contrary, IRC is also influenced by what happens in the labour market outside.

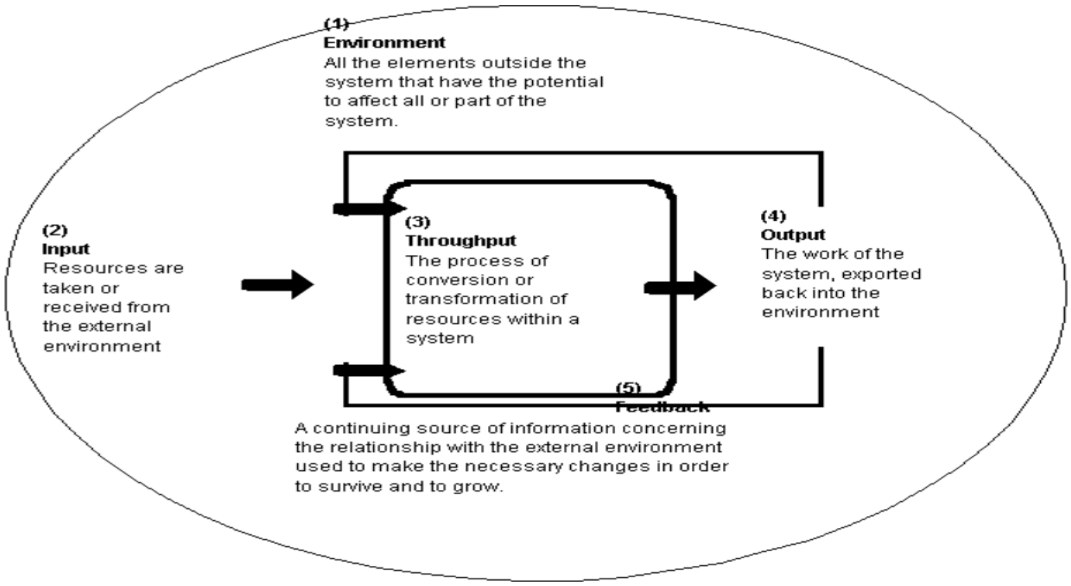
In spite of the shortfalls above, this theory is relevant to the study because it underscores the existence of conflicting interests between employers and employees owing to the differences in ideology, values (personality/behaviour and motives) and income/power distribution disparities (Jaeoba, Ayatunji and Sholesi, 2013). Consequently, from the basis of the current study, the theory helps scholars to understand the rationale behind the creation of the IRC as an institution mandated to manage the employment relationship through effective remedies to labour disputes.

This theory speaks to the study objective of analysing the process which the Court uses to resolve or settle labour disputes. From the realisation of the conflict inevitability in an employer-employee relationship by the Malawi government, the Court was created as a system for managing labour disputes. A fair and reasonably speedy process of dispute resolution entails industrial harmony and hence national development. The process' bottlenecks entail delayed and hence denied justice. The theory cements what the literature says that conflicts or disputes are inevitable and what is required is the creation of a management system aimed at minimizing the disruptive effects of disputes and conflicts (Salamon, 2000). The IRC is such a system whose process is purportedly meant

to serve this objective; and hence a subject of analysis of the current study. Secondly, the theory speaks to assessment of the perception of the court users.

2.6.2 Systems Theory

This theory was developed by J.T. Dunlop. According to Tapia, Ibsen and Kochan (2015), this theory sates that organizational, scientific and human systems operate in an environment from which they get inputs, process the inputs, produce outputs back into the environment which feedback into the system as inputs again. It further states that these systems have interrelated components surrounded by a boundary; absorbing inputs from other systems and transforming them into outputs to serve other systems (Jaeoba, Ayatunji and Sholesi, 2013). The diagram below depicts the essence the Systems theory:



Adopted from Jaeoba et al (2013)

According to Dzimbiri (2015), the Systems theory (or Open Systems theory as Katz and Kahn termed it later) states that organization ability to meet and sustain its needs depends on the environment in which it operates. Conversely, the closed system is mutually exclusive to itself with no interaction with the environment. Clawson (2004) contends that complex organizations are open systems interacting with the environment and adjusting to it for survival. An organisation (a system) gets inputs from the environment,

transforms them into outputs and releases the outputs into the environment which uses the outputs for creation of further inputs into the organisation.

Critics have argued that this theory fails to present environmental reality in its quest for equilibrium. It simplifies reality by saying that a system has inputs, transformative process, output and the feedback mechanism into the system (Jaeoba, Ayatunji and Sholesi, 2013). However, there is a multiplicity of directions (back and forth) of the flow of activities and relationships thereof in both internal and external environment of a system which overshadows the logical procedure presented by this theory (ibid). It emphasises the critical importance of an effective labour dispute resolution system and not the rationale behind the creation of the IRC.

Despite the above criticism, this theory is relevant to the study because it presents a system as having many parts that make a whole. IRC is an institution which operates in a political, economic and legal environment. Its activities such as dispute settlement has an effect on the environment; and conversely IRC is affected by the environment. The Court is mandated to comply with the law (made by Parliament) in its delivery of justice (input); it is expected to use its "effective" processes to settle labour disputes (process) and is affected by both internal and external factors (environment) in the course of doing its work; and it has to give effective and timely judgement as settlement of the disputes to the satisfaction of court users (output). The effect of systems theory is that it helps managers to look at organizations more broadly as it enables them to interpret events/patterns and recognize various parts of the organizations as well as the interrelationships thereof (Olum, 2004). Consequently, the environmental contextualization from the systems theory underscores the importance of looking at the environmental influences on the IRC mandate.

This theory speaks to the study objective of assessing the court users' perception of the Court. As found in the study, the Court effectiveness is largely hampered by the external factors in the environment in which the Court operates. The inputs to a system may be right but if the environmental factors affect the processing of the inputs, the output or

outcomes of that system are bound to be problematic to the intended beneficiaries of the system (Clawson, 2004). The feedback loop in the systems theory corroborates the need to assess the feelings of the intended users of a system such as the Court in order to understand the extent of fulfilling the objective at the inception and further guide the policy direction aimed at improving service delivery. This is why this study assessed the perception of the court users in order to understand the level of court user' satisfaction on the delivery of justice by the court hence the relevance of this theory.

In the researcher's view, the government funding to the IRC, members of staff of the IRC and the matters brought to the court for determination constitute inputs to the system; the case registration, servicing of notices and the pre-hearing/full hearing of matters constitute the process part of the system; while the court rulings or determinations constitute the output part of the system. Pluralist Theory as the key theory for this study as it confirms the existence of employer-employee conflict in interests and the need for a deliberate system for a dispute resolution. However, the Systems Theory confirms that some employer-employee conflicts are a result of environmental factors (interaction between an institution like the IRC and the environment). Therefore, the Pluralist Theory of IR and Systems Theory are complimentary in the context of this study.

2.7 **Chapter Conclusion**

The chapter has presented a review of some of the work by other authors on labour dispute settlement and the concept of effectiveness. The first part of the chapter discussed the concept of labour dispute settlement and the process; then the review and discussion of successes and failures as well as legislative instruments across some jurisdiction; and then narrowed down to the IRC. Further the chapter discussed the concept of effectiveness before ending with a discussion of the two theories underpinning the study. The literature reviewed and the theoretical framework above lay a proper foundation of this study. The next chapter is the study methodology.

CHAPTER THREE

RESEARCH METHODOLOGY

3.0 Introduction

This chapter covers the methodological approach adopted in the research in order to achieve the study objectives. It starts with a recap of the study objectives; then discusses the study approach, research design, study population and sample; the sampling technique; the methods used in collecting and analyzing data; the study limitations; and the ethical considerations. A research methodology is an outline of steps to be taken in a research study in order to find answers to the research questions (Kumar, 2014; Leedy & Ormrod, 2001).

3.1 Study Approach

As stated by Kumar (2014), qualitative research method follows an unstructured approach to inquiry with emphasis on inductively exploring diversity as opposed to quantification and it provides narratives (as opposed to measurement) of feelings, perceptions and experiences in its findings; whereas quantitative research method is rooted in the rationalization philosophy with structured and predetermined set of procedures to quantify variations in a phenomenon and emphasis on measurement of variables.

The study adopted a qualitative approach using qualitative research methods in order to establish a broader understanding of a phenomenon under study and enhance accuracy of the research findings (Teddlie and Tashakkori, 2009; Kumar, 2014). This approach was chosen because it is better placed to answer the study questions through narrative

experiences of the key informants and court users in order to get plausible answers. As argued by Aliaga, and Gunderson (2002), qualitative research seeks to examine the context of human experience (Schwandt, 2000) and proposes that there are multiple realities and different interpretations may result from any research phenomenon (Appleton and King, 2002).

Under this qualitative approach, the study inductively (by exploration) answered the following research questions: To what extent does the IRC comply with the legal provisions and set standards? What process does IRC use to settle labour disputes? What challenges does IRC face in fulfilling its legal mandate? What is the court users' perception on the effectiveness of the IRC?

3.2 Study Design

According to Thyer (1993) and Kerlinger (1986) a research (study) design is a detailed road map or plan a researcher follows during a research journey to find answers to research questions or problems. It articulates the kind of data required, provides a guide on the methods to be used in collecting and analyzing data, and explains different methods and procedures to be applied during the research process up to data analysis. Study design explains whether the study will be "experimental, correlational, descriptive, or before and after" (Kumar, 2014).

This study could have taken the survey approach. However, this would not have been a suitable design because this study is largely about the experiences of those close to and familiar with the work of the IRC with regard to the phenomenon under study – accumulating case backlog in relation to the Court's effectiveness or lack thereof in settling labour disputes. Therefore, the type of data from the study is largely qualitative. Furthermore, the survey approach would have been appropriate only in partly answering one study question of assessing the perception of court users. Again, the study could have taken the correlational approach but this is only appropriate when there are several dependent variables being tested against an independent variable (Gerring, 2007).

Under this study, the effectiveness of the Industrial Relations Court was being analyzed by largely answering study questions around exploring the Court's compliance with law; analyzing the Court's dispute settlement process; and exploring the challenges militating against the objectives of the Court; and the resultant perception of the Court users. The answers to these questions are largely experiential, descriptive and qualitative and not correlational or quantifiable with scores. This study is bout one only labour court in Malawi and the only phenomenon being studied is the increasing case backlog as an indicator of ineffectiveness of the Court. Therefore, both the survey and correlational study approaches are inappropriate for the study.

Consequently, the study employed the experiential descriptive case study design. Burns (1997) defines a case study as an approach in which an instance or a few carefully selected cases are studied intensively; and the total population is treated as one entity. Bloor and Wood (2006) define a case study as research strategy aimed at gaining an understanding of a social phenomenon and processes involved in a setting. This is the most appropriate design for a study which is focused on a thorough understanding or exploration of a phenomenon rather than confirmation or quantification of it; and is largely descriptive in nature with narratives based on experiences of the key informants around a phenomenon (Kumar, 2014). Yin (2009) further argues that a case study is the most legitimate method for a research which requires extensive in-depth description of social phenomena like the case is in the current study. Therefore, the data collected is qualitative and this was collected through an interview guide; and the narrative analysis was used to analyze the collected data.

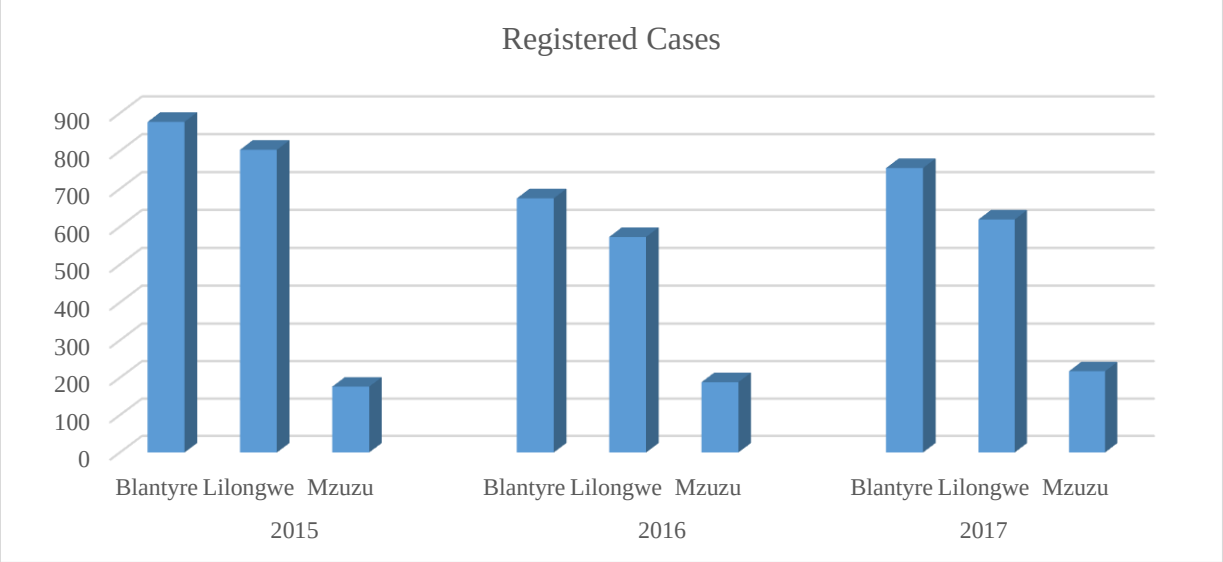
3.3 Study Population, Sample and Sampling Technique

According to Taherdoost (2016) and Kumar (2014) a study population is a set of people a researcher wants to study. A study sample is subgroup of the population which is the focus of the study and is selected in a way that it represents the study population; and it allows the researcher to study a subset of a population and collect data that has a high degree of probability to represent the entire population (Kumar, 2014). These are people from whom the required information is gathered; and a sample is selected to save time

and resources. The sampling technique is the systematic way of arriving at the population sample which is representative of study population (ibid).

The study population was made up of the three Industrial Relations Courts of Blantyre, Lilongwe and Mzuzu (three Registries of Blantyre, Lilongwe and Mzuzu). However, the study only focused on the Blantyre and Lilongwe Registries. This was the case because Lilongwe and Blantyre are the major cities of Malawi and more cases were registered at the two Registries than at Mzuzu Registry from January 2015 to December 2017 which the period of interest in this study. Blantyre Registry registered 877 in 2015, 675 cases in 2016 and 755 cases in 2017 making a total of 2,307 cases. Lilongwe Registry registered 803 cases in 2015, 573 cases in 2016 and 619 cases in 2017 making a total of 1,995 cases. Mzuzu Registry registered 176 cases in 2015, 188 cases in 2016 and 217 cases in 2017 making a total of 581 cases (IRC Library). The bar chart below depicts the number of registered cases during the study period to illustrate what motivated the choice of the two Registries:

Bar Chart 2: Court Cases Registered between January 2015 & December 2017



***Source*: Created by the Researcher**

As argued by Ezzy (2002), the richness of data about a phenomenon is achieved by purposively rather than randomly deriving a sample. Furthermore, Bernard (2002) stresses that purposive sampling is a non-random technique which does not require underlying theories or a set number of informants and that instead the researcher decides on which people using their knowledge and experience in the study phenomenon can and are willing to provide the information needed because of either their knowledge or experience. Sampling is a process of identifying a section of the study population to enable generalizations to the entire study population (Amin, 2005; Wisker, 2001).

The study adopted the purposive sampling which was appropriate for the choice of participants is guided by the fact that they are rich in the relevant information for the study and hence help in providing plausible answers to the research question and objectives. Consequently, 5 members of IRC employees were purposively selected for interviews from both judicial and support staff cadres where 3 were judicial officers (the Chairperson and Assistant Registrar for Blantyre Registry; and the Deputy Chairperson for Lilongwe Registry); and 2 support staff - 1 Court Clerk for Blantyre Registry and 1 Court Clerk for Lilongwe Registry – these clerks were responsible for managing the Court library and archives a both Registries hence their being sampled. These were key informants who are better placed to provide the information needed because of their knowledge or experience as Court staff. This sample represented 13% of the combined staff headcount of 47 for all the three registries of Blantyre, Lilongwe and Mzuzu; and 13% of staff headcount of 37 for the Blantyre and Lilongwe Registries (at the time of the study) and hence a good representation of all cadres of IRC employees.

Secondly, 4 panelists were selected to share their experiences and challenges during their work at IRC where 2 panelists were from Lilongwe Registry and another 2 from Blantyre Registry (2 employer representatives and 2 employee representatives). 4 panelists make 20% of the 20 panelists.

