REPORT

OF THE

COMMITTEE ON LEGAL AFFAIRS, HUMAN RIGHTS AND GOVERNANCE ON THE PETITION BY MR GEORGE CHILUFYA TO AMEND SECTION 19(3)(B) OF THE INDUSTRIAL AND LABOUR RELATIONS ACT, CHAPTER 269 OF THE LAWS OF ZAMBIA

FOR THE

FIRST SESSION OF THE THIRTEENTH NATIONAL ASSEMBLY

Published by the National Assembly of Zambia

REPORT

OF THE

COMMITTEE ON LEGAL AFFAIRS, HUMAN RIGHTS AND GOVERNANCE ON THE PETITION BY MR GEORGE CHILUFYA TO AMEND SECTION 19(3)(B) OF THE INDUSTRIAL AND LABOUR RELATIONS ACT, CHAPTER 269 OF THE LAWS OF ZAMBIA

FOR THE

FIRST SESSION OF THE THIRTEENTH NATIONAL ASSEMBLY

TABLE OF CONTENTS

REPORT OF THE COMMITTEE ON LEGAL AFFAIRS, HUMAN RIGHTS AND GOVERNANCE ON THE PETITION BY MR GEORGE CHILUFYA TO AMEND SECTION 19(3)(B) OF THE INDUSTRIAL AND LABOUR RELATIONS ACT, CHAPTER 269 OF THE LAWS OF ZAMBIA FOR THE FIRST SESSION OF THE THIRTEENTH NATIONAL ASSEMBLY.

1.0 Membership of the Committee

The Committee consisted of Dr C Andeleki, MP (Chairperson); Ms T E Lungu, MP (Vice Chairperson); Mr G K Chisanga, MP; Mr A M Kasandwe, MP; Mr C Miyutu, MP; Mr E Sing'ombe, MP; Mr F M Fube, MP; Mr L Hamwaata, MP; Mr M Chinkuli, MP; and Mr J E Banda, MP.

The Honourable Madam Speaker
National Assembly of Zambia
Parliament Buildings
LUSAKA

Madam

The Committee has the honour to present its Report on the Petition by Mr George Chilufya to amend section 19(3)(b) of the Industrial and Labour Relations Act, Chapter 269 of the Laws of Zambia for the First Session of the Thirteenth National Assembly.

2.0 Functions of the Committee

Pursuant to Standing Order No. 125(2) of the National Assembly of Zambia Standing Orders, 2021, a Petition that has been laid on the Table of the House shall be referred to an appropriate Committee for consideration. The Committee was tasked to consider the Petition to amend section 19(3)(b) of the Industrial and Labour Relations Act, Chapter 269 of the Laws of Zambia (hereinafter referred to as "the Petition").

3.0 Meetings of the Committee

The Committee held seven meetings to consider the Petition by Mr George Chilufya.

4.0 Procedure Adopted by the Committee

The Committee requested for written memoranda from stakeholders listed at Appendix II, and invited them to appear before it in order to clarify any issues arising from their written submissions.

5.0 Background

Prior to the 2008 amendment, the *Industrial and Labour Relations Act, Chapter 269 of the Laws of Zambia* provided for the jurisdiction of the Industrial Relations Court. In particular, section 85(3) provided for the time within which a complaint was presented to the Court and if that time was not adhered to, the Court was divested of jurisdiction to consider the complaint unless an application for extension of time was made and granted by the Court.

Section 19(3) of the *Industrial and Labour Relations (Amendment) Act, No. 8 of 2008* amended section 85 of the principal Act by deleting sub-section (3) and replacing it with the following:

"The Court shall not consider a complaint or an application unless the complainant or applicant presents the complaint or application to the Court;

(a) within ninety days of exhausting the administrative channels available to the complainant or applicant; or
(b) where there are no administrative channels available to the complainant or applicant, within ninety days of the occurrence of the event which gave rise to the complaint or application:

Provided that –

(i) upon application by the complainant or applicant, the Court may extend the period in which the complaint or application may be presented before it; and
(ii) the Court shall dispose of the matter within a period of one year from the day on which the complaint or application is presented to it."

Against this background, the Court of Appeal in the case of ***Guardall Security Group Limited v Reinford Kabwe, Appeal No. 44 of 2019*** pronounced itself on what should happen where a judge failed to deliver judgment within the statutory period of one year from the date the complaint or application was lodged. The Court of Appeal held that the Industrial Relations Court had no jurisdiction to hear and determine a matter which went beyond one year from the date the complaint or application was lodged, and the judgment resulting from such proceedings, if any, was null and void.