Thirdly, 5 court users were selected to share their experiences at the IRC. The first 5 registered cases at both Blantyre and Lilongwe Registries in 2015 but not concluded at the time of the study were the ones selected as these are the oldest cases in the entire study period and hence appropriate for the time test of Court effectiveness.

Lastly, 1 labour practice lawyer who had litigated more cases at the IRC between January 2015 and December 2017 (and a registered member of the Malawi Law Society) was selected for the study. Lawyers in Malawi who represent litigants at IRC are a key stakeholder in the labour law discourse in Malawi and hence the experiences on the work of the IRC added value to the study. Therefore, a total of 15 respondents (10 key informants and 5 court users) were interviewed during the study. As argued by Miles and Huberman (1994), small numbers of respondents engaged in qualitative studies help in detailed studying of a social phenomenon.

3.4 Data Collection

Data collection is the process of gathering information to inform the researcher's findings using either primary sources or secondary sources or both depending on the epistemological nature of the study. Primary data is the data the researcher collects using the primary sources or methods such as observation, interviews, questionnaires, workshops/seminars and focused group discussions; whereas secondary data is data collected through consulting existent documentation (Kumar 2014).

3.4.1 Primary Data

In this study, primary qualitative data was collected through interviews with the key informants and court users using an interview guide. Fisher (2005) explains that in depth interviews are personal and structured to facilitate a personal interaction between the researcher and the interviewee thereby removing the non-response challenges characteristic in structured questionnaires. Interview is a one-one-one interaction between two or more individuals to elicit information, beliefs or opinions from another person; and it involves the interviewer reading questions to the respondent and recording the

answers (Monette et al, 1986; Burns, 1997; Taylor & Bogdan, 1998). In this study, the key informants and court users shared their experiences with the Court and these experiences helped the researcher to get answers to the study questions. Furthermore, interviews with some court users was done in Chichewa. Then these were translated into English by the researcher. The researcher did not use an official translator because the researcher is the one who understood the context of the study and hence better placed to translate the Chichewa responses into English.

3.4.2 Secondary Data

Secondary data was collected through desk research and documentary review of cases, IRC publications (the Status Reports & Case Returns), the Labour Relations Act (1996), published books/journals as well as articles on the study area. This data was important as it provided a contextual framework to the study and hence a strong foundation to the key informant interviews.

3.5 Data Analysis Techniques

According to Bogdan and Biklen (1982), data analysis is described as working with data, organizing it, breaking it into manageable units, synthesizing it, searching for patterns; discovering what is important and what is to be learned, and describing what the researcher would want others to learn from it. Shamoo and Resnik (2003) further argue that data analysis is the process of systematically applying statistical and/or logical techniques to describe and illustrate, analyze, condense, and evaluate data. Kumar (2014) as well as Polit and Beck (2003) define data analysis as the process of bringing order, structure and meaning to the mass of collected data.

In this research qualitative data gathered was analyzed using narrative analysis. According to Shamoo and Resnik (2003), narrative analysis is a type of data analysis in which the researcher interprets the findings of studied phenomenon to make conclusions thereof. Through this technique every interview had a narrative thereof which the researcher reflected upon; organized the narrative; and then presented it in a re-hashed

format. Data collected was in the form of interview recordings, field notes, and the researcher's own observations. This method of data analysis was particularly chosen because it enabled the researcher to reformulate and present the key informants' stories in different contexts and based on their individual knowledge and experiences around the study phenomenon.

The choice of the narrative data analysis was guided by the type of the qualitative (narrative data from interviews) data collected during the study. The analysis of the effectiveness of the court were around the following major data areas or indicators:

- Case Processing Time –The time taken for the IRC to register and conclude cases brought before it – whether within 90 days, the court is able exhaust the labour dispute settlement process from case registration to pre-hearing conference, full hearing, assessment) and deliver judgement within 21 days – a demonstration of IRC effectiveness.
- Court User Satisfaction –This is a perception analysis among Court users regarding how their experience in their case brought to IRC – this is a constituency satisfaction assessment.

Hereunder is the diagrammatic presentation of the sources of data and analysis thereof:

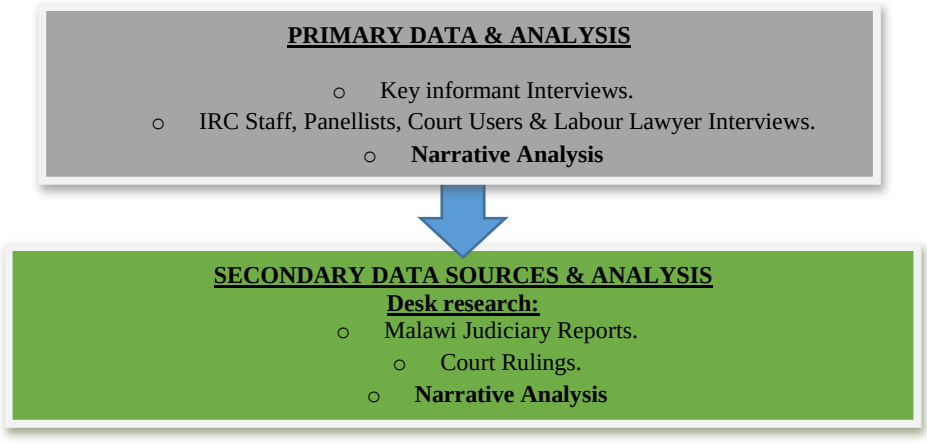


Figure 2: Data Collection & Analysis

***Source:* Researcher**

It should be noted that although the researcher chose the case study design and a qualitative study approach one-on-one interviews as a data collection tool, this approach is time consuming; very hard to establish causality; results are not statistically representative. But it is an appropriate approach for a deep dive and a thorough understanding of the phenomenon under study. The research strategies employed assisted the researcher to collect appropriate data which respond to research questions on Court's legal compliance, Court's dispute settlement process analysis, identification of the challenges the Court faces and the court users' perception assessment.

3.6 Study Limitations and Mitigating Techniques

The research encountered three limitations during the study. Firstly, the success of the research study depended on access to IRC staff, panellists, court users and a lawyer for interviews and administration of interview guides. Since litigation processes are sensitive in nature, it proved difficult to obtain some information; and some informants refused to have a recording of the interviews; and all respondents were uncomfortable to sign consent forms. To get around this hurdle, before the start of every interview (using an interview guide); the researcher assured the respondents that their identities were not going to be revealed to anyone, that data collected was going to be treated with utmost confidentiality and that the collected data was going to be used for academic purposes only. This made the respondents (in spite of their refusal to sign consent forms and to be recorded) comfortable and contented enough to participate in the study and this facilitated an easier data collection.

Secondly, the IRC staff and panellists are very busy people. This had an effect on their availability when needed for interviews. However, the researcher could send prior and subsequent reminders to the interviewees (using various media) in order to manage the negative effects of this limitation on the study schedule.

3.7 Ethical Considerations

As argued by Halai (2006), a sound research is a moral and ethical endeavour which ought to be concerned with ensuring that the interests of those participating in the study

are not harmed as a result of research being done. As argued by some scholars, study participants or stakeholders are supposed to voluntarily take part (or indeed withdraw) in the study (Schinke and Gilchrist, 1993); and they should be told that the collected data will to be treated with strict confidentiality (Kumar, 2014).

The key informants and court users participated in the study voluntarily and without being pressured or coerced. Furthermore, they were informed that their identities would not be revealed to anyone; that all collected data would be treated with utmost confidentiality; and that the data would be used for academic purposes only. Consequently, no names were used in the study and instead all the respondents were given codes such as Respondent CS-CE0X (for Court staff); Respondent PA-CE0X (for Panelists); Respondent LL-CE0X (for Labour lawyer); and Respondent CU-CE0X (for Court users) in order to conceal their identity. In the code names, CS stands for Court Staff, PA stands for Panelist, LL stands for Labour Lawyer, CU stands for Court User, CE stands for Court Effectiveness and 0X is a particular 2-digit number of the respondent.

Finally, the purpose, relevance and importance of the study were explained to the respondents before the start of interviews as arguably advised by Kumar (2014).

3.8 Chapter Conclusion

This chapter has explained the research methodology used in conducting the study. It explained the design of the research. A qualitative method was used in order to respond to the requirements of the research objectives. The study sample size, data collection and analysis methods are other issues discussed in this chapter. The chapter ended with limitations of the study and ethical considerations issues the researcher encountered during the study. The next chapter presents study findings and discussions thereof.

CHAPTER FOUR

FINDINGS AND DISCUSSIONS

4.0 Introduction

This chapter presents and discusses the findings of the study. It starts by presenting and discussing the findings on the effectiveness of the IRC by exploring the extent to which the Court complies with the legal provisions and set standards in fulfilling its legal mandate; analyzing the due process the Court uses in settling labour disputes; exploring the challenges or factors which militate against the effective delivery of justice at the Court; and then finally exploring the Court users' perception towards the Court with regard to the effective delivery of justice. Hereunder is a detailed discussion of the findings as guided by the specific study questions and objectives.

4.1 Analyzing Extent of Court's Compliance with Legal Provisions and Set Standards

In order to determine the extent to which the Court complies with the legal provisions and set standards governing its work in fulfilling its legal mandate of settling labour disputes in a timely and satisfactory manner, the researcher explored whether the court complied with the Labour Relations Act (1996) and the IRC (Procedures) Rules (1999) in order to establish if the accumulation of cases at the court was caused by non-compliance of the said legal provisions and set standards.

According to Respondent CS-CE03, once a case has been registered through completion of the IRC Form 1 (consistent with the Rule 11) within 14 days and the same is served on the respondent; the respondent has to respond or counterclaim within 14 days by

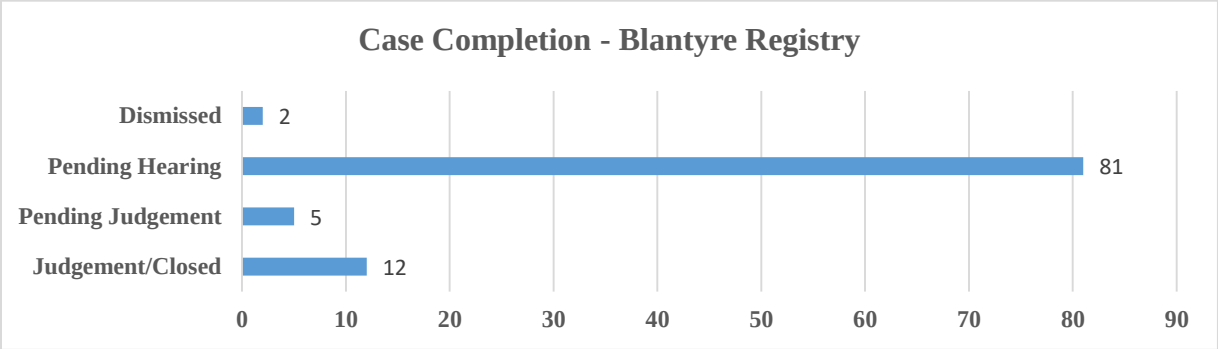
completing IRC Form 2 (consistent with the Rule 12). Once the respondent files a counterclaim, the Registrar has to set a date for a pre-hearing conference within 7 days. Then the matter may go to full trial for the court to determine its judgement on the contested issues and assess claims and costs; and deliver its ruling. According the set standards of the court, ceteris paribus, from registration to the delivery of the court ruling on the matter, three months (90 days) should suffice. Respondent PA-CE06 agreed by stating the below:

"Everything being equal, IRC matters should not take more than 90 days (3 months). However, the various challenges the court faces in its legal mandate make it difficult for the court to act swiftly. I would thus put the Court effectiveness as 50% because of the various challenges the Court faces in its work most of which are beyond its control" **A Panelist on 5 June 2020**.

Based on the interview responses from both the Court judicial staff and panelists, the researcher discovered that, in terms of case registration, the court complies with the legal provisions and set standards as enshrined in both the Labour Relations Act and the IRC (Procedure) Rules. However, from the Court judicial staff interview responses, it was further revealed that from pre-hearing to full hearing bottlenecks start showing; and due to the volume of work for the judicial officers and the various challenges (discussed later in this chapter), judgements take more than 21 days to be delivered contrary to the law. Therefore, the accumulation of cases can partly be blamed on the court's non-compliance of the 90 days processing of cases (especially at hearing level) and 21 days delivery of judgments.

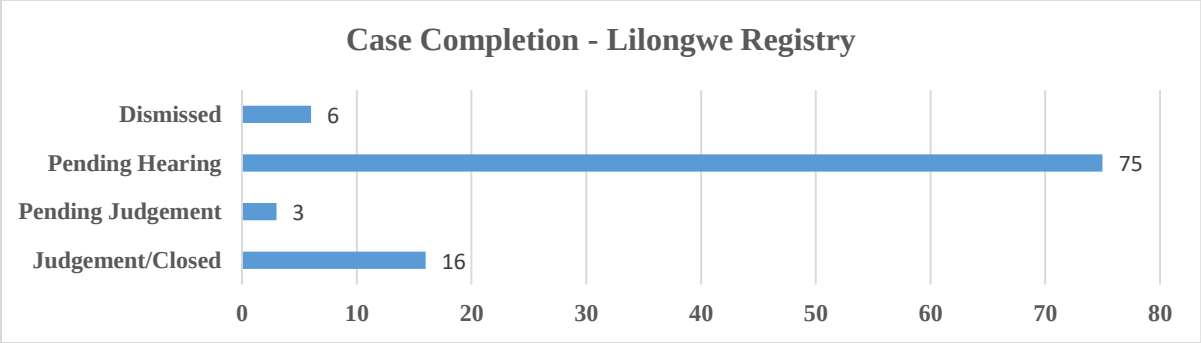
As illustrated below, based on the analysis of secondary data from the Court Registry, the completion of the first 100 cases registered in the study period (2015-2017) at both Lilongwe and Blantyre Registries confirm that the court failed to comply with the law.

Bar Chart 3: Case Completion – Blantyre Registry



***Source*: Created by the Researcher based on secondary data from the Blantyre Registry Library**

Bar Chart 4: Case Completion – Lilongwe Registry



***Source*: Researcher based on secondary data from the Blantyre Registry Library**

As observed from the above bar charts, out of the first 100 cases registered at the Blantyre Registry between 2015 and 2017, only 12 cases had been concluded; 2 had been dismissed; 5 were pending conclusion and yet 81 cases were still at hearing (pre-hearing or full hearing) stage 5 years after registration. Equally, out of the first 100 cases registered at the Lilongwe Registry between 2015 and 2017, only 16 cases had been concluded; 6 had been dismissed; 3 were pending conclusion and yet 75 cases were still at hearing (pre-hearing or full hearing) stage 5 years after registration. This confirms that the court is not effective in its delivery of labour justice as it takes many years to complete most of the cases brought before it.

Any delay in delivery of justice has a frustrating effect on the court users. As lamented by one Court user (Respondent CU-CE11) during an interview, the court users lose their means of regular income prior to comment of the case and the economic effects of their families can be huge resulting in dwindling health and withdrawal of children from school as they wait for the ruling for too long. It is therefore a concern which the Court needs to resolve.

However, as discussed latter in this chapter, according to the interview response from the Respondent CS-CE01, this delay in delivery of judgments is primarily rooted on the insufficient numbers of judicial staff which is linked to insufficient funding the court receives from the central government through the judiciary arm of government.

4.2 Analyzing the Court's Labour Dispute Settlement Process

As argued by Olatunji (2015), a process is as good as the people who use it. In order to establish to establish whether the labour dispute settlement process influences the delays in the timely and satisfactory settlement of labour disputes and hence the accumulation of cases at the IRC; the researcher had to analyze the dispute settlement process in its entirety. As depicted below, the researcher established from an interview with Respondent CS-CE02 that the following is the due process of labour dispute settlement at the IRC:

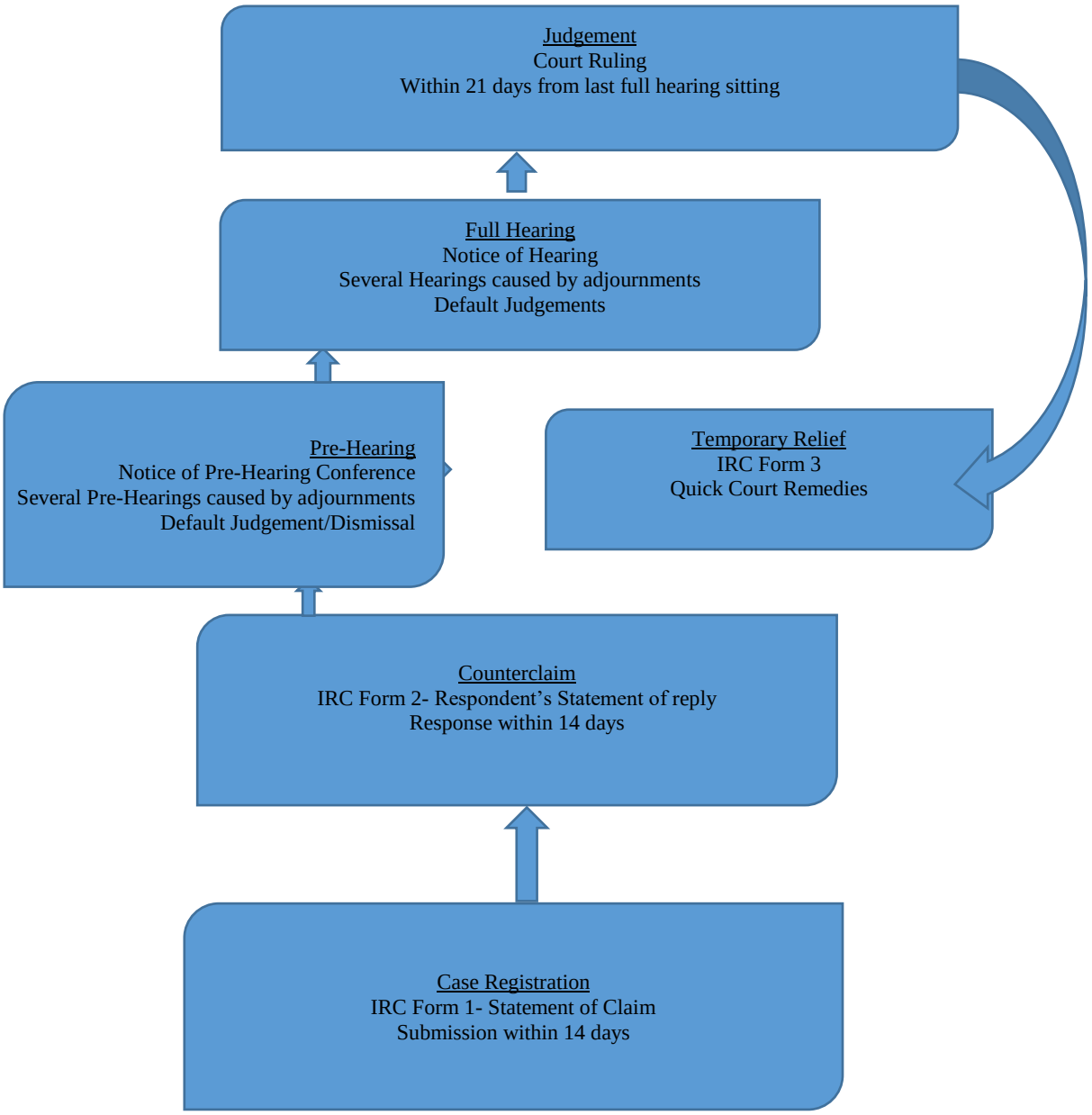


Figure 3: Labour Dispute Settlement Process

Source: ***Researcher from an interview***

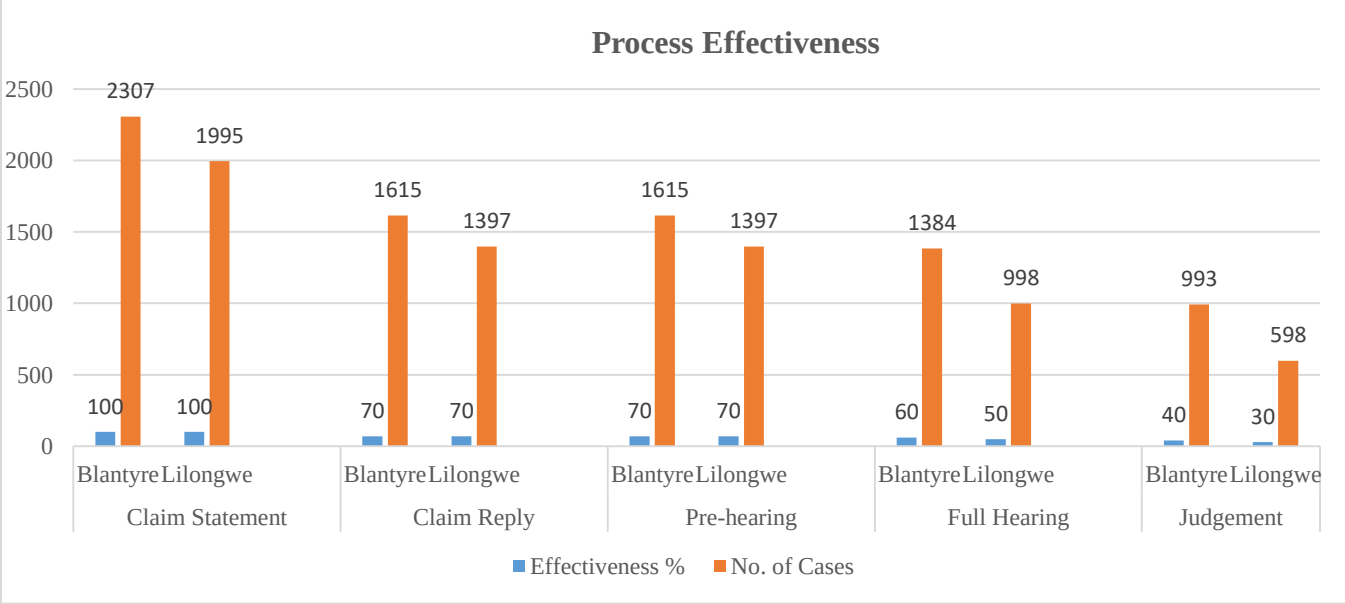
Upon reviewing the secondary data from the Court Registry, the researcher calculated (using Excel) effectiveness by dividing the statistics of completed cases at each level by total number of the cases at that level multiplied by 100 in order to get the percentage effectiveness of the dispute settlement process at that level. Hereunder is the analysis of

secondary data from the Court Registry which enabled the analysis of the process at various levels:

Process Level	Registry	Effectiveness %	Cases Processed	No. of All Cases
Claim Statement	Blantyre	100	2307	2307
	Lilongwe	100	1995	1995
Claim Reply	Blantyre	70	1130	1615
	Lilongwe	70	978	1397
Pre-hearing	Blantyre	70	1130	1615
	Lilongwe	70	978	1397
Full Hearing	Blantyre	60	830	1384
	Lilongwe	50	499	998

Consequently, the below is chart depicting the process effectiveness at each process level:

Bar Chart 5: Statistical Analysis of Process Effectiveness



***Source:* IRC Case Statistics Report**

4.2.1 Statement of Claim

As stated by **Respondent CS-CE03** (in an interview), whether one goes to the District Labour Officer, Regional Labour Officer, Commissioner of Labour or the Principal Secretary of Labour for conciliation before coming to the Court or not; the first step taken to register the case at the Court is by completing the IRC Form 1 which is the applicant's statement of claim. In IRC Form 1, the claimant must give concise and clear statement on the material facts of the matter and the legal issues arising thereof to enable the opposing party to respond (and in order to engender quick action on the respondent, at the end of the Statement of Claim Form there is a notice advising that if the party intends to oppose the matter, they must deliver a response within 14 days of service of the statement of claim, failing which the matter may be heard and determined in the party's absence and an order as to costs may be made against the party). As depicted in the Bar Chart 5 above, the study established that logging a statement of claim as part of the process had a 100% effectiveness such that all the cases (2, 307 cases at Blantyre Registry and 1, 995 cases at Lilongwe Registry) were registered within the shortest time at both Blantyre and Lilongwe Registries.

4.2.2 Respondent's Statement of Reply/Counterclaim

As stated by Respondent CS-CE05 (in an interview), once the Statement of Claim is served, the opposing party must respond within 14 days by completing IRC Form 2 which is the Respondent's Statement of Reply or counterclaim. In this form, the respondent is at liberty to object the jurisdiction of the court in the matter (if necessary); to oppose the applicant's statement of claim giving clear and concise grounds of opposition with a specific admission or denial of the allegations expressed in the IRC Form 1; and to express a counterclaim (if any) as well as indicating whether they oppose the relief sought by the applicant and indicate what other relief they think is more appropriate. As depicted in the Bar Chart 5 above, only 70% of registered cases during the study period (1, 615 cases at Blantyre Registry and 1,397 cases Lilongwe Registry) had claim replies. This confirms that process bottlenecks against court effectiveness start at this level as some employers take long in filing a response to a claim or complaint

against them because either the claim is genuine and they are trying to find a way of settling this outside the court or they take advantage of court being overwhelmed with work and hope that they can buy time; otherwise there is no reason why an employer would delay in responding to an unfounded claim or complaint from an employee. Although there is a safeguard (against this errant employer behavior) where the opposing party is supposed to respond to a claim within 14 days otherwise the court may determine the matter in the absence of the that party; pronounce a default judgement and issue an order on liquidated claims and costs against the respondent; some employers get away with it as the court loses tracking of such cases.

4.2.3 Pre-Hearing Conference

As stated by Respondent CS-CE03 (in an interview), upon receipt of the completed IRC Form 2 from the respondent, the court sets a date for a pre-hearing conference (presided over by the Chairperson, Deputy Chairperson or Registrar) and serves the notice of pre-hearing conference to both parties. At the pre-hearing conference parties attempt an out of court settlement, as the presiding officer mediates parties over the labour and employment dispute thereby avoiding full hearing where parties settle on agreed terms and alternatively it is aimed at streamlining issues for speedy trial. During this meeting, the court and the two parties determine whether the dispute may be settled by agreement without going into full hearing or trial; make agreements on the nature and extent of the unresolved issues; establish any facts which are a common cause and/or are admitted by any of the two parties; establish steps to be followed in order to shorten the full hearing of the dispute; agree on which party would start presenting the case; exchange case documents and agree on how documentary evidence would be dealt with; agree whether affidavit evidence would be handled with or without cross-examination; and discuss the necessity of the on-the-sport inspection and the presence of witnesses at the court. For the avoidance of prejudice during full hearing, the pre-hearings are mostly presided over by the Registrar. Pre-hearing minutes are drawn up and the two parties (with the court as witness thereof) sign the minutes filed by the Registrar at least 3 days before the full hearing. As depicted in the Bar Chart 5 above, further delay process bottlenecks are

experienced at this level hence only 70% of the cases (1, 615 for Blantyre Registry and 1, 397 for Lilongwe Registry) registered during the study period had gone through pre-hearing. Some seemingly straight forward cases such as non-payment of overtime which can be resolved at this level are not resolved because mostly the claimant would want the matter to go into full hearing in the hope that they would get more compensation at that level. In the absence of meritorious reasons non-attendance results into a dismissal of the case for want of prosecution in absence of an applicant; adjourning the matter for full hearing in absence of a respondent; or striking off the matter on the court list in absence of both parties.

4.2.4 Full Hearing, Assessment and Judgement

As stated by Respondent CS-CE02 (in an interview), if the matter is not settled during the pre-hearing conciliation, the court serves a Notice of Hearing to both parties. During full hearing, the court hears all the contested issues from both the claimant and the respondent at full trial to enable its determination of the matter. In the absence of meritorious reasons, non-attendance results into a dismissal of the case for want of prosecution in absence of an applicant; hearing and conclusion of the matter in absence of respondent; or striking off the matter on the court list in absence of both parties. Consequent to a full hearing, the court sets a date for assessment of claims and costs and a Notice of Assessment is served on both parties. As depicted in the Bar Chart 5 above, only 60% of the registered cases (1, 384) for Blantyre Registry and 50% of the registered cases (998) for Lilongwe Registry had gone through the full hearing stage at the time of the study. Respondent CS-CE02 confirmed (in an interview) that the numerous adjournments sought by employers at full hearing and the shortage of both judicial staff and panelist (as discussed later in this chapter) affect progress on such cases.

Respondent CS-CE03 advised that thereafter the court writes its judgement on the matter and the date for the pronouncement of the court ruling is set and communicated to the parties. If the court is forced to deliver a default judgement because the respondent did not complete IRC Form 2 to counter the claims of the complainant, the court issues a

warrant of execution to the sheriffs on the default judgement if the claims were liquidated; otherwise, the court goes into assessment of the litigated claims if not liquidated in order to determine the quantum thereof; then issue an order of assessment and a subsequent warrant of execution to the sheriffs. When the court delivers its ruling, the parties to the case are served with copies of the judgement within 21 days from the final full hearing sitting. The court judgement is appealable to the High Court (within 30 days from the ruling) if a party is not satisfied with the judgement on the point of law consistent with Section 65(2) of the LRA. As depicted in the Bar Chart 5 above, only 40% of registered cases (993) at Blantyre Registry and 30% of registered cases (598) at Lilongwe Registry had been concluded. As confirmed by Respondent CS-CE01, at this level, the major bottleneck is the volume of work for judicial officers to deliver judgement within 21 days from conclusion of the substantive hearing of the cases.

4.2.5 Interim Relief Applications

According to Respondent CS-CE03, using the IRC Form 3 (Notice of Motion – Rule 16), an applicant (the employer, employee or a trade union) may seek a temporary court relief such as an injunction to either stop an industrial action (in the case of employer) or stop an employer from effecting some disciplinary actions such as suspension, demotion, transfer, cessation or reduction of employment and employment termination or dismissal against an employee (in the case of employee or trade union). Conversely, the respondent may also use the same IRC Form 3 (Notice of Motion – Rule 16) to challenge a default judgement which the court pronounces upon the respondent's failure to submit a counterclaim using IRC Form 2 within 14 days. When the above two scenarios happen, the matter goes back to pre-hearing and full hearing processes as discussed earlier. The Court is sometimes forced to depart form its first-come-first-serve principle to attend to temporary court reliefs sought such as court injunctions; or when one has acritical medical condition necessitating the court's quick attention as requested by the applicant; and when there is a case of winding up a company and the retrenchment packages are contested before the court.

The above discussion captures the due process of labour dispute settlement at the Court. Although the Employment Act (2000) states that disputes have to be brought to the labour officers for conciliation before taking them to IRC, the researcher noted that there are some cases the IRC has registered without requiring complainants to go back to the labour officers because the Labour Relations Act (1996) gives the original jurisdiction to the IRC over the hearing and determination of labour disputes. This can partly explain why cases that might have been resolved through conciliation by labour officers are directly taken to IRC thereby worsening the backlog. According to Respondent PA-CE06, some complainants may doubt the capacity of labour officers to conciliate labour disputes hence they bring matters directly to the Court. However, the researcher noted that failure to utilize this structural arrangement partly explains the increasing backlog of cases at the IRC.

Consequently, apart from the above, the researcher discovered that the labour disputes settlement process bottlenecks discussed above can partly be blamed for the accumulation of cases at the court. Respondent CS-CE03 advised that the process has prescribed safeguards such as default judgements; the 14 days requirement claims and counterclaim submission of IRC forms 1 and 2; and the Court's legal authority to order costs if a party fails to attend a conciliation meeting without a good cause or brings to Court a vexatious or frivolous matter consistent with Section 72 of the LRA; and that the court uses these safeguards to ensure sanity and accord the applicants fair, timely and satisfactory labour dispute settlement. However, the researcher noted that the bottlenecks at pre-hearing and full hearing as well as the delayed judgements portion the ineffectiveness blame on Court's labour dispute settlement process.

Furthermore, much as the study established that the process is somehow reasonable and orderly; and that the dispute settlement process cannot shoulder the whole blame for the delayed and hence denied justice; the system needs further tightening to achieve better outcomes. Respondent CS-CE02 informed the researcher that the temporary reliefs sought by employers in order to stay a default judgement are sometimes abused and used as way to delay speedy delivery of justice. Furthermore, there are numerous adjournments caused

by some unprepared lawyers on flimsy grounds and yet the court has no legal authority to order penalties (this is discussed in greater detail later in this chapter as one of the court challenges) against the errant legal representatives.

Respondent PA-CE06 suggested that the Court should support Alternative Dispute Resolution (ADR) as opposed to adjudication (which should only be necessitated by a dispute on point of law) by being more flexible in its processes by referring seemingly straight forward cases to conciliation and mediation. As argued by the ILO, any process which is overly formal, legalistic, time-consuming, with frequent delays and expensive is a recipe for rigidity and hence frustrations to the people the institution was purportedly meant to serve; and creates a fertile environment for corrupt minds and over-reliance on legal arguments and consequent excessive adjournments (ITC – ILO, 2013).