Mr George Chilufya (hereinafter referred to as the "Petitioner") was affected by this decision of the court. The Petitioner was a party in the case of ***Raphael Mvula and 527 Others v Torres Advanced Enterprises Solution IRC/LK/395/2020***, which was dismissed on the understanding that the judge had no jurisdiction to hear and determine the case after the statutory period of one year had elapsed, whereupon the judge advised the complainants to file a new complaint for determination by another judge.

The grievance raised in the Petition was that whereas section 85(3)(b)(ii) of the *Industrial and Labour Relations Act,* as amended by section 19(3)(b) of Act No.8 of 2008 mandated the Court to dispose of a matter within a period of one year from the year on which the complaint or application was presented to it, there was no penalty provided for breach thereof. Mr Chilufya petitioned the National Assembly to amend section 19(3)(b) of the Act to provide for punishment for a judge who failed to conclude a matter and deliver judgment within the statutory period of one year; provide for the removal of a judge from office; and provide for the judge to be made to bear the costs of the litigants. According to the Petitioner, the amendment to the Act would restore confidence by the public in the Judiciary.

6.0 SUMMARY OF SUBMISSIONS BY STAKEHOLDERS

6.1 Legal Framework Governing the Grievance Procedure for Litigants

The Committee was informed that the procedure available to members of the public who may have grievances against judges was found in the *Judicial (Code of Conduct) Act, No.13 of 1999*, as amended by Act No.13 of 2006. The Act allowed litigants to lodge complaints against a Member of the Bench with the Judicial Complaints Commission when there was perceived judicial misconduct.

The Committee was informed that under section 24(1) of the *Judicial (Code of Conduct) Act*, the Judicial Complaints Commission (JCC) received and investigated any complaint or allegation of misconduct made against a judicial officer, and submitted its findings and recommendations to the appropriate authority for disciplinary or other administrative action. Stakeholders, however, submitted that there was need to align the Act with the constitutional amendments introduced by the Constitution, as amended by Act No.2 of 2016.

6.2 Existing Avenues to Punish a Judge for Failure to Discharge the Functions of Office of a Judge

The Committee heard that the office of judge was one that was constitutionally held. As provided for in Article 140 of the Constitution, judges were appointed by the President on the recommendation of the Judicial Service Commission and subject to ratification by the National Assembly. Pursuant to Article 143 of the Constitution judges had security of tenure and performed their functions independent of any influence from the other wings of Government or public or private person.

Stakeholders submitted that a judge became liable under the provisions of the Constitution for non-compliance as highlighted below.

(a) Articles 143 and 144 of the Constitution

The Committee was informed that under the present constitutional set up, the removal of a judge from office for failure to discharge the functions of the office was provided for under Articles 143 and 144 of the Constitution.

The Committee heard that Article 143 provided that a judge shall be removed from office on the grounds of a mental or physical disability that made the judge incapable of performing judicial functions; incompetence; gross misconduct; or bankruptcy. Article 144(1) provided an option for the Judicial Complaints Commission to initiate the removal of a judge from office. In accordance with Article 144(2), where the Judicial Complaints Commission decided that a *prima facie* case had been established against a judge, it was compelled to submit a report to the President accordingly. Article 144(3) to (10) further provided:

(3) The President shall, within seven days from the date of receiving the report, submitted in accordance with clause (2), suspend the judge from office and inform the Judicial Complaints Commission of the suspension.

(4) The Judicial Complaints Commission shall, within thirty days of the judge being suspended from office, in accordance with clause (3)—

(a) hear the matter against the judge on the grounds specified in Article 143 (b), (c) and (d); or

(b) constitute a medical board, in consultation with the body responsible for regulating health practitioners, to inquire into the matter against the judge based on the ground specified in Article 143(a).

(5) Where the Judicial Complaints Commission decides that an allegation based on a ground specified in Article 143(b), (c) and (d) is—

(a) not substantiated, the Judicial Complaints Commission shall recommend, to the President, the revocation of the judge's suspension and the President shall immediately revoke the suspension; or

(b) substantiated, the Judicial Complaints Commission shall recommend, to the President, the removal of the judge from office and the President shall immediately remove the judge from office.

(6) The proceedings under clause (4) (a) shall be held in camera and the judge is entitled to appear, be heard and be represented by a legal practitioner or other person chosen by the judge.