4.3 Analyzing the Challenges Militating Against the Court's Effectiveness

Although the Court tries to comply with the law (and the set standards) and that the dispute settlement process has some safeguards as stated earlier in this chapter, for its operations and to make the dispute settlement process as fair as possible; the study established (through interviews with some respondents) that the Court has numerous challenges which militate against its envisaged effectiveness in the delivery of justice. As argued by Sengenberger (2013), the effectiveness of a labour dispute settlement system depends on various factors and the status of industrial relations in a country. The study revealed the following challenges:

4.3.1 Insufficient Judicial Staff

Respondent CS-CE03 stated that when an institution like the IRC has its own establishment, it receives direct funding from central government. According to this court official, from the inception of the court in 2002, when the IRC opened in Blantyre and later in Lilongwe and Mzuzu in 2009, the court has always used "borrowed staff[1]" from either the High Court or the Chief Resident Magistrate Court. By the time this study was conducted, the establishment for the court had not yet been approved and this has

[1] IRC has no legal mandate to directly recruit its own staff.

implications on how quickly the court can respond to staff shortages. As it will be more expounded later, by not having its own establishment like the other courts, the IRC does not get direct government funding on staff remuneration budget. This by extension has implications on how quickly the cases brought before the court can be dispensed with. According to Respondent CS-CE02, when an institution has its own establishment, there is more leverage to hire people with requisite skills for that organization to meet its objectives. What happens is that when the court requests staff from the Chief Justice, the staff allocated are not the best the court would require for its effective delivery of justice, the staff requests are not attended to quickly; and those allocated are either redundant or lacking in skills at the High Court or the Chief Resident Magistrate Court. Respondent CS-CE03 lamented over the poor quality and insufficient court officers' problem as below:

"*The IRC is sometimes treated like a dumping site of judiciary staff not required elsewhere for various reasons and this has implications on the speed with which the court can settle cases brought before it; and the quality of the work the court delivers and hence the accumulation of cases. There is urgent need for more high-quality judicial officers to lighten the backlog burden and achieve speedy dispute resolution*" **A court official, on 11 June 2020**.

Respondent SC-CE03 further said that unlike at the Resident Magistrate Court and the High Court (where there are more judicial officers to whom cases are allocated based on their area of specialization); all cases at the IRC are only handled by either the Chairperson or the Deputy Chairperson or the Assistant Registrar. Furthermore, the powers of the Registrar are limited such that they only preside over maters on delegated authority according to law; and every unfair dismissal case has to be escalated to the Chairperson or the Deputy Chairperson. According to Respondent CS-CE02, on average, a Registry registers 4 cases (requiring the sitting of the Chairperson or Deputy Chairperson with Panelists) per day. With only one Chairperson, a Deputy Chairperson and an Assistant Registrar at the Blantyre Registry to preside over all cases from the southern and eastern judicial regions; one Deputy Chairperson and an Assistant Registrar at the Lilongwe Registry to preside over all cases from the central judicial region; and a

Deputy Chairperson as well as an Assistant Registrar at the Mzuzu Registry to preside over all cases from the northern judicial region; there is a lot of work for the judicial officers which takes a toll on their health[2] and cause delays in case conclusion. According to Respondent CS-CE02, before 2009, Mzuzu Registry did not have a Deputy Chairperson resident there and this meant that all cases registered in the northern region had to be referred to Lilongwe Registry and with shortage of staff in Lilongwe cases kept accumulating at that time. Respondent PA-CE08 agreed that more court staff would partly resolve the problem as stated below:

"*If for example the Chairperson at Blantyre Registry had a minimum of 5 Deputies and each one of them hears 2 to 3 cases per day (with adequate numbers of Panelists), the backlog could be cleared within months…"* **A Panelist on 5 June 2020**.

As argued by Anyim et at (2012), the delays in concluding cases brought to the court on account of insufficient court staff causes frustration to the court users and ultimately the erosion of their trust in the Court. From the above scenario the researcher could deduce that the pressure of work in too much for the judicial officers to cope. Consequently, the shortage of staff means that registered cases have to stall until the time the insufficient staff are available to handle the cases; and this explains why cases continue to accumulate at the court. According to Respondent CS-CE03, if the court had its own establishment approved and was made autonomous on hiring its staff, the court could have been able to hire sufficient staff with requisite skills who would help the court in meeting its legal mandate of settling labour disputes within reasonable time and reduce or eliminate the accumulation of cases in the long run.

4.3.2 Unavailability of Panelists

It is one thing to have a court (like the IRC) but yet more important to have sufficient human resources all the time the Court is required to perform its legal mandate (Wojkowska, 2006). Firstly, according to Respondent CS-CE03, panelists are not full-

[2] A serious work-life balance challenge for judicial officers.

time employees of the court and attend court hearings on voluntary basis. They are employees of various big organizations affiliated to the Employers Consultative Association of Malawi (ECAM) who occupy big positions there; and either leaders of the trade unions affiliated to the Malawi Congress of Trade Unions (MCTU) or MCTU Secretariat staff. This means that they are busy people where they have full time employment; and consequently, they can only attend the court hearings as and when they have time off their normal duties where they work. Whenever they have a dilemma between attending a court hearing and absenting themselves to work for their employer, the latter is always more like to obtain as they do not want to compromise their full-time jobs; hence they prioritize their employers' work over the court hearings. According to Respondent CS-CE01, this causes so many court hearing adjournments as it is not easy to switch or alternate from one panelist to another at short notice. Regularized sittings are almost impossible. This ultimately means that cases will delay until the time the panelists are available. In the long run this has the effect of accumulating cases as the court continues to register new dispute; and Respondent CS-CE01 confirms the need for more panelists as expressed hereunder:

Secondly, according to Respondent CS-CE03, to hear a dispute brought to the Court, the Chairperson, the Deputy Chairperson or the Registrar (on delegated authority) must sit together with Panelists (employer and employee representatives) unless the matter involves a question of law (LRA, S. 67). Firstly, panelists receive an allowance of MK10 000.00 (Ten thousand Kwacha – revised in 2019 from MK2 000.00 which was applicable since 2009) per day regardless of the number of sittings on that day. Respondent PA-CE09 said that this is not motivating enough for the panelists as they spend their money on transport (to and from the court), accommodation and meals. They are not motivated because the allowance is insufficient even to just reimburse the expenses panelists incur in order to attend Court hearings. As noted by Respondent CS-CE02, panelists get excited and enthusiastic at the start of their tenure because the appointment boosts their curriculum vitae but this enthusiasm fizzles out in no time; that whenever they have no money for transport, accommodation and meals, they are unable

to faithfully attend court hearings thereby causing adjournments of the hearings and ultimately delaying the matters under them.

Thirdly, according to Respondent CS-CE03, when the tenure of office for panelists elapses, it takes too long for ECAM and MCTU to make new panelists' recommendations to government; and Ministry of Labour also takes too long to have them gazetted. For example, in 2009, it took two years to have the panelists appointed and gazetted to start working. This forces the court to either continue using the previous panelists to hear disputes (which is illegal); or only hear disputes that involve questions of law; or stop all court hearings until new panelists are appointed and gazetted. If the court elects to halt the hearings for the avoidance of their decisions being challenged on technical grounds, the result is that cases will continue to accumulate as new cases get registered.

Lastly, the Labour Relations Act (2000) does make sittings for court hearings mandatory. Respondent CS-CE02 said that gives room for panelists to use any excuse for not showing up for a court hearing knowing that there are no legal penalties for doing so. As argued by Wilson (2001), making the dispute settlement hearing mandatory could go a long way in instilling a spirit of seriousness in the panelist and ensure access to justice for all through speedy resolution of disputes. Although the Court might exercise its authority to ensure panelists attend court hearings, this can only be done to a certain extent otherwise the panelist may opt to resign. This is compounded further by many panelists resigning for various reasons before the expiry of their three-year office tenure. With reference to how difficult to get a replacement from either ECAM, MCTU and Ministry of Labour, the remnant few panelists have to be stretched to sit for all the cases up to the end of their tenure. This has the effect of delaying dispute settlement (as there is more work for fewer panelist) and the resultant accumulation of cases thereof. Although Labour Relations (Amendment) Act (2012) increased the number of panelists from 10 to 20 (and increased the sitting allowance from MK2 000 to MK10 000); there number was still on the lower side. Against a backlog of over 4 000 cases, 20 panelists are inadequate. Furthermore, in the case of **Phiri v Shire Bus Line (2008) [MLLR 259]**, the IRC Chairperson sat alone without panelists (as per the requirement of the law) and the

proceedings were deemed a nullity and of no legal effect by the High Court. This shows how important it is for the panelist numbers to increase in order for the Court to meet this legal requirement in fulfilling its mandate in order to clear the backlog. As expressed below, Respondent CS-CE01 suggests that an increase in the number of panelists would go a long way in resolving the problem of case conclusion delays resulting from the unavailability of panelists:

"*There is urgent need to increase of number Panelists to at least 40 for each of the current 3 Registries of Blantyre, Lilongwe and Mzuzu (total of 120 Panelists); this number would help in dealing with unavailability of Panelists and clear the case backlog timely. Furthermore, Zomba should have an IRC Registry to cater for the eastern region.*" **A court official on 11 December 2019**.

The researcher found out that the uncertain availability of panelists has caused some sections of the society to suggest changes to the LRA so that the IRC judicial officers can hear and determine labour disputes alone without panelists. They argue that Panelists are not legal minds to fully appreciate the labour law the way a judicial officer would; and that matters at IRC should be handled in the manner as any other legal matters are handled at any other court of law. As indicated below, Respondent LL-CE10 blames the delays in conclusion of cases solely on the inclusion of panelist in the legal structure of the Court:

"Panelists are the major problem in as far as case backlog at IRC is concerned. The LRA should be amended to remove the need for Panelists. What special skills do the Panelists have that the judicial officers fully trained in labour law do not possess? IRC is a court of law and is supposed to be independent; how can it be independent when the same law creating IRC demands the presence of non-judicial people to hear a legal matter?" **Labour Lawyer on 1 June 2020**.

However, in the researcher's opinion the framers of the Labour Relations Act (1996) appreciated the need for Panelists hence their inclusion in the Act. Respondent CS-CE01

agrees that as judges of facts, the Panelists bring experiential industry knowledge to the hearing and determination of labour disputes at the court; they bring value in terms of presentation of facts and they argue based on practical experience thereby ensuring judicial fairness and equity by providing a level playing field. Respondent PA-CE09 agrees that to place the whole blame of the backlog accumulation on the unavailability of Panelists and hence suggesting their removal as a sure solution is being overly simplistic because the backlog accumulation is a multi-faceted problem.

As argued by Corby (2015), making labour dispute settlement an exclusive domain of legal minds would make the labour Court overly legalistic, rigid and expensive; and that this can turn the system into a commercial commodity for the rich and well-resourced employers who flex their financial muscle in their tide against a poor and indigent employee. As stated below, Respondent PA-CE06 does not agree with lawyers and says that accumulating backlog of cases is a multi-pronged problem requiring a multi-faceted solution:

"*Panelists' unavailability is just part of the problem. For me, the major problems are shortage of judicial staff; the numerous adjournments caused by lawyers who come to court unprepared and consequently punish their clients with higher legal fees; and unconfirmed bribery allegations against Court Clerks when it comes to setting hearing dates for cases."* **Panelist on 13 December 2019**.

Consequently, the availability of panelist (a legal requirement at the time of the study) is[3] critical to speedy conclusion of disputes brought to the court hence the contrary has caused delayed delivery of justice by the court and hence the accumulation of cases in the long run. The different viewpoints taken on this matter by the lawyer and the panelist are an indication of each side defending its position on the matter. In the final analysis, what matters most is whether the court user (the primary intended beneficiary of the Court creation) gets the expected justice in a timely manner (Olatunji, 2015). The researcher

[3] Section 68 of the Labour Relations Act was repealed in the 2021 Amendment -Panelists are now removed from IRC structure.

found out that the inclusion of panelists on the Court structure is very important for the court to make a decision that took into account the experiential input from employer-employee representatives for a level playing field in an otherwise intimidation Court environment.

4.3.3 Unavailability of IRC Registries in the 25 Districts

As argued by Wilson (2001) and Anyim et al (2012), access to justice is key tenet in a democracy and serious commitment gesture from the government with regard to industrial peace. Availability of sufficient court infrastructure practically manifests such a commitment.

The court has its own premises in Blantyre only as it occupies what used to the Blantyre Magistrate Court. According Respondent CS-CE02; the Court operates from rented premises in Lilongwe; and it is housed at the High Court premises in Mzuzu. What this means is that the court premises in Lilongwe were not purposely built for court use and hence the environment is not conducive to court operations. This makes it impossible for the court to achieve some of the justice delivery requirements such as access to justice for the disabled. Furthermore, since its premises are only located in Blantyre, Lilongwe and Mzuzu, the access to justice is hampered as some of the workers whose rights get infringed upon by employers are unable to go to far away court registries in Blantyre, Lilongwe and Mzuzu because of the distance and the transportation costs thereof. As lamented by Respondent CU-CE12, the implication of this is that those who manage to go to the three registries to register their cases fail to attend the court hearings thereby causing numerous adjournments and hence the accumulation of the cases at the court.

According to Respondent CS-CE03, in order to resolve this and bring the court closer to people, the Court introduced court circuits within the regional jurisdictions of the three registries. Blantyre registry operates court circuits within the southern region (Zomba, Mangochi, Mulanje and Nsanje); Lilongwe registry operates court circuits in the central region (Kasungu, Salima and Mchinji); whereas Mzuzu operates the court circuits in the

northern region (Mzimba, Karonga and Nkhatabay). However, Respondent CS-CE02 said that this arrangement also meets challenges because it means that when the already insufficient staff move to the courts circuit, the operations at the Registries have to stall; and this increases the court operational costs through staff allowances and transport/accommodation costs; and that when these resources (vehicles and money) are not available, all cases at the court circuits are adjourned to the time the court gets resources to visit the court circuit sites again; and consequently leads to accumulation of cases in the long run. Respondent CS-CE02 expressed frustrations caused by the court space problem (and how this affects the Court effectiveness) by stating the below:

"*We do not have sufficient court space. Ideally, each district should have a court room either as a stand-alone IRC court or within the District Magistrate Court premises. Because of the court space problem, cases registered from districts far away from the 3 Registries take too long to be attended to thereby causing backlog accumulation. Based on this, I would say the Court is operating at 50% effectiveness because of shortage of judicial staff as well as numerous other challenges beyond the Court's control."* **A court official on 11 December 2019**.

Anyim et al (2012), agree that government failure to adequately fund justice institutions (such as the IRC for the creation of more court space and enhancement of access to justice) undermines the government's sincerity in the very creation of such institutions.

4.3.4 Problematic Legal Representation

According to Section 73 of the Labour Relations Act (1996), it is not mandatory for one to have a lawyer for any matter they bring to the court. One can choose to appear before the court personally; or appoint a member of an organization one belongs to; or a member of a trade union; or a member of an employer organization to represent them without engaging a lawyer. Matters in the IRC are supposed to be straightforward and hence easily handled by people without legal representation but since legal representation is a

constitutional right, there is need for Court's leave to have legal representation (Sikwese, 2019).

According to Respondent CS-CE03, most complainants believe that they can buttress their arguments and increase the chances of winning the case in court by engaging a lawyer. This means that some of the cases brought to court have legal representation and the court cannot deny anyone from using a legal practitioner in their case as long as leave of court is sought and granted. As stated by Respondent CS-CE01, lawyers are more knowledgeable about labour laws than a lay person not trained in law; lawyers may bring coherence to the arguments flow to help the court arrive at a better settlement of a dispute; that it is a constitutional right for anyone to be represented in court such that the court cannot bar anyone from being represented by a lawyer; and that however some lawyers have prolonged the cases in various ways. This is consistent with what the literature says that some lawyers may always seek to delay proceedings of the Court through an over-reliance on legal arguments and excessive adjournments which in turn increases the litigation costs to their clients (as they charge clients based on time spent on the case) and ultimately this leads to the build-up of unsettled cases at the court (ITC-ILO, 2013). According to Respondent PA-CE06 and Respondent CS-CE03**,** some lawyers seek to delay Court proceedings in various ways as discussed below:

Firstly, some seemingly straight forward matters which can easily be dealt with during pre-hearing, the lawyers (especially for employers who usually have the more financial muscle to afford a lawyer than employees complaining against them) have opted for a full hearing just to show their clients that they are not feeble in order to justify higher fees. This has elongated simple matters thereby wasting court's time and the effect of which is accumulation of unfished cases.

Secondly, lawyers do not prepare their clients before coming to court such that their clients make shoddy and disjointed presentations necessitating the Chairperson to keep reminding the complainant to stick to the material facts of the case. This in turn means more time spent moving back and forth on submissions by the complainant resulting in

matters that would otherwise have been finished in hours to be adjourned severally for days or months in order to reach a conclusion. Lawyers are not fair to their clients who travel from very far to attend court hearings which means the longer the case subsists the more costly it becomes to the client. By preparing clients and advising them to stick to material facts of the case during hearings, lawyers would assist the court in dealing with a matter within hours of a single sitting. Ultimately, the elongated presentations from complainants and the resultant adjournments have the ultimate effect of accumulating cases in the long run.

Lastly, some of lawyers representing clients at the court come to court without sufficient preparations themselves and not all lawyers are competent in labour matters but very few advise a client accordingly such that they take court's time by raising irrelevant technicalities in the matter; they take a lot of time in cross-examination of irrelevant issues; and more often than not, they just come to pray for adjournments because of their unpreparedness. Unfortunately, the Labour Relations Act (1996) does not empower the court to penalize such errant lawyers for clogging the court process with irrelevant arguments on technicalities and causing adjournments with numerous excuses. As stated below, Respondent CS-CE01 and Respondent CS-03 call for the amendment of the Labour Relations Act (1996) in order to give the Court powers to met out penalties against errant legal minds:

"In order to bring sanity, the lawyers should bear the cost of adjournments. The law should empower the court to force the lawyers or their clients to take responsibility for the panelists' allowances every time they cause adjournments." **A court official on 11 June 2020**.

In the absence of the legally provided for penalties against the errant legal representatives, the court is forced to adjourn cases severally. This has the effect of delaying cases which would otherwise have been concluded within days; and ultimately this entails accumulating cases in the long run. As aptly argued by Stevens and Mosco (2010), some lawyers may seek to delay court proceedings through too much reliance on

legal arguments and excessive adjournments resulting in increased litigations costs and consequent build-up of unsettled cases.

4.3.5 Labour Officers' Lack of Capacity

Section 62 of the Employment Act (2000) provides that:

> (1*) Within three months of the date of dismissal, an employee shall have the right to complain to the District Labour Officer that he has been unfairly dismissed irrespective of whether notice was given or not.*
>
> *(2) The right of an employee to make a complaint under this section shall be without prejudice to any right that he may enjoy under a collective agreement.*
>
> *(3) Where the District Labour Officer fails to settle the matter within one month the matter may be referred to the Court in accordance with section 64(2) and (3).*

And Section 64(1) of the Employment Act provides that:

> *Any person having a question, difference or dispute as to the rights or liabilities of any person, employer or employee under this Act or a contract of employment may bring the matter to the attention of a labour officer who shall attempt to resolve the matter.*

However, as noted earlier, recent case law position is that much as people are encouraged to take labour disputes to labour officers first, they cannot be turned back if they take their matters directly to IRC which is a court with original jurisdiction to hear and determine such matters (Sikwese, 2019).

The researcher's reading of these provisions is that the complaints ought to come to the IRC by way of either appeal against the Labour Officer's decision or by way of referral where the Labour Officer refers the unresolved matter to the IRC stating the reasons why the matter could not be resolved at the Labour Office. As stated in the **George and Another Vs Conforzi Plantations [IRC Matter No. 15 of 2005]**, the "*…law is very clear that a person having a labour dispute or complaint including a dispute relating to*

dismissal, must take that complaint to the District Labour Officer within 90 days of the date of the dispute arising."

The researcher further notes that this law presumes that labour officers have the capacity to conciliate labour disputes brought before them. Therefore, in an ideal situation and consistent with the Labour Relations Act (1996), labour disputes are supposed to be dealt with amicably between the disputing parties; and if this does not resolve the dispute, the matter be taken to the district or regional labour officer (and the Principal Secretary of the Ministry of Labour) for conciliation before the matter is taken to IRC. However, due to lack of capacity to handle labour disputes, most district labour officers do not endeavor to conciliate the matters but instead quickly refer almost all the matters to IRC as lamented hereunder by Respondent CS-CE03:

"*Most Labour Officers are not competent to conciliate disputing parties and this leads to them sending every matter to the IRC"* **A court official, on 11 June 2020**.

The labour officers lack of capacity entails that most cases are directly brought to Court[4]; thereby increasing the number of cases registered and worsen the backlog of cases. Just as judicial officers require training (as stated in IRC Status Report, 2011 -2016), the labour officers need to be equipped with the necessary skills.

4.3.6 Flawed Workers' Perception on Court Remedies

As argued by Benson (2012), more people opt to pursue matters individually as opposed to using collective means due to success stories (in terms of speed of resolution) of individually pursued cases and because of the inertia on the part of trade unions. Unfortunately, this has the effect of worsening the backlog. According to Stevens and Mosco (2010), this individualism kills trade unionism and systematic collective bargaining in the long run.

[4] Though encouraged to take matters to labour office first, people are not turned back at IRC.

According to Respondent PA-CE06, due to increased coverage of successfully litigated labour cases in both print and electronic media, the general public and workers in particular have become more knowledgeable about their labour rights and remedies available when their labour rights get infringed upon by employers. This in turn has result in more workers taking their matters to the court for redress; and this in turn means more cases are registered for litigation. Respondent CS-CE03 observes that the resultant public attitude is that the aggrieved parties (especially employees and trade unions) have the tendency of taking almost every labour matter to the Court; and they are hopeful that they would be successful with hefty compensations awarded to them by the Court. They do not bother to explore resolution of the matters through internal contact and dialogue processes within the organization or to exhaust the dispute resolution processes contained in their collective bargaining agreements hence some straight-forward matters such as non-payment of overtime or delayed payment of pension benefits after six months' unemployment are taken straight to the court. Respondent PA-CE07 sums up the wrong and flawed high monetary expectations of the litigants from the cases brought before the Court as expressed below:

"*There is an inherent mentality that the court will always side with the employees; they will approach a lawyer who does not even bother to advise the client to explore a non-court route; they come to Court unprepared to argue their case; and get disappointed when the compensation is not as expected and they have to pay their lawyer out of it*." **A Panelist on 5 June 2020**.

Respondent CS-CE03 stated that this is usually premised on the flawed perception that when maters are taken to the Court, claimants get claims in millions of Kwachas in compensation; such that even when the matter goes for pre-hearing, the applicants or their lawyers needlessly insist on pushing the matter all the way to full trial; and that the tendency of taking every labour matter to the court (coupled with the myriad of challenges the court faces) worsens the case backlog at the Court.

4.3.7 Inadequate Government Funding

As observed by Anyim et al (2012), it is a serious and abhorrent display of insincerity for any government to create an institution purportedly meant to serve the interests of the vulnerable part of the society but deny the same of adequate funding.

According to Respondent CS-CE02, the nature of the IRC is that it does not generate its own income to sustain the operations and pay staff. It relies on annual funding from the central government through the Judiciary. Ideally, the court was supposed to be part of the High Court. However, the Court is categorized as one of the subordinate courts. Respondent CS-CE03 said that this scenario affects the perception of the government treasury in terms of funding prioritization to the court such that the funding from treasury is very low and primarily focused on the remuneration budget of the court officials with very little allocated for the court's operational (ORT) costs' budget (transport, allowances, rentals, and operation of satellite/circuit courts). From the secondary data (IRC Status Report 2011-2016), the researcher found out that the Court's annual budget estimates submitted to government (which are a reflection of the Court's aspirations of the near perfection delivery of its legal mandate) have always been heavily slashed such that the approved annual budgets have had very low ceilings as illustrated in the table below:

Table 1: IRC Annual Budget Allocations

Year	Estimated Budget (MWK)	Approved Budget (MWK)	Approved Vs Estimated Budget (%)[5]
2011 – 2012	291 881 212.40	16 611 393.00	6%
2012 – 2013	291 881 212.40	18 023 361.00	6%
2013 – 2014	223 276 105.55	25 983 505.00	12%
2014 – 2015	225 496 665.55	35 983 505.00	16%
2015 – 2016	375 966 204.68	62 983 505.00	17%
2016 – 2017	475 966 204.68	80 160 047.00	17%

***Source*: IRC Status Report 2011-2016**

[5] An analytical addition by the Researcher to existent secondary data

From the secondary data presented above, it was noted that the IRC budget approvals averaged at 12%. Such heavy budget cuts suffocate the work of the IRC which is supposed to serve a labour force of about 850 000 in the formal sector and about 5.5 million in the informal sector (IRC Status Report 2011-2016*).* According to Section 66 of the Labour Relations Act (1996), the Court is supposed to go the districts to hear and determine cases right there for purposes of meeting the Court's mandate of making justice accessible. As observed by Respondent CS-CE03, one pool vehicle at each of the three Registries causes mobility challenges such that the IRC Chairperson and Deputy Chairpersons are unable to travel to the districts with Panelists to hear and determine cases and this has greatly compromised delivery of labour justice. The result is that cases continue to accumulate and only those who can afford to travel to the regional courts have their cases heard and determined; and this has caused a situation where justice appears to be for the affluent only (IRC Status Report: 2011-2016).

The researcher's opinion is that with the insufficient funding (and shortage of staff discussed earlier in this chapter), the Court is put under immense pressure of work because the speed at which cases are registered does not match with the rate at which cases are concluded hence the accumulation of cases in the long run; and that is why at the time of this study in 2020, the court was dealing with some cases from as far back to six years ago (2014) because the Court purportedly operates on first-come-first-serve basis. Respondent CS-CE03 concluded that increased funding would enable the Court to procure more pool vehicles to facilitate easier transportation to the district court circuits so that most cases are heard and determined there and ease the pressure of work at the regional courts; increase allowances for Panelists; engage in other judicial services such as public awareness campaigns on the court operations; provide training to the Panelists on labour law and the general Court decorum; and provide customer care training to Court staff so that they remain motivated and responsive to the ever-changing work environment; and Fashoyin (1992) agrees that poor funding to government institutions (such as the IRC) smacks insincerity on the part the government.

4.4 Assessing the General Court Users' Perception of the Court

The researcher found out that owing to the numerous factors (discussed earlier in this chapter) militating against the desired effective delivery of justice by the Court, the perception of most court users is that the court's work is not satisfactory. Hereunder is the narrative assessment of court users' perception of the IRC:

4.4.1 Compliance with the Law and Set Standards

The court users feel that the Court does not fully comply with Labour Relations Act (1996) and the Court Rules because most cases take many years to conclude. According to the IRC Status Report (2011 to 2016), the Court set 90 days as sufficient time for dealing with a labour dispute. However, because of various factors discussed earlier in this chapter, the Court fails to comply with the 21 days rule on issuance of a ruling or judgement to the disputing parties. Therefore, as observed by Respondent CS-CE03 and Respondent PA-CE08, much as the Court's wish is to promote the orderly and expeditious dispute settlement conducive to social justice and economic development (as equally argued in Thomson, 2002); most court users are not happy with the work of the Court as they feel it is not effective enough to foster industrial harmony since the dispute settlement process takes too long thereby negating the essence of a fair judicial process envisaged when the Court was being created (as equally argued in Atiola and Dugeri, 2012). For example, the case of **William Matabwa V. Biochemical Partners [IRC Case No. 04/15 of 2015]** was registered on 13 January 2015 but it was still stuck at "pending pre-hearing date" in 2020. This speaks volumes of delayed and hence denied justice contrary to the speedy resolution of labour disputes stated in the Labour Relations Act. To underscore this, Respondent CU-CE11 said this to express annoyance:

"...Registrar, which side are you? Are you the side of a foreigner or Malawians? How are you handling my case? Every time a date is set, you are not around. What is going in my case from July 2012 up to now?" **A court user in a letter dated 11 December 2019**.

4.4.2 Perceived Bribery and Corruption

Court users wonder how some cases registered later get processed by the same Court while theirs are stuck. As quoted from Respondent CU-CE12 below, this has frustrated many court users who perceive the court clerks as being corrupt when discharging their duties as noted below especially when allocating hearing dates for hearing cases:

"*I suspect the court clerks receive bribes in order to set a date for hearing a case. My case was registered in 2015 but up to now the court is yet to set a date even for pre-hearing. People go to court to seek justice. If the court takes 5 years to handle a case, is there justice? I spend a lot of money on transport for me to travel from my home village in Chiradzulu to follow up the case; and I withdrew my children from school because I am now jobless"*. **A court user on 13 June 2020**.

However, Respondent CS-CE04 said that no bribery or corrupt practice had ever been reported against any court official; and that in any case the Court has to be moved by parties to a dispute for the Court to progress to next levels of the labour dispute brought before it for adjudication. However, Respondent PA-CE06 and Respondent CU-CE15 advised that that instead of burying its head in the sand on the allegations, the Court needs to investigate the allegations of bribery and corruption among its staff. Respondent CU-CE14 suggested that perhaps the Court should consider (as part of Court Rules amendment) reducing the number of years within which a matter brought before it should either be dealt with or struck off its register (if the parties do not move the Court to a logical conclusion) from 5 years to 1 year; as this might explain some delays in the allocation of hearing or trial dates for some cases for appropriate action by the Court against the errant court staff in order to improve the public perception of the Court as more cases get concluded within reasonable time thereof.

The researcher observes that the two different viewpoints from both the court official and the court user clearly indicate the two worlds apart between the two parties. As argued by Anyim (2012), the delays in settling cases (for whatever reason) force the court users to think that something wrong happens in the system and this causes suspicion of corruptive

practices. The researcher agrees that instead of ignoring such suspicions, the Court needs to investigate the allegations in order to clear its name since positive perception of the Court is of great importance in the delivery of labour justice.

4.4.3 Legal Representation and Court Infrastructure

According to Section 73 of the Labour Relations Act (1996), the right to legal representation is limited hence one has to seek leave of the Court to enjoy this right. However, Respondent CU-CE12 and Respondent CU-CE13 observe that because the Court does not want to be seen to be denying people a fair trial, leave for legal representation is always granted by the Court; that most employers opt for legal representation because they have the financial muscle to afford it; and that some employers abuse the legal representation as a means of tiring complainant (employees) out of a dispute settlement process. As agreed by Benson (2012), too much use of legal representation leads to making the court process overly legalistic, too formal, time consuming and expensive as numerous adjournments are sought; and that this causes a build-up of unsettled cases. Respondent PA-CE06 advises that the Court could do better by limiting the granting of leave for legal representation and advise disputing parties to settle disputes through negotiation and conciliation; and that this would entail speedy settlement of disputes and a better perception of the Court among court users.

Respondent CU-CE11 laments that court users travel long distances to attend court hearings; that usually at the time the matter is being heard, most of them are jobless; they cannot afford legal representation; and that they find it hard to find money to travel to Court to attend hearings; making it very hard to appear at the Court in person since they cannot afford legal representation. Respondent CU-CE11 laments as below:

"*This court cares less for the poor. This court is for the rich people who can afford a lawyer and have the means to travel to and from court not us who have no names. After registering my case in January 2015 in Mangochi there was no movement on my matter. I was advised by a friend to go to Blantyre to speed up my case but that too did not help as the court could not allocate a date to start hearing my case after several follow-ups*

travelling from Mangochi until I got tired and gave up following the case in 2016. Life is tough, the court ought to side with the poor and ensure equal justice between the poor and the rich. Up to now, my case is yet to start." **A court user on 16 December 2019**.

The researcher observes that this compromises court users' access to justice as it entails delays in their cases. Creation of Court Circuits was noted as a step in the right direction (IRC Status Report, 2011-2016); but the court needs to get closer to people for the achievement of the professed access to justice. This can reduce the time taken to conclude disputes and the general public perception of the Court can be enhanced.

From the above discussion, it is abundantly clear that the major factor that has affected the court users' perception against the Court is the prolonged delays in concluding labour disputes brought before the Court; and this negative feedback from some court users confirms the frustrations resulting from delayed and hence denied justice. Consequently, the researcher found out that most court users have lost trust in the court due to these delays in the delivery of justice. In the long run, this situation has the effect of entrenching the suffering in silence by those whose labour rights get infringed upon by employers in future.

4.5 Chapter Conclusion

As discussed in this chapter, the court tries its best to comply with the legal provisions set in the Labour Relations Act (1996) and the standards set in the IRC (Procedure) Rules; and the labour dispute settlement process is fair with adequate safeguards. However, the researcher found out that the court faces numerous challenges which hamper it from effectively delivering labour justice. Due to the said challenges, the Court takes far too long to conclude most cases to the frustration of most court users. Furthermore, there are various bottleneck during trial (pre-hearing and full hearing processes) such that it takes inordinate time for someone to get through the hearing stage because of constant adjournments due to unavailability of panelists and problematic legal representation, insufficient judicial officers and lack of funding for court circuits.