(7) The medical board, constituted in accordance with clause (4) (b), shall consist of not less than three registered health practitioners.

(8) The medical board shall, within thirty days of being constituted, examine the judge and report to the Judicial Complaints Commission on the judge's capacity to perform the judicial functions.

(9) Where the medical board recommends to the Judicial Complaints Commission that the judge is—

(a) physically or mentally capable of performing the judicial functions, the Judicial Complaints Commission shall recommend to the President the revocation of the judge's suspension and the President shall immediately revoke the suspension; or

(b) not physically or mentally capable of performing the judicial functions, the Judicial Complaints Commission shall recommend to the President the removal of the judge from office and the President shall immediately remove the judge from office.

(10) A judge who refuses to submit to an examination, in accordance with clause (8), shall immediately be removed from office by the President.

(b) The Judicial (Code of Conduct) Act No. 13 of 1999

The Committee was also informed that the *Judicial (Code of Conduct) Act*, as amended by Act No. 17 of 2008 provided for the Code of Conduct for officers of the judicature. The Act was enforced by the Judicial Complaints Commission which was established by Article 236 of the Constitution. The Commission's mandate was to ensure that judges and judicial officers were accountable to the people for the performance of their functions;

receive complaints lodged against a judge or judicial officer, as prescribed; hear a complaint against a judge or judicial officer, as prescribed; make recommendations to the appropriate institution or authority for action; and perform such other functions as prescribed.

(c) Industrial and Labour Relations Act, Chapter 269 of the Laws of Zambia

Stakeholders submitted that while the *Industrial and Labour Relations Act, Chapter 269 of the Laws of Zambia* did not specifically provide avenues to punish a judge for failure to discharge the functions of that office. Section 94 of the Act stated that:

(1) The Court shall deliver judgment within sixty days after the hearing of the case.

(2) Failure to deliver judgment, within the period stipulated in subsection (1) shall amount to inability by the Chairman or Deputy Chairman to perform the functions of his office and the provisions of the Constitution in dealing with the inability by a judge to perform his functions under the Constitution shall apply.

Most stakeholders submitted that the existing avenues to deal with a judge for failure to discharge the functions of that office were adequate. Some stakeholders, however, expressed the view that the section that needed amendment was section 94 and not section 19(3)(b) of the *Industrial and Labour Relations Act, Chapter 269 of the Laws of Zambia* to make it clear that a judge who failed to deliver a judgment within the stipulated statutory period of one year would be amenable to the provisions of the Constitution that deal with the inability by a judge to perform his or her functions.

6.3 Challenges in Disposing of Matters within the Statutory Period

Stakeholders submitted that it was practically difficult for a judge to dispose of matters in the Industrial Relations Court within one year. This was because as much as there was a relatively less stringent requirement for adherence to procedural rules in the Industrial Relations Court, case management was usually characterised by a number of impediments, including adjournments that may not be in the control of litigants and judges, coupled with numerous preliminary applications, especially where the parties were represented. Stakeholders further submitted that an inquiry into the reasons why some judges of the Industrial Relations Court were unable to dispose of matters within the prescribed period of one year after the presentation of the originating process proved very revealing and brought to the fore substantial challenges that the Industrial Relations Court was experiencing as set out below.

(a) Budgetary Challenges

The Committee heard that the 2019 Judiciary Annual Report listed budgetary allocations as a challenge that hampered the development and creation of infrastructure that would allow for the seamless operation of all courts. For example, the Court of Appeal and the Constitutional Court had no courtrooms of their own and required the use of buildings that were initially dedicated to the High Court and other courts.

In addition, within the existing courthouse buildings, equipment required for day-to-day operations was old and broken down or in dire need of serious updating. Further, there was shortage of staff leading to overwhelmed and inefficient court systems that resulted in a large backlog of cases.

(b) Lengthy Litigation and Highly Unpredictable Procedure

The Committee heard that once a complaint was lodged in the Industrial Relations Court, the judge issued an order directing the respondent to file an answer within a specific period. Sometimes litigants failed to file their answers within this period for various reasons and applications were made for the extension of time. Applications for extension of time may take more than a month before they could be heard, depending on how busy the Court was.

Further, when a respondent filed a response, the Complainant was required to reply. The Court was then required to call for a scheduling conference to agree with the parties on the dates for the trial of the matter. The dates must be available and convenient to the judge, the parties and their Counsel. This could take six months, and in some cases, a longer period of time.