CHAPTER FIVE

CONCLUSION

5.0 Introduction

This chapter presents the conclusion based on the findings of the study and has suggestions for the future research areas. The chapter starts with a summary of the study findings; and it ends with the further study areas and the study findings policy implications.

5.1 Summary of the Study

The purpose of this study was to explore the effectiveness of the IRC in labour dispute settlement. The focus was on the accumulating backlog of cases and establishing whether the Court's non-compliance with legal provisions and set standards as well the labour dispute settlement process contributes to the increasing backlog of cases; finding out the factors that militate against the objectives of the Court with regard to effective delivery of labour justice; and assessing the resultant perception of the court users.

With respect to the first specific study objective regarding the analysis of the Court's compliance with legal provision and set standards, the researcher found out that the Court to lesser extent complies with the law especially in the initial stages of the dispute settlement process but delayed delivery of judgement beyond the 21 days (due to volume of workload) waters down the said compliance because the desired outcome (as opined in the Systems Theory) is not achieved in a timely manner due to volume of work for the judicial officers; and hence the accumulation of cases can partly be blamed on the non-compliance of the said legal provisions and set standards. However, huge blame goes to the myriad of challenges summarized later in this chapter.

With respect to the second specific study objective of analyzing the effectiveness of the dispute settlement process, the researcher established that the labour disputes settlement process can also partly be blamed for the ever-increasing backlog of cases at the Court. The process has prescribed safeguards such as default judgements, the 14-day requirement on claims and counterclaim submission; and consistent with Section 72 of the Labour Relations Act (1996), the Court's legal authority to order costs if a party fails to attend a conciliation meeting without a good cause or brings to Court a vexatious or frivolous matter. Although the court uses these safeguards to ensure that the labour dispute settlement process per se does not clog the system and entail accumulation of cases; some stakeholders abuse the process to delay justice with numerous adjournments (and this is made worse by insufficient judicial officers and unavailability of panelist) thereby making the process partially effective.

With regards to the third specific study objective of identifying the challenges the Court faces in the delivery of justice, the researcher found out that accumulating backlog of cases at the court and hence the delayed and denied justice is largely caused by various factors or challenges such as the shortage of judicial officers; the inadequate Court infrastructure; the low number and unavailability of Panelists; the problematic legal representation; the labour officers' lack of capacity to conciliate labour disputes before referring them to the Court; the flawed court users' perception on the quantum of monetary Court remedies; and inadequate government funding. These factors suffocate the Court from meeting its objective of speedy delivery of justice as envisaged under Section 67(4) of the Labour Relations Act (1996). This has led to a big mismatch between the rate at which cases are registered against the rate at which cases are concluded resulting in increasing backlog of cases; and hence posturing the Court as being ineffective in its mandate of delivering labour justice within reasonable time.

Lastly, with regard to the fourth specific study of assessing the court users' perception, the researcher established that the myriad challenges militating against the objectives of the Court; the corruption perception against Court officers resulting from the long time

taken to have cases concluded; and numerous adjournments caused by lawyers representing some employers have eroded the court users' trust and confidence in the Court. With such delays in concluding cases, the Court is perceived to be failing to play its role in the employer-employee relationship in which the propensity to abuse labour rights tilts in favour of the employer.

As argued by Steers (1991), it is important to note that legal compliance and satisfaction of constituents is key in the measurement of an institution's effectiveness. Furthermore, Ivancevich and Matterson (2002) argue that an organization can either be effective, partially effective or ineffective. After considering delays in judgements beyond the legal prescription; the bottlenecks stakeholders use to delay the dispute settlement process; and a myriad of internal and external factors militating against the Court's mandate of delivery labour justice in a timely and satisfactory manner, the researcher concludes that the IRC is partially effective. The Court is perceived as unreliable. There is a lot that needs to be done by various stakeholders for the Court to become effective in the delivery of its legal mandate.

5.2 Further Study Areas

For purposes of further study and hence creating more knowledge, the researcher suggests areas of further study with regard to the IRC work of hearing and determining labour disputes. Firstly, one may wish to look at the issue of gender in terms of whether gender can explain or determine the magnitude of the infringement of labour rights by employers on either men or women and the resultant instances of cases brought before the court. It would make a good study to look at gender-tinged labour right infringements in order to understand why a particular gender dominates in terms of cases brought to IRC for settlement; and whether gender and the attendant economic disparities thereof impact on the effectiveness of the Court. This would help the Court to make gender considerations when forming a panel to hear labour matters to near perfection; and prompt the government to espouse policies that would prevent the gender-tinged labour rights abuses on the labour market. The Ministry of Labour, the IRC and the Malawi Congress of Trade Unions can collaborate to conduct this study.

Secondly, it would also make an interesting study to find out which cadre of workers dominates complaints at the IRC. For example, is it the security guards and domestic workers employed by companies and individuals in their homes; or it is high ranking officials such as Chief Executive Officers against big private companies as well as public departments and agencies? Finding out why a particular cadre of employees or workers from a particular employment sector dominates matters brought to Court would help in caseload management in terms of what to prioritize; and aid the government to appropriately target civic education around this study area and partly prevent accumulation of cases at the Court in the long run. The Ministry of Labour, the IRC and the Malawi Congress of Trade Unions can collaborate to conduct this study.

Lastly, a comprehensive study on the perceptions of the court users (under less time constraints) which would combine both qualitative and quantitative approaches would make a great deal of scholarly research sense. A researcher at any university can conduct this comprehensive study for scholarly purposes.

The three areas of further study proposed above should be carried out using a mixed approach where both qualitative and quantitative methods are employed. If carried out, the three proposed studies would help in building the knowledge base around this study area which is a cardinal principle in the academic research discourse.

5.3 Policy and Legislative Implications of the Study

With reference to what has been found in this study, the researcher noted some policy implications as discussed hereunder.

5.3.1 Recruitment of More Judicial Officers

According to Respondent CS-CE03, there is need for the government though the Ministry of Justice and the Judicial Service Commission to hire, appoint or re-allocate more judicial officers to the Court in order to lighten the workload and achieve speedy settlement of labour disputes. In order to start working comfortably and begin to operate at optimal level for the gradual restoration of the lost public trust, the Court needs at least

ten (10) Judicial officers at Blantyre Registry (Chairperson, 7 Deputy Chairpersons and 2 Registrars); eight (8) Judicial Officers at the Lilongwe Registry (6 Deputy Chairpersons and 2 Registrars); and five (5) Judicial Officers at the Mzuzu Registry (4 Deputy Chairpersons and 1 Registrar). At the time of the study, Zomba had no IRC Registry.

5.3.2 Expansion and Establishment of IRC Registries

According to Respondent CS-CE02, there is need for more Court space both at the three Registries and in the districts as a way of bringing the Court closer to the people. In the short term, the Court should rent more space to create more court rooms under the current Registries so that several sittings can be conducted concurrently; and in the long term, the Court should build its own more spacious premises to cater for several sittings at the same time. Furthermore, for the 25 districts court circuits' purposes, the Court should use the existent District Magistrate Court premises with a resident IRC Court Clerk there.

5.3.3 Increasing the Number of Panelists

According to Respondent CS-CE01, there is need to increase the number of Panelists. Initially, the number be increased from the current 20 (10 employer Panelists and 10 employee Panelists) to 40 (20 employer Panelists and 20 employee Panelists); and eventually aim to have at least 40 Panelists per Registry thus a total of 120 Panelists across all the three Registries. This (coupled with the increased number of Judicial Officers and more Court space as discussed earlier) would go a long way in reducing the workload and ensure speedy settlement of labour disputes by the Court. This would require a further amendment to Section 66 of the Labour Relations Act.

5.3.4 Amendment of the Labour Relations Act

According to some respondents, there is need for Ministry of Labour and Ministry of Justice to consider amendment of the Act. According to Respondent CS-CE02, the IRC

should be allowed to introduce the jury trial[6] (just like at the High Court) through an Act amendment in order to buttress the work of the Panelists; and the Court will not be bound to a specific list of people (as is the case with the gazetted Panelists) to be selected to form a jury panel but instead achieve flexibility on the part of the Court; and to make mediation mandatory as is the case at the High Court as a way of entrenching the spirit of conciliation so that most straight-forward matters can end during pre-hearing instead of being insisted onto full trial by either of the disputing parties. This would in turn prevent delays currently caused by show-muscling for its own sake by parties to a dispute and aid in speedy clearance of the backlog of cases and the subsequent restoration of public trust in the IRC primarily and the entire judicial system generally. According to Respondent CS-CE03, the Act should be amended to allow complainants to choose to either have their matter heard by Panelists or by a Judicial Officer sitting alone like other Courts conduct their business; or indeed by a jury (as discussed earlier in this chapter). This would ensure that a complainant has several options on how their matter should be handled with implications of their choice properly explained; and this would in turn reduce the complaints around the delays in the delivery of the Courts' ruling on a matter. This legally provided for flexibility of the Court would ultimately help to reduce the backlog in the long run. Lastly, consistent with Section 72 (2) of the Act, cost of proceedings which parties are ordered to bear or suffer in other courts cannot be ordered in the IRC unless the party fails to attend a conciliation meeting without a good cause or the Court deems the matter as vexatious or frivolous. According to Respondent CS-CE02, some lawyers have found a loophole in this provision as it does not take care of the numerous unjustifiable adjournments sought. Due to lack of preparedness or seriousness (as discussed earlier), most lawyers just come to Court to attend a meeting but seek adjournment thereby beating the provision cited above as long as they have attended the Court sitting and the matter is not vexatious or frivolous. There is need to expand the ambit of this provision to allow the Court to order costs as to careless or unjustifiable adjournments caused by parties or their legal representation. This would bring sanity and ensure speedy conclusion of cases as espoused under Section 67 (4) of the Act.

[6] Although jury trials have been suspended at the HC currently on account of cost & inefficiency, IRC should try this.

5.3.5 Increased Government Funding

Like any other public institution, the IRC requires increased funding from the government of Malawi. According to Respondent CS-CE03, in order to meet its recurrent costs (staff remuneration and operational costs), the Court requires a budget allocation of not less than MWK500 Million per annum; and a further annual developmental budget allocation for infrastructural improvement according to the Court's strategic goals. The increased funding (from the current K80 Million) would help the Court to pay its staff; run the Court Circuits without problems regarding the transport, accommodation allowances and meals for Court staff and Panelists; and be able to expand the Court space through building new Court rooms and renting. Furthermore, an increased budget allocation would enable the Court to increase the Panelists' allowances from MWK10 000.00 per day to at least MWK10 000.00 per sitting or to pay Panelists just enough to offset travel, accommodation and meals expenses as a way of motivating them to attend Court hearings. The Court would also be able to engage in civic education of the stakeholders on the Court's operations and processes; and share challenges so that the general public can appreciate the limitations of the Court. According to Respondent PA-CE06, with increased funding, the IRC (with joint funding from the Ministry of Labour) can capacitate the labour officers with requisite skills in conciliation of labour matters as this would have a long-term effect of reducing the number of simple cases that are hitherto directly referred to the Court. Ultimately, the Court would be able to dispenses high quality justice it is mandated to deliver and improve the public image of the Court. Increased funding (and less dependence on donors) would demonstrate government's commitment to labour justice delivery and the rule of law in general.

5.3.6 Investigation of Bribery Claims

According to Respondent PA-CE06, in order to establish the truth, there is need to investigate the bribery claims against the Court Clerks to establish why some complainants have to come to the Court several times in order to get a date set for their hearing (or they are given a very distant hearing date); and confirm what some Court users claim that some of the cases are delayed because Court Clerks want to be bribed

before they set a date of hearing. Investigating these claims would go a long way in clearing the Court Clerks and the Court from this corruption perception the Court users have; and the errant Court Clerks would be disciplined in order to bring sanity in the case backlog management and restore public image of the Court.

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APPENDICES

Appendix 1:INTERVIEW GUIDE - PANELISTS

Interviewee Name: ……	Interviewer Details: Name:……. Mobile Contact:……. Email Address:……..
Position:…….	Interview Date: …….
Mobile Contact: …….	Interview Time: …….
Email Address: …….	Interview Place …….

Introduction

I am *Peter Kanyatula*, a student, at the University of Malawi (Chancellor College) pursuing a Master of Arts in Human Resources Management and Industrial Relations degree. I am collecting data for a research study on the "*Analyzing the Effectiveness of the Industrial Relations Court in Labour Dispute Settlement"*. Therefore, I would like to ask you to help me in responding to the questions in this Interview Guide.

Be assured that any information provided by you will only be used for academic purposes and all information will be treated with the highest degree of confidentiality. Please respond honestly to the questions to ensure that valid and reliable data is collected. Thank you in advance for your help and time.

1. IRC Set Standards/Legal Provisions Compliance
   1.1 Does the IRC settle a labour disputes brought before it consistent with and within the set standards and legal provisions? Explain.

   1.2 To want extent does the IRC comply with the set standards and legal provisions?

   1.3 What are the implications of IRC not complying with the legal provision in terms of settling disputes within reasonable time?

2. Labour Dispute Settlement Process and Court User Perception

   2.1 In your own understanding, what is the labour dispute settlement process at the IRC?

   2.2 What are the bottlenecks during pre-hearing, full hearing and judgement of labour disputes at the IRC?

   2.3 What is the major cause of these process bottlenecks?

   2.4 What impact do these process bottlenecks have on the IRC effectiveness and hence the court user satisfaction?

   2.5 To what extent is legal representation a challenge during pre-hearing and full hearing of labour disputes at the IRC?

   2.6 In your own opinion, is the IRC accessible, fair and courteous in its delivery of justice? Explain.

   2.7 What implications does inadequate court infrastructure across the country have on the court users' access to labour justice?

   2.8 Do you think the level of education and income (with regard to court filing fees) act as barrier to court users in accessing justice at the IRC? Explain.

3. In your opinion, what is the court users' perception about the IRC effectiveness in labour dispute settlement?

4. Challenges affecting the fulfilment of IRC legal mandate

   4.1 What major challenges does the IRC face in its quest to fulfil its legal mandate?

4.2 What is the impact of the accumulating backlog of cases at the IRC on the court users?

4.3 To what extent would you attribute the accumulating backlog of cases at IRC to the Panellists' availability/unavailability?

4.4 In your opinion, how important are the Panelists in administering justice at the IRC?

4.5 What impact would the removal of Panelists from the IRC structure have on court user satisfaction?

5. IRC Effectiveness Improvement Proposals

5.1 What suggestions would you make in order to improve the effectiveness of the IRC in fulfilling its legal mandate?

6. Interview Closing

6.1 Is there anything else you would like to share around the effectiveness of the IRC?

This marks the end of our interview. Thank you very for sparing your precious time to talk to me. This cannot be taken for granted!

Appendix 2: INTERVIEW GUIDE – IRC STAFF (LEGAL)

Interviewee Name: ……	Interviewer Details: Name:……. Mobile Contact:……. Email Address:……..
Position:…….	Interview Date: …….
Mobile Contact: …….	Interview Time: …….
Email Address: …….	Interview Place …….

Introduction

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   1.2 To want extent does the IRC comply with the set standards and legal provisions?

1.3 What are the implications of IRC not complying with the legal provision in terms of settling disputes within reasonable time?

2 Labour Dispute Settlement Process and Court User Perception

2.1 In your own understanding, what is the labour dispute settlement process at the IRC?

2.2 According to law & practice, what is the reasonable time within which the IRC is expected to resolve a labour dispute (from case registration to judgement)?

2.3 What are the bottlenecks during pre-hearing, full hearing and judgement of labour disputes at the IRC?

2.4 What is the major cause of these process bottlenecks?

2.5 What impact do these process bottlenecks have on the IRC effectiveness and hence the court user satisfaction?

2.6 To what extent is legal representation a challenge during pre-hearing and full hearing of labour disputes at the IRC?

2.7 In your own opinion, is the IRC accessible, fair and courteous in its delivery of justice? Explain.

2.8 What implications does inadequate court infrastructure across the country have on the court users' access to labour justice?

2.9 Can the court hear a case at any level in the dispute resolution process in the absence of the complainant? Under what circumstances?

2.10 Do you think the level of education and income (with regard to court filing fees) act as barrier to court users in accessing justice at the IRC? Explain.

2.11 How often do IRC staff get training relevant in their work? If they don't get training, what impact would this have on their work with regard to effectiveness?

2.12 What is the establishment for IRC? How many vacancies remain unfilled? What impact do these vacancies have on the court work?

2.13 How many legal officers (Chair, Deputy Chairs & Assistant Registrars) would enable IRC to operate at expected effectiveness levels?

2.14 what extent has the constitution (or lack thereof) of the Tripartite Labour Advisory Council impacted on the IRC Backlog of cases?

3 In your opinion, what is the court users' perception about the IRC effectiveness in labour dispute settlement?

4 Challenges affecting the fulfilment of IRC legal mandate

4.1 What major challenges does the IRC face in its quest to fulfil its legal mandate?

4.2 What is the impact of the accumulating backlog of cases at the IRC on the court users?

4.3 To what extent would you attribute the accumulating backlog of cases at IRC to the Panellists' availability/unavailability?

4.4 In your opinion, how important are the Panelists in administering justice at the IRC?

4.5 What impact would the removal of Panelists from the IRC structure have on court user satisfaction?

5 IRC Effectiveness Improvement Proposals

5.1 What suggestions would you make in order to improve the effectiveness of the IRC in fulfilling its legal mandate?

5.2 What suggestions would you make on:

Litigation Process at IRC?

Amendments to the LRA?

6 Interview Closing

6.1 Is there anything else you would like to share around the effectiveness of the IRC?

This marks the end of our interview. Thank you very for sparing your precious time to talk to me. This cannot be taken for granted!

Appendix 3: INTERVIEW GUIDE – COURT USERS

Interviewee Name: ……	Interviewer Details: Name:……. Mobile Contact:……. Email Address:……..
Position:…….	Interview Date: …….
Mobile Contact: …….	Interview Time: …….
Email Address: …….	Interview Place …….

Introduction

I am *Peter Kanyatula*, a student, at the University of Malawi (Chancellor College) pursuing a Master of Arts in Human Resources Management and Industrial Relations degree. I am collecting data for a research study on the "*Analyzing the Effectiveness of the Industrial Relations Court in Labour Dispute Settlement"*. Therefore, I would like to ask you to help me in responding to the questions in this Interview Guide.

Be assured that any information provided by you will only be used for academic purposes and all information will be treated with the highest degree of confidentiality. Please respond honestly to the questions to ensure that valid and reliable data is collected. Thank you in advance for your help and time.

1. IRC Set Standards/Legal Provisions Compliance

   1.2 Does the IRC settle a labour disputes brought before it consistent with and within the set standards and legal provisions? Explain.

   1.2 To want extent does the IRC comply with the set standards and legal provisions?

   1.3 What are the implications of IRC not complying with the legal provision in terms of settling disputes within reasonable time?

2 Labour Dispute Settlement Process and Court User Perception

2.2 In your own understanding, what is the labour dispute settlement process at the IRC?

2.3 What are the bottlenecks during pre-hearing, full hearing and judgement of labour disputes at the IRC?

2.4 What is the major cause of these process bottlenecks?

2.5 What impact do these process bottlenecks have on the IRC effectiveness and hence the court user satisfaction?

2.6 To what extent is legal representation a challenge during pre-hearing and full hearing of labour disputes at the IRC?

2.7 In your own opinion, is the IRC accessible, fair and courteous in its delivery of justice? Explain.

2.8 What implications does inadequate court infrastructure across the country have on the court users' access to labour justice?

2.9 Do you think the level of education and income (with regard to court filing fees) act as barrier to court users in accessing justice at the IRC? Explain.

2.10 Can you explain as to whether you were satisfied or not with that way the IRC handled your case?

2.11 How long did the IRC take to conclude your case?

2.12 What is your perception about the IRC effectiveness in labour dispute settlement?

3 Challenges affecting the fulfilment of IRC legal mandate

3.2 What major challenges does the IRC face in its quest to fulfil its legal mandate?

3.3 What is the impact of the accumulating backlog of cases at the IRC on the court users?

3.4 To what extent would you attribute the accumulating backlog of cases at IRC to the Panellists' availability/unavailability?

3.5 In your opinion, how important are the Panelists in administering justice at the IRC?

3.6 What impact would the removal of Panelists from the IRC structure have on court user satisfaction?

4 IRC Effectiveness Improvement Proposals

4.2 What suggestions would you make in order to improve the effectiveness of the IRC in fulfilling its legal mandate?

5 Interview Closing

5.2 Is there anything else you would like to share around the effectiveness of the IRC?

This marks the end of our interview. Thank you very for sparing your precious time to talk to me. This cannot be taken for granted!

Appendix 4: INTERVIEW GUIDE – IRC STAFF (SUPPORT)

Interviewee Name: ……	Interviewer Details: Name:……. Mobile Contact:……. Email Address:……..
Position:…….	Interview Date: …….
Mobile Contact: …….	Interview Time: …….
Email Address: …….	Interview Place …….

Introduction

I am *Peter Kanyatula*, a student, at the University of Malawi (Chancellor College) pursuing a Master of Arts in Human Resources Management and Industrial Relations degree. I am collecting data for a research study on the "*Analyzing the Effectiveness of the Industrial Relations Court in Labour Dispute Settlement"*. Therefore, I would like to ask you to help me in responding to the questions in this Interview Guide.

Be assured that any information provided by you will only be used for academic purposes and all information will be treated with the highest degree of confidentiality. Please respond honestly to the questions to ensure that valid and reliable data is collected. Thank you in advance for your help and time.

1 Labour Dispute Settlement Process and Court User Perception

1.2 In your own understanding, what is the labour dispute settlement process at the IRC?

1.3 What are the bottlenecks during pre-hearing, full hearing and judgement of labour disputes at the IRC?

1.4 What is the major cause of these process bottlenecks?

1.5 What impact do these process bottlenecks have on the IRC effectiveness and hence the court user satisfaction?

1.6 In your own opinion, is the IRC accessible, fair and courteous in its delivery of justice? Explain.

1.7 What implications does inadequate court infrastructure across the country have on the court users' access to labour justice?

1.8 Do you think the level of education and income (with regard to court filing fees) act as barrier to court users in accessing justice at the IRC? Explain?

2 In your opinion, what is the court users' perception about the IRC effectiveness in labour dispute settlement?

3 Challenges affecting the fulfilment of IRC legal mandate

3.2 What major challenges does the IRC face in its quest to fulfil its legal mandate?

3.3 What is the impact of the accumulating backlog of cases at the IRC on the court users?

3.4 To what extent would you attribute the accumulating backlog of cases at IRC to the Panellists' availability/unavailability?

3.5 In your opinion, how important are the Panelists in administering justice at the IRC?

3.6 What impact would the removal of Panelists from the IRC structure have on court user satisfaction?

4 IRC Effectiveness Improvement Proposals

4.2 What suggestions would you make in order to improve the effectiveness of the IRC in fulfilling its legal mandate?

5 Interview Closing

5.2 Is there anything else you would like to share around the effectiveness of the IRC?

This marks the end of our interview. Thank you very for sparing your precious time to talk to me. This cannot be taken for granted!

Appendix 5: INTERVIEW GUIDE – LABOUR LAWYER (MLS)

Interviewee Name: ……	Interviewer Details: Name:……. Mobile Contact:……. Email Address:……..
Position:…….	Interview Date: …….
Mobile Contact: …….	Interview Time: …….
Email Address: …….	Interview Place …….

Introduction

I am *Peter Kanyatula*, a student, at the University of Malawi (Chancellor College) pursuing a Master of Arts in Human Resources Management and Industrial Relations degree. I am collecting data for a research study on the "*Analyzing the Effectiveness of the Industrial Relations Court in Labour Dispute Settlement"*. Therefore, I would like to ask you to help me in responding to the questions in this Interview Guide.

Be assured that any information provided by you will only be used for academic purposes and all information will be treated with the highest degree of confidentiality. Please respond honestly to the questions to ensure that valid and reliable data is collected. Thank you in advance for your help and time.

1. IRC Set Standards/Legal Provisions Compliance
   1.2 According to your litigation experience at IRC, does the court settle a labour disputes brought before it consistent with and within the set standards and legal provisions? Explain.

   2.1 To want extent does the IRC comply with the set standards and legal provisions?

   2.2 What are the implications of IRC not complying with the legal provision in terms of settling disputes within reasonable time?

2. Labour Dispute Settlement Process and Court User Perception
   2.1 In your own understanding, what is the labour dispute settlement process at the IRC?

2.2 What are the bottlenecks during pre-hearing, full hearing and judgement of labour disputes at the IRC?

2.3 What is the major cause of these process bottlenecks?

2.4 What impact do these process bottlenecks have on the IRC effectiveness and hence the court user satisfaction?

2.5 To what extent is legal representation a challenge during pre-hearing and full hearing of labour disputes at the IRC?

2.6 In your own opinion, is the IRC accessible, fair and courteous in its delivery of justice? Explain.

2.7 What implications does inadequate court infrastructure across the country have on the court users' access to labour justice?

2.8 Do you think the level of education and income (with regard to court filing fees) act as barrier to court users in accessing justice at the IRC? Explain.

2.9 To what extent has the constitution (or lack thereof) of the Tripartite Labour Advisory Council impacted on the IRC Backlog of cases?

3 In your opinion, what is the court users' perception about the IRC effectiveness in labour dispute settlement?

4 Challenges affecting the fulfilment of IRC legal mandate

4.1 What major challenges does the IRC face in its quest to fulfil its legal mandate?

4.2 What is the impact of the accumulating backlog of cases at the IRC on the court users?

4.3 To what extent would you attribute the accumulating backlog of cases at IRC to the Panellists' availability/unavailability?

4.4 In your opinion, how important are the Panelists in administering justice at the IRC?

4.5 What impact would the removal of Panelists from the IRC structure have on court user satisfaction?

5 IRC Effectiveness Improvement Proposals

5.1 What suggestions would you make in order to improve the effectiveness of the IRC in fulfilling its legal mandate?

5.2 What suggestions would you make on:

Litigation Process at IRC?

Amendments to the LRA?

6 Interview Closing

6.1 Is there anything else you would like to share around the effectiveness of the IRC?

This marks the end of our interview. Thank you very for sparing your precious time to talk to me. This cannot be taken for granted!

Appendix 6: CONSENT FORM

ANALYZING THE EFFECTIVENESS OF THE INDUSTRIAL RELATIONS COURT IN LABOUR DISPUTE SETTLEMT

RESEARCHER

Name: Peter KANYATULA

University/College/Department: University of Malawi/Chancellor College/PAS Department

Address: C/O P.O. Box 187, Blantyre.

Phone: +265 999958966

Email: kanyatulap@gmail.com

PURPOSE OF STUDY

The aim of this is to analyze the effectiveness of the Industrial Relations Court (IRC) of Malawi stemming from the ever-increasing backlog of cases.

PROCEDURES

This study will take the interview format using an interview guide. And before the interview starts, the researcher will introduce himself and the title and purpose of the study; and them ask the respondent if the interview can be digitally recorded or manually recorded.

RISKS

No risks are envisaged for your participation in the study as the data collected will be used purely for academic purposes and with utmost confidentiality.

BENEFITS

There are no direct benefits for the respondent resulting from this study. However, by your participation, you will have contributed to the growth of the body of knowledge around the work of labour courts.

CONFIDENTIALITY

Please note that the researcher will not write any identifying information for you. Every effort will be made by the researcher to preserve your confidentiality including the following:

- Not mentioning your names in the study report/findings.
- Keeping notes, interview transcriptions, and any other identifying participant information in a locked file cabinet in the personal possession of the researcher.

Participant data will be kept confidential except in cases where the researcher is legally obligated to report specific incidents. These incidents include, but may not be limited to, incidents of abuse and suicide risk.

COMPENSATION

Please note that there is no compensation for your participation as a respondent in this study.

CONTACT INFORMATION

If you have questions at any time about this study, or you experience adverse effects as the result of participating in this study, you may contact the researcher whose contact information is provided on the first page. If you have questions regarding your rights as a research participant, or if problems arise which you do not feel you can discuss with the Primary Researcher directly by telephone on +265 999958966 or at the following email address kanyatulap@gmail.com .

VOLUNTARY PARTICIPATION

Your participation in this study is voluntary. It is up to you to decide whether or not to take part in this study. If you decide to take part in this study, you will be asked to sign a

consent form. After you sign the consent form, you are still free to withdraw at any time and without giving a reason. Withdrawing from this study will not affect the relationship you have, if any, with the researcher. If you withdraw from the study before data collection is completed, your data will be returned to you or destroyed.

CONSENT

I have read and I understand the provided information and have had the opportunity to ask questions. I understand that my participation is voluntary and that I am free to withdraw at any time, without giving a reason and without cost. I understand that I will be given a copy of this consent form. I voluntarily agree to take part in this study.

Participant's Signature _____ Date _____

Researcher's Signature _____ Date _____

Appendix 7: IRC FORMS

REPUBLIC OF MALAWI

IRC FORM 1

IN THE INDUSTRIAL RELATIONS COURT OF MALAWI
APPLICANT'S STATEMENT OF CLAIM

Matter No. IRC ……../……..

In the dispute between

Applicant ……

Respondent …….

To: The Registrar
Industrial Relations Court
P.O. Box 5596
Limbe
Malawi

And to: (Insert the Respondent's name and address)

……
……

1. Particulars of the Applicant

(a) Name (if there are a number of applicants, attach a list with all their names)
……..

(b) Description (e.g. individual, firm, company, partnership, organization , trade union undertaking etc.)
……..

(c) Physical address ……
……

(d) Postal address …….
…….

(e) Telephone No…….

(f) Telefax No …….

(g) Address for service of documents in these proceedings
……
……

2. Particulars of the Respondent:
(a) name ……..

(b) description (e.g. individual, firm, company, partnership, organization , trade union, undertaking etc.)
……
(c) physical address …….

(d) postal address ……..
……..
(e) Telephone No. …….
(f) telefax No. ……..

3. Employment particulars of the Applicant:

(a) date of commencement of employment with the Respondent:
……..

(b) nature of the Respondent's business:
……
……

(c) nature of the Applicant's employment:
……

(d) remuneration of the Applicant when so employed:
……

4. Brief description of alleged trade dispute: (e.g. dismissal, suspension, withholding Wages, etc)
……

5. Particulars of alleged trade dispute: (set out clear and concise particulars in Paragraphs including sub-paragraphs, consecutively numbered)
……
……

6. Particulars of relief sought:
……
……

7. Dates and venues of attempts to settle the alleged dispute:
   (a) before the District Labour Officer:
   ……

   (b) before the Regional Labour Officer:
   …….

   (c) before the Labour Commissioner/Principal Secretary responsible for labour
   …….

   (d) privately between the parties:
   …….

8. List of books, documents and other relevant materials to this matter which are in the Applicant's possession or under his control:
   ……..

9. Notice to the Respondent:

   (a) if the Respondent intends to oppose this application, he is required within 14 days' after service on him of the Applicant's statement of claim to deliver, in terms of rule 12, his statement of defense as near as may be in accordance with IRC Form 2;

   (b) if the Respondent fails to deliver a statement of defense, a determination, including an order as to costs, may be made in his absence.

Signed at ……. this …… day of ……..

Applicant/Representative
of the Applicant

Signed: .....

NOTE: If the Respondent intends to counterclaim, he must deliver simultaneously with his statement of defense a statement as near as may be in accordance with IRC Form 1, with the necessary amendments to the required particulars to suit his specific counterclaim and the heading should be changed to read: "Respondent's Counterclaim."

REPUBLIC OF MALAWI

IRC FORM 2
IN THE INDUSTRIAL RELATIONS COURT OF MALAWI
RESPONDENT'S STATEMENT OF REPLY

Matter No. IRC ……/……..

In the dispute between

Applicant …….

Respondent ……...

To. The Registrar
Industrial Relations Court
P. O. Box 5596
Limbe, Malawi

And to: (Insert the Applicant's name and address)

……..
……..

1. Particulars of the Respondent

(a) name ……

(b) description (e.g. individual, firm, company, partnership, organization, trade union, undertaking etc.)
…….

(c) trade name (if any) ……..

(d) physical address ……..
……..

(e) postal address ……..

……..

(f) Telephone No. …….

(g) Telefax No. ……..

(h) Address for service of documents in these proceedings:

……...

……

2. Objection to jurisdiction of the Court: (Complete only if applicable set out fully the grounds for such objections)

……

……

3. The Respondent's opposition to the applicant's statement of claim: (Set clear and concise grounds of opposition with a specific admission or denial of the allegations in each paragraph and sub-paragraph).

……

……

4. Respondent's counter claim, if any: (set out clear and concise grounds of counter claims).

……

……

5. Relief sought: (if the Respondent opposes the relief sought but thinks the Applicant is entitled to some other relief set out particular of such other relief)

……

……

6. List of books, documents and other materials relevant to the Respondent's Opposition which are in the Respondent's possession or under his control:

……

……..