(c) Additional Responsibilities for Judges

The Committee heard that the Industrial Relations Court was no longer an independent Court that it used to be at the time the *Industrial and Labour Relations Act, Chapter 269 of the Laws of Zambia* was enacted. At the times, the Chairman and Deputy Chairman were exclusively dedicated to industrial relations disputes. However, following the 2016 constitutional amendment, the Industrial Relations Court was now a division of the High Court. As a division of the High Court, judges had additional responsibilities. From time to time, High Court judges left their permanent stations to attend to criminal sessions for close to a month. This kept them away from their core duties under the Industrial Relations Division, leaving industrial relations disputes pending.

(d) Shortage of Judges

The Committee was informed that the inquiry into the challenges being faced by the Industrial Relations Court led to the discovery that the Court was extremely understaffed in comparison with other Divisions. It was noted that in comparison to 2008, when the *Industrial and Labour Relations (Amendment) Act, No. 8 of 2008* was first conceived, the number of matters before the Court had increased substantially due to the growth of the labour industry and the fact that employees had become generally more enlightened about their legal rights than in the past. However, the number of judges in the Industrial Relations Court had not increased to correspond to the growing number of cases since the enactment of *Industrial and Labour Relations (Amendment) Act, No. 8 of 2008*. The inquiry into the challenges additionally revealed that the Industrial Relations Court had five judges and that each judge had an average of over 200 civil cases which had to be thoroughly heard and disposed of within a period of one year.

(e) Huge Backlog and Rapid Increase in Volume of Litigation

Stakeholders submitted that there had been a general increase in the number of cases being filed before the Court than in the past. This had led to a huge backlog and substantial caseloads for the few judges in the Court. Further, the number of cases being recommenced had also increased as a consequence of the existence of section 19(3) (b)(ii) of *Industrial and Labour Relations (Amendment) Act, No. 8 of 2008* and the decision of the Court of Appeal in the case of ***Guardall Security Group Limited v Reinford Kabwe, Appeal No. 44 of 2019***. These legal authorities had largely compounded the problem being faced by judges in the Court because there was no practicable way of dealing with the backlog as the judges continued to be robbed of opportunity to adjudicate upon

matters despite having made significant progress in the said matters due to section 19(3)(b)(ii) of the Act.

In essence, section 19(3)(b)(ii) was causing more harm than good as it was worsening the backlog by robbing courts of opportunity to finish hearing matters even where they had made considerable progress. For this reason, it appeared that without addressing the challenges being faced by judges in the Industrial Relations Court, section 19(3)(b)(ii), in its current form, created a much more harm than the mischief it was intended to cure.

The Committee was informed that to demonstrate the magnitude of the problem being experienced in the Industrial Relations Court, one judge's Quarterly Report for civil jurisdiction cases showed that the judge had about 256 active cases as at June, 2021 and that the judge's diary was so full that it already contained matters scheduled for hearing in 2023. Noteworthy was that judges in the Industrial Relations Court were also allocated criminal matters and election petitions which they had to adjudicate upon as well. The Committee heard that this state of affairs entailed, for example, that if a new matter was to be commenced in the Industrial Relations Court, and was subsequently allocated to any judge, that matter would immediately fall outside the jurisdiction of the judge as it can only be heard in 2023.

(f) Inadequate Number of Courtrooms and Other Facilities

The Committee was informed that investigations into the challenges being faced by the Industrial Relations Court also revealed that the number of courtrooms and other necessary facilities did not correspond to the number of judges. The inquiry revealed that the five judges in the Court only had two courtrooms to share amongst themselves. This led to the unfortunate situation of the judges being left with no choice but to share courtrooms. This consequently impeded the ability of judges to hear several matters each day as they were restricted to the time that they were allocated to use a courtroom.

(g) Intervening Court Procedures and Applications

The Committee heard that it was a requirement for parties to proceedings to attempt to settle matters by way of mediation in the Industrial Relations Court before they embarked on litigation. Therefore, part of the statutory period was spent on mediation. Seeing that the mediation process normally took a considerable amount of time to schedule and conduct, the Court lost time for hearing the case by virtue of the said exercise and was usually left with an average of about ten months to hear the case.

Further, time was lost as a result of interlocutory applications that were made by Counsel or litigants during the course of the proceedings. These interlocutory applications further consumed so much time out of the twelve-month period within which matters must be heard.

Stakeholders further submitted that judges in the Industrial Relations Court also lost time because they had to operate in circuit courts whenever they were in session. Furthermore, the judges were allocated election petitions to hear, which essentially took away about three months from the statutory timeframe as election petitions took priority and had to be strictly determined within the time set by law. These aforesaid scenarios led to the creation of a back log of industrial relations cases and ultimately resulted in the lapse of the statutory timeframe within which industrial relations matters must be determined.

(h) Transfer of Judges

The Committee heard that sometimes judges were transferred from one station to another or one division to another. When a judge was transferred from the station, the matters which were before that judge were reallocated to other judges, except those where the hearing had been concluded and they were just pending for judgment. When matters were reallocated, any earlier agreed dates for trial and other interlocutory hearings were vacated. The new judge was required to issue new dates, which ought to be convenient for the parties. Similarly, judges may retire or even die and in such cases, their matters would have to be reallocated including those which were just pending judgment.

(i) Unforeseen Circumstances

The Committee heard that another challenge that rendered the Court unable to dispose of matters within the prescribed time period was the Covid-19 pandemic, which the country was grappling with and other illnesses. Delays were being experienced when key members contracted the virus and were forced to avoid work due to quarantine periods. Courts had become undermanned due to frequent and unpredictable surges of infections. The findings of the inquiry disclosed that matters were rarely heard without an adjournment being granted on the premise that a party to the case or their Counsel was indisposed. These were largely inevitable grounds for the granting of an adjournment and the number of indispositions had increased in frequency since the inception of Covid - 19. The courts, therefore, have had to adapt.

Stakeholders submitted that in the light of the foregoing factors, it was not practically possible for most cases brought before the Industrial Relations Court to be determined within one year, and as such the law ought to leave room for such eventualities.

6.4 Ramifications of the Proposals by the Petitioner

Stakeholders submitted that even though the Petitioner made a valid point with regard to financial implications on the litigant, it must be noted that the Industrial Relations Court was a division of the High Court. In that regard, judges of the Industrial Relations Court enjoyed the same privileges and constitutional protection as any other judge of the High Court. With regard to the proposals in the Petition, stakeholders submitted as follows:

(i) Proposal to Remove a Judge who Failed to Deliver Judgment within Prescribed Period from Office

Stakeholders submitted that the office of a judge was constitutionally protected. In that regard, the grounds upon which a judge could be removed from office were prescribed under Article 143 of the Constitution. As such, any additional ground to be prescribed by an Act of Parliament, if not reconcilable with Article 143 of the Constitution would be unconstitutional. Therefore, in dealing with the proposal by the Petitioner, attention must be paid to the provisions of the Constitution bordering on the removal of a judge from office, and in particular Article 143.

Under Article 143 of the Constitution, a judge could be removed from office on the grounds of a mental or physical disability that made the judge incapable of performing judicial functions; incompetence; gross misconduct; or bankruptcy. The Constitution did not define what conduct amounted to incompetence to warrant the removal of a judge from office. Although the provision was wide enough to include the failure by a judge to

conclude matters and deliver judgments on time, one isolated incident of such failure would be insufficient to prove incompetence.

Some stakeholders submitted that this was because in practice, so many factors could lead to a judge's failure to conclude the hearing of a matter and deliver judgment on time, as alluded to, especially in the Industrial Relations Court, where the time for doing so was limited to one year. Certain delays were caused by the parties themselves or due to the complexity of the matters but in the final analysis, the circumstances of each case would have to be considered. Stakeholders added that such an amendment could adversely affect the quality of justice delivered in the courts because Justice may be dispensed in a hasty manner for fear of losing jobs.

Other stakeholders submitted that the Constitution further accorded judges judicial independence. Judicial Independence was the ability of judges and judicial officers of all ranks to carry out their judicial functions in accordance with the law without any additives, pressure or inducement from any other source, person or authority. Judicial independence rested on the pillars of institutional and financial autonomy. These pillars encompassed the need for an appropriate appointment procedure, security of tenure, satisfactory conditions of service that the Executive could not adversely affect, the provision of adequate financial resources, and appropriate terms and conditions for all those involved in the administration of justice.

The Committee heard that the fundamental concept of judicial independence existed for the benefit of everyone. It protected the judges and decision-makers to ensure that their decisions were based upon the law as it applied to the evidence presented and properly admitted, in order to ensure justice between the parties. Protecting judges ensured that people would know or understand that they received a fair trial or hearing.

Article 122 of the Constitution stated as set out below.