Signed at this day of

Respondent/Representative

Signed .....

REPUBLIC OF MALAWI

IRC FORM 3

Rule 16

IN THE INDUSTRIAL RELATIONS COURT OF MALAWI

Matter No. IRC……/……..

In the Matter between

…….. Applicant

and

…….……..……Respondent
.

NOTICE OF MOTION

……

To: The Registrar
Industrial Relations Court
P. O. Box 5596
Limbe
Malawi

And to: (Insert the respondent's name and address
……
……
……

Kindly take notice that the Applicant intends to bring an application at a time and date to be
fixed by the Registrar for an order in the following terms:
……
……
……

NOTE: The facts on which the Applicant relies for the relief sought must be set out clearly and concisely in an accompanying affidavit in paragraphs, including sub paragraphs consecutively numbered and any other supporting affidavit and document must be attached to this found affidavit.
The applicant in his answering affidavit must either admit or deny each of these and must similarly set out facts on which he relies for opposing such application.

(Set out the relief sought)

……
……

In the case of an urgent application, the Applicant must telephone the Registrar in advance for
a suitable date and time and the paragraph relating to relief being sought should then read as follows:-

Kindly take notice that the Applicant intends to bring an urgent application at the Industrial
Relations Court at on the day of

on or soon thereafter as the matter can be heard, for an order in the following terms:
(Here set out the
urgent relief sought)
……
……
……

Take notice further that the affidavit of together with the annexure there to (if any) annexed herein, will be used in support of this application

Take notice further that the Applicant has chosen the following address at which service of

process in these proceedings will be accepted.

……
……
……
……

Take notice further that the Respondent may file an affidavit in response with the Registrar and
serve a copy thereof on the Applicant within 14 days of service of this application on the Respondent.

The Registrar is directed to place this matter on the list for a hearing and to notify the parties of the date,
place and time of such hearing.

Dated at this Day of

Applicant/Representative

of

the Applicant

Signed

Note: In the case of an urgent application, the last two paragraphs of the Notice of Motion are not
applicable.

Made this 5th day of March, 2013

(FILE NO. CONF. 99/16 A .K Nyirenda SC

Chief Justice

IN THE INDUSTRIAL RELATIONS COURT OF MALAWI

PRINCIPAL REGISTRY

MATTER NO. IRC …… OF ……

BETWEEN

……. APPLICANT

-and-

……. RESPONDENT

NOTICE OF PRE-HEARING CONFERENCE

TAKE NOTICE that a pre-hearing conference on the above matter shall take place on the ……day of …….....2020 at …… o'clock in the …… noon at Old magistrate Court Blantyre.

Take further notice that at the pre-hearing conference parties attempt an out of court settlement, as the presiding officer mediates/conciliates parties over the labour and employment dispute thereby avoiding full hearing where parties settle on agreed terms. Alternatively, it is aimed at streamlining issues for speedy trial.

In addition note that in the absence of meritorious reasons non-attendance results into:

- dismissal for want of prosecution in absence of applicant.
- adjourning the matter for full hearing in absence of respondent.
- Striking off the matter on the court list in absence of both parties

Further be advised to bring relevant evidence pertaining to your claim such as

- witnesses
- letter of appointment and or contract of employment
- letter (s) of warning (s) and of disciplinary hearing memorandums/minutes
- letter (s) of suspension
- letter of dismissal/termination
- brief concise statement of main arguments

Dated this …… day of …….....2020

……..
R E G I S T R A R

TO: APPLICANT RESPONDENT
……. ……
……. ……

IN THE INDUSTRIAL RELATIONS COURT OF MALAWI

PRINCIPAL REGISTRY

MATTER NO. IRC …… OF ……..

BETWEEN

……..
APPLICANT

-and-

…….
RESPONDENT

NOTICE OF HEARING

TAKE NOTICE that the Honourable Chairperson / Deputy Chairperson has scheduled your matter for hearing before member panellists on the ……. day of ……2020, at …….. o'clock in the …… noon at Old Magistrate Court, Blantyre.

Take further notice that the issues to be determined at full trial are at indicated below:-

- Unfair dismissal
- Withheld wages/bonus
- Overtime pay
- Notice pay
- Severance pay

- Pension benefits
- Discrimination
- Other claims (specify) ……..

In addition note that in the absence of meritorious reasons non-attendance results into:-

- dismissal for want of prosecution in absence of applicant
- hearing and conclusion of the matter in absence of respondent
- striking off the matter on the court list in absence of both parties

Further be advised to bring relevant evidence pertaining to your claim such as

- Witnesses
- Letter of appointment and or contract of employment
- Letter(s) of warning(s) and or disciplinary hearing memorandums/minutes
- Letter(s) of suspension
- Letter of dismissal/termination
- Brief concise statement of main arguments

Dated this ……. Day of ……2020

……..
ASSISTANT REGISTRAR

APPLICANT RESPONDENT

.....

.....

.....

.....

.....

IN THE INDUSTRIAL RELATIONS COURT OF MALAWI

PRINCIPAL REGISTRY

MATTER NO. IRC …… OF ……

BETWEEN

……..…… ……. APPLICANT

……..…….……...……...RESPONDENT

NOTICE OF ASSESSMENT

TAKE NOTICE that assessment on the above matter herein shall take place on the ……... day of ……..……. 2020 at ……..……o'clock in the ……noon at Industrial Relations Court, Principal Registry, Old Boma Building, Blantyre.

Dated this …… day of ……2020

……..
ASSISTANT REGISTRAR

Applicant:……..

Respondent:…….

Appendix 8: Thematic Tables

Theme	Sub-Theme	Responses		
		Respondent CS-CE01	**Respondent CS-CE02**	**Respondent CS-CE03**
Legal provisions & set standards	Law	• Default judgment 14dys after Form is filled. • Judgement 21dys after trial.	• Default judgment 14dys after Form is filled. • Judgement 21dys after trial	• Case Registration & claim service in 14dys. • Counterclaim in 14dys • Pre-hearing in 7dys • Full trial • Judgement in 21dys.
	Compliance	• High volume of work fail the court on compliance (insufficient judicial staff).	• Many factors prevent the court from complying with the law	• Not fully complaint on account of insufficient judicial staff
	Mandate	• MWI Constitution S.110(2) & LRA Part VII	MWI Constitution S.110(2) & LRA Part VII	MWI Constitution S.110(2) & LRA Part VII
	Effectiveness	• Court unable to handle all cases as its not present in districts.	• Not fully effective	• Partially effective
Challenges	Judicial staff	• Inadequate judicial staff • Heavy workload • Delays & unhealthy for officers	• Pressure of work on current judicial staff • More needed	• More judicial officers required • 5 deputies for Blantyre; 4 deputies for Lilongwe; 2 deputies for Mzuzu. • Each registry to have Assistant Registrar
	Panelists	• Unavailability	• Unavailability	• Unavailability

		of Panelists • Delaying cases hence 40 required per registry • Maybe be removed from court set up	of Panelists • Not full-time court staff/More needed/Low allowances/Tenure of office/Hearing attendance not mandatory.	of Panelists • Not full-time court staff/More needed/Low allowances/Tenure of office/Hearing attendance not mandatory.
	District registries	• Lack districts court infrastructure	• No registries in districts/Court circuits • Court has to make visits across the country in court circuits	• No registries in districts/Court circuits • Affecting court to meet its objectives
	Problematic Legal representation	• Delay proceeding with prolonged crosss-examination	• They come unprepared & seek needless adjournments	• Do not prepare their clients • Needless adjournments are sought • Need for costs to be levied on them - LRA
	Wrong Court user perception	N/A	N/A	• Due to high compensation expectation, complainant take almost every matter to IRC
	Labour officers' capacity	N/A	N/A	• Lack of LOs capacity to conduct reconciliation means all matters are brought to them are referred to IRC
	Govt	• Inadequate	• IRC be made a	• Unable to

	Funding	govt funding	stan-alone establishment for direct funding from central govt	finance its outreach (court circuits) due to low funding
Dispute Settlement Process	Process	• Pre-Hearing; then • Full trial with Panelists (if not resolved during prehearing) • Chair or Deputy sits alone on point of law	• Form 1 & Form 2 in 14dys • Pre-Hearing • Full trial with Panelists (if not (90dys up to here to suffice) • Form 3 for temporary relief.	• Labour/IRC - Form 1 & Form 2 in 14dys • Pre-Hearing • Full trial with Panelists (if not (90dys up to here to suffice) • Form 3 for temporary relief. • Chair/Deputy – alone on point of law
	Process bottlenecks	• Problematic legal representation (not wanting to end matters at Pre-hearing) • Inadequate Panelists	• Some employers take long to submit a counter claim • Court enters default judgement, but employers seek temporary reliefs & this stalls matters	• Problematic legal representation • Prolonged cross-examination by lawyers
	Impact on Court Users	• Loss of trust in the court	• Frustration & loss trust in the Court	• Loss hope & confidence in the court
	Legal Representation	• Lawyers do delay proceedings with prolonged cross-examination	• Needless adjournments prolong matters	• Most lawyer want matters to always go to full trial
Panelists	Availability impact	• If unavailable, the court can't sit. • Should be	• Attendance to court hearing is not mandatory	• Low allowances (K10 000) hence low

		removed from Court structure	hence Panelist choose whether to come for hearings or not • Need to make it mandatory	motivation • Not full-time court staff, busy with their work • Govt, ECAM/MCTU take time to fill vacancies upon expiry of tenure & when one resigns • Court work stops unless a matter is purely on point of law
	Removal of Panelist from Court structure	• Yes to ensure speedy Resolution of matters. • Though they are judges of facts.	• Yes to ensure speedy Resolution of matters	They are judges of facts hence important. Just need to increase the number.
Court Effectiveness Improvement	Court registries	• Open Zomba Registry • Increase funding • Increase Panelists to 120	• Create more court space at current registries • More funding for court circuits	• Use district magistrate court for IRC court & have a resident court clerk there • Create (rent) more space in current registries- for several matters to be heard concurrently
	Litigation Process	• Pre-Hearing be fully utilised • Needless adjournments should attract costs to party that causes it	• Needless adjournments should attract costs to party that causes it	• Needless adjournments should attract costs to party that causes it
	LRA Amendment	• Increase # of	• Make	• Court to have

		Panelits to 40 for each registry or Remove them from court structure	attendance of court hearing mandatory for Panelists • Jury trial be introduced which would allow flexible panelling.	powers to make determinations on costs. • Needless adjournments be punished on the causers. • Complainant be allowed to choose whether Panelists be involved in their case or not.

Theme	**Sub-Theme**	**Responses**	
		Respondent CS-CE04	**Respondent CS-CE05**
Dispute Settlement	Process	• Once the complaint is presented to IRC, a case file is opened. • Then a notice is served on the other party. • The Panellists are empanelled for pre-hearing; then the matter goes into full hearing. • Then the ruling is written and pronounced in the court.	• Upon registration of matter, Pre-hearing is done in 7dys. • Full hearing if not resolved. • Judgement in 21 days from end of trial.
	Court users' satisfaction	• Court users are frustrated as justice is delayed. • Consequently, court users suspect the IRC staff to be indulging in corruption to decide the speed at which a matter is dealt with.	• Not satisfied by the court processes because their cases take too long to be settled.

	Bottlenecks	• Unavailability of Panelists • Transport for court Marshalls to deliver hearing notices	• Unavailability of Panelists
Court Users' Perception Feedback	-	• Have poor perception as they view the court as corrupt • Loss of trust in the court	• Poor feedback as they think court clerks are to blame for delays in their cases
Challenges	-	• Unavailability of Panelists • Insufficient court officials. • Delays caused by lawyers' adjournments	• Labour officers lack of capacity – all cases come to IRC • Most complainants expect high monetary compensation when they bring their matters to IRC

Theme	**Sub-Theme**	**Responses**			
		Respondent PA-CE06	**Respondent PA-CE07**	**Respondent PA-CE08**	**Respondent PA-CE09**
Legal provisions & standards	Compliance	• From case registration to full hearing 90dys are enough • But this does not happen	As per LRA Part VII	Not fully compliant/lawyers to blame.	Insufficient judicial officers is failing court compliance on judgements.
Dispute settlement process	Process	• Court user reports to IRC • Pre-hearing • Full hearing • Judgment	• Court user reports to IRC • Pre-hearing • Full hearing • Judgment	• Case registration • Full hearing • Judgment	• Complaint recorded at IRC • Full hearing • Judgment
	Bottlenecks	• Lawyers prolong proceedings by elongated cross-examination	• Pre-hearing – Court user lack of knowledge • Full hearing - Panelists availability • Judgement -Too	• Panelists availability	• Judgement take too long

			many cases		
Legal representation	-	• Lawyers come to court unprepared	• Lawyers come to court unprepared • Seek numerous adjournments	• Seek numerous adjournments	• Important but they elongate processes
Court fairness, access & courtesy	-	• Fair • Corruption claims from court users on setting of hearing dates	• Court doing well-few decisions are over-ruled by higher courts	• Fair & courteous	• Fair
Education & Income	-	• Not a hindrance	• Not a hindrance	• Not a hindrance	• Not a hindrance
Court User Perception	Perception		• Frustration as justice is delayed • Court image eroded		
Challenges Court faces	Challenges	• Labour officers capacity needs to be improved to reduce Court work • Lawyers unpreparedness • Lawyers want matters to always go beyond pre-hearing.	• Funding • Panelists availability • Lawyers involvement & their unpreparedness • Complainants expect high compensation from IRC hence too many cases	• Lawyers unpreparedness • Lawyers want matters to always go beyond pre-hearing.	• Lawyers seek too many adjournments
Panelists' availability	Contribution to delays	• 40% contribution to delays	• 30% of case delays is attributable to this	• Unavailability of Panelits contribute to delays	• No contribution. (Lawyers are a major problem)
Improvement suggestions	-	Min of Labour to train Labour officers (IRC can facilitate). Investigate corruption claims	• Meet full expenses of Panelists • Increase # of Panelists to 20 per registry	• Increase # of Panelists to 20 per registry	• Court should limit granting of leave legal representation

Theme	Sub-Theme	Responses
		Respondent LL-CE10
Set standards & legal provision	Compliance	• Largely compliant
Dispute settlement Process	Process	• Good process • Beleaguered by process bottlenecks such as unavailability of panelists who are not court permanent staff & lack of capacity for court clerks.
Representation	Legal representation	• Constitutional right • IRC is a court of law hence necessary • Facilitate proper & speedy adjudication • Aid the court in case management
Unavailability of Panelists	Necessity of Panelists	• Delay court proceeding & cause adjournments • LRA should be repealed to remove this provision • Labour issues are not complicated • Panelists do not have special skills which a judicial officer does not have.
Court user perception of IRC	Perception	• Court user frustration as trust gets washed away
Improvement suggestions	Suggestions	• Remove Panelists from court structure • Judiciary to widen Magistrate courts job description to cover labour matters fully • Introduce jury process

Theme	Sub-Theme	Responses				
		Respondent CU-CE11	**Respondent CU-CE12**	**Respondent CU-CE13**	**Respondent CU-CE14**	**Respondent CU-CE15**
Set standards & legal provisions	Compliance & extent	• Not complian t at all	• Not complaint	• Court tries to be complaint	• Not fully complaint	• Not compliant
	Non-compliance impact	• Loss of regular income on dismissal as matter take long	• Traveling to court too many times – transport costs as matters delay	• Frustration	• Court breaking the law	• Loss of trust

		• This has effect on family life – health & education of children.				
Dispute Settlement Process	Process	• Not aware	• Hearing & judgement	• Case registration • Hearing • Judgement	• Case registration • Hearing • Judgement	• Not fully aware
	Bottlenecks	• Court clerks & Registrar not helpful • Visiting the court many times before a date is set	• Lawyers for employers make matters longer	• Court clerks not helpful sometimes	• Lawyers' adjournments	• Court clerks not helpful
Court challenges	Challenges	• Long distance • Lack courts in the districts	• Court clerks are corrupt • Transport costs	• Distances to nearest registry	• Distances to nearest registry	• Years pass before
	Backlog effect	• Frustration	• Loss of trust	• It can erode court image	• Frustration if matter takes too long	• Loss of hope & people may suffer in silence
	Panelists	• Very important • Should not be removed	• Important • Just increase the #	• Unavailable sometimes & this causes delays • But very important • Should not be removed	• Important • Should not be removed	•
Improvement suggestions	-	• Create courts in the districts for	• Set maximum # years by law within which a	• Improve court access	• More funding for court circuits	• Limit leave of legal representation.

		access	case should concluded if it fails the 90dys hearing & 21dys judgement. • Investigate corruption among curt clerks			