(1) In the exercise of the judicial authority, the Judiciary shall be subject only to this Constitution and the law and not be subject to the control or direction of a person or an authority.
(2) A person and a person holding a public office shall not interfere with the performance of a judicial function by a judge or judicial officer.
(3) The Judiciary shall not, in the performance of its administrative functions and management of its financial affairs, be subject to the control or direction of a person or an authority.
(4) A person and a person holding a public office shall protect the independence, dignity and effectiveness of the Judiciary.
(5) The office of a judge or judicial officer shall not be abolished while there is a substantive holder of the office.

To this effect, judicial independence and protection accorded to judges ought to be upheld. The ramifications of lifting this veil could adversely affect how judges heard cases and delivered judgements. As such, the proposed amendment was unconscionable.

(ii) Proposal for a Judge who Failed to Dispose of a Matter Within One Year to Bear the Costs of the Litigants

Stakeholders submitted that it was a well-established principle that a judge enjoyed judicial immunity. Therefore, no civil liability could and should accrue to a judge personally by reason of the acts done or omissions made in the performance of his or her duties. This ensured that judges exercised their judicial mandate independently and without fear or favour. This was the standard practice in all Commonwealth jurisdictions, including Zambia, and there was no good reason for departing from this position.

The Committee was informed that the United Nations Basic Principles on the Independence of the Judiciary_ adopted by the 7th United Nations Congress on the Prevention of Crime and the Treatment of Offenders and endorsed by the United Nations General Assembly Resolutions 40/32 provided that:

"Without prejudice to any disciplinary procedure or to any right of appeal or to compensation from the State, in accordance with national law, judges should enjoy personal immunity from civil suits for monetary damages for improper acts or omissions in the exercise of their judicial functions."

Further, several court decisions had confirmed the position indicated above. In the case of ***Godfrey Miyanda v Matthew Chaila (Judge of the High Court)*** (1985) ZR 193, it was stated that:

"If it were otherwise, the administration of justice would lack one of its essentials –the independence of the judges. It is better to take the chance of judicial incompetence, irritability, or irrelevance, than to run the risk of getting a Bench warped by apprehension of the consequences of judgments which ought to be given without fear or favour.

Delivery of judgments may be delayed for a variety of reasons. But although the saying is that justice delayed is justice denied, it must also be borne in mind that rash justice can also be justice denied. In my considered opinion, the remedy for delayed judgment cannot and should not be the taking of a judge to court. Zambia cherishes the independence of the judiciary. It will therefore be setting a very dangerous precedent and a serious threat to the independence of the judiciary if suing judges is established as remedy to a delayed judgment.

Stakeholders were in agreement that any threat of possible civil liability against judges arising from the matters under their charge would affect their independence. The implication of the Petitioner's proposal to let judges bear the costs of litigants when a matter was dismissed for not having been concluded within the statutory period of one year would entail going against the protection granted to judges. Therefore, requiring judges to bear the cost for litigants because a matter had not been disposed of within the prescribed period could make judges to hastily hear and determine a matter in order to meet the stipulated time within which judgment should be delivered. This may have the absurdity of possibly resulting in litigants not being given a fair trial, which consequently was a miscarriage of justice and a violation of a citizen's civil right and would result inevitably a contravention of the Constitution. Rather than making rational and judicious

decisions, judges would be compelled to make hasty decisions in order to avoid the impending order for costs against them.

The above notwithstanding, stakeholders submitted that although there was a lacuna in the law with regard to lapses by a judge in the discharge of his or her duties, ordering a judge to pay costs to litigants would have the adverse effect of hampering judicial independence through the trepidation of judges. Therefore, there ought to be provisions to deal with misconduct or inefficiency of judges, which did not constitute a ground for removal from office.

6.5 Proposals on the Reform of the Law

Stakeholders made various proposals for reform of law as set out below.

(i) There was need for a specific provision in the law or a disciplinary code for judges, to guide the Chief Justice, who was required to ensure that judges performed their functions with dignity, propriety and integrity and exercised their functions in accordance with the law and deal with judges' misconduct or inefficiencies which did not constitute a ground for the removal of a judge from office.

(ii) Following the 2016 constitutional amendment, the Industrial Relations Court was now a Division of the High Court. Therefore, there was need to harmonise its Rules with other Divisions of the High Court with regard to balancing between the much needed speedy delivery of justice and having a more realistic approach to the resolution of the challenge of pendency of matters, other than prescribing a timeframe for the determination of matters.

(iii) Harmonise the provisions of the *Industrial and Labour Relations Act, Chapter 269 of the Laws of Zambia* with the practice and procedure obtaining in the general Division. Currently, as a result of the constitutional amendments of 2016, the Industrial Relations Court was a division of the High Court. This notwithstanding, the Industrial Relations Court drew its functionality from the *Industrial and Labour Relations Act,* which was yet to be harmonised with the *High Court Act, Chapter 27 of the Laws of Zambia*. There was need to amend the two Acts to reflect the constitutional changes.

(iv) Ensure that the *Judicial (Code of Conduct) Act, No. 13 of 1999,* as amended by Act No.13 of 2006, classified unjustifiably delayed judgments as a form of incompetence.

(v) There was need for a holistic review of the *Industrial and Labour Relations Act, Chapter 269 of the Laws of Zambia* to remove archaic provisions and adopt best practice that was responsive to the changing needs of society.

7.0 COMMITTEE'S OBSERVATIONS AND RECOMMENDATIONS

Taking into account both the written and oral submissions from the stakeholders, the Committee makes the observations and recommendations as set out hereunder.

(i) The Committee observes that the Petitioner, Mr George Chilufya misdirected himself when he petitioned the National Assembly to amend section 19(3)(b)(ii) of the *Industrial and Labour Relations Act, Chapter 269 of the Laws of Zambia,* as the section providing for the disposal of a matter by a Court within a period of one year from the day on which the complaint or application is presented to it. In that

regard, the Committee wishes to direct the august House to the correct provision of the law which is section 85(3)(b)(ii) of the *Industrial and Labour Relations (Amendment) Act, No.8 of 2008*.

(ii) The Committee notes with concern that some judges are unable to dispose of matters in the Industrial Relations Court within the statutory period of one year due to substantial challenges that the Court is facing such as budgetary challenges, huge case back log, inadequate judges and courtrooms, intervening court procedures such as preliminary and interlocutory applications, and unforeseen circumstances, *inter alia*, the Covid-19 pandemic. The Committee, therefore, calls on the Executive to ensure that more judges are appointed, and that the adequate number of courtrooms is provided.

Further, the Committee recommends that Industrial Relations Court Registries should be set-up in all provinces as this will help decongest the Industrial Relations Court and tremendously decrease the amount of legal fees and costs that litigants incur in the process of lodging documents.

(iii) The Committee is aware that the Industrial Relations Court was established with a focus on finding solutions without being stifled by procedure, and to provide simpler, cost-effective and more accessible justice within the scope of industrial relations matters. Bearing in mind the numerous challenges faced by the Industrial Relations Court, some of which are outlined under (ii), the Committee is of the view that section 85(3)(b)(ii) should be amended by including a *proviso* under the current section. The *proviso* should take into account that there are complexities whenever a matter is being heard and determined, and where such extenuating circumstances exist; a matter should be disposed of within twelve months, following the expiration of the statutory period.

(iv) The Committee is alive to the fact that the proposals by the Petitioner are an indication of the general dissatisfaction and/or frustration of litigants with the prevailing conditions at the Industrial Relations Court. However, the Committee observes that any threat to the rights of a judge relating to the tenure of office, arising from the matter he or she is handling will affect his or her independence. Therefore, removing judges from office or requiring judges to bear the cost for litigants because a matter has not been disposed of within the statutory period can influence judges to hastily hear a matter. This may have the danger of possibly resulting in litigants not being given a fair trial, leading to a miscarriage of justice and a violation of a citizen's civil right. It is against this background that the Committee is of the view that where failure to deliver judgment is genuinely attributable to a judge, litigants can invoke Articles 143 and 144 of the *Constitution of Zambia, Chapter 1 of the Laws of Zambia* to remove a judge, as they are adequate.

However, the Committee is of the view that provisions to deal with misconduct or inefficiency by judges, where they consistently fail to deliver judgments in good time, and which do not constitute grounds for removal of a judge from office should be created in the Judicial Code of Conduct for enforcement by the judge-in-charge. The Committee, therefore, recommends including the classification of

unjustifiably delayed judgments as a form of incompetence under the *Judicial (Code of Conduct) Act, No. 13 of 1999*, as amended by Act No.13 of 2006.

(v) The Committee is aware that as a result of the constitutional amendments undertaken in 2016, the Industrial Relations Court became a division of the High Court. The Committee, however, notes with concern that the Court draws its functionality from the *Industrial and Labour Relations Act, Chapter 269 of the Laws of Zambia* using the Industrial Relations Court Rules Statutory Instrument No.34 of 1996. In this regard, the Committee recommends that the Industrial Relations Court Rules Statutory Instrument No.34 of 1996 be repealed and replaced to align them with the High Court (Amendment) Rules, Statutory Instrument No. 58 of 2020. This will remove the inconvenience caused to litigants who are required to re-launch an action on account of judges not having concluded matters within one year.

8.0 CONCLUSION

The Industrial Relations Court was envisioned as an extension of the dispute resolution process that was informal and exempt from the strict rules of evidence and procedure. This was no longer the case as there was a general increase in the number of cases being filed before the Court. The number of cases being recommenced had also increased as a consequence of the existence of the section 85(3)(b)(ii) of the *Industrial and Labour Relations (Amendment) Act, No.8 of 2008*, and the decision of the Court of Appeal in the ***Guardall*** Case.

The Committee took note of the dissatisfaction of litigants on this basis. Although the Committee was in agreement with the Petitioner that some form of punishment should be meted on a judge who failed to deliver judgment within the prescribed period, where reasons were solely and genuinely attributable to the judge, the Committee was of the considered view that no civil liability should accrue to a judge, personally, as this would adversely affect the quality of justice delivered in the courts. The Committee was of the view that litigants should invoke Articles 143 and 144 of the *Constitution of Zambia, Chapter 1 of the Laws of Zambia*, as they were adequate. The Committee further noted that such civil action would affect the independence of the Judiciary, which was one of the basic Principles of the United Nations Office of the High Commissioner for Human Rights (OHCHR), and as such should be guaranteed by the state and enshrined in the Constitution.

The Committee wishes to thank the Petitioner and all the stakeholders for their oral and written submissions on the Petition. The Committee further wishes to express its gratitude to the Office of the Speaker and the Clerk of the National Assembly for the guidance and services rendered to it during the consideration of the Petition.

Dr C Andeleki, MP
(Chairperson)

Ms T E Lungu, MP
(Vice-Chairperson)

Mr G K Chisanga, MP
(Member)

Mr A M Kasandwe, MP
(Member)

Mr C Miyutu, MP
(Member)

Mr E Sing’ombe, MP
(Member)

Mr F M Fube, MP
(Member)

Mr L Hamwaata, MP
(Member)

Mr M Chinkuli, MP
(Member)

Mr J E Banda, MP
(Member)

March, 2022
LUSAKA

APPENDIX I

List of National Assembly Officials

Mr F Nabulyato, Acting Principal Clerk of Committees (SC)
Mrs C K Mumba, Acting Deputy Principal Clerk of Committees (SC)
Mrs A M Banda, Senior Committee Clerk (SC)
Ms B Zulu, Committee Clerk
Mrs R N Mwiinga, Typist
Mr D Lupiya, Committee Assistant

APPENDIX II — List of Witnesses

MINISTRY OF JUSTICE
Ms B Chibbonta, Chief Parliamentary Counsel

JUDICIAL COMPLAINTS COMMISSION
Mr V B Malambo, SC, Chairperson
Mr N Makeleta, Secretary

ZAMBIA CONGRESS OF TRADE UNIONS
Mr C Mukuka, Secretary General
Mr E Njovu, Deputy Secretary General – Administration
Mr J Beene, Deputy Secretary General – Finance
Ms N L Kimbala, Director – Gender, Youth and Child Development
Mr E Musonda, Director – Finance
Mr B Phiri, Director – Research
Mr M Kamanisha, Deputy Director - Research

MWENYE AND MWITWA ADVOCATES
Mr M Mwenye, SC LL.B. Advocate, Solicitor – England and Wales, Notary Public
Mr E S Kaluba, Lawyer

JUDICIARY
Mr P B Mwiinga, Registrar of the Subordinate Court
Mr S Nyimbiri, District Registrar
Ms M C Chibangulula, District Registrar
Ms L C Sikwenda, District Registrar
Ms P S Tembo, Assistant Research Advocate

MAGISTRATES' AND JUDGES' ASSOCIATION OF ZAMBIA
Mr N Simaubi, Secretary and Senior Research Advocate

CHAPTER ONE FOUNDATION
Ms L Kasonde, Executive Director
Ms K C Kamina, Intern
Ms N Kabayi, Intern

ZAMBIA LAW DEVELOPMENT COMMISSION
Mrs H N Chanda, Director
Mr M Mwenda, Research Coordinator
Ms M Chikwanda, Researcher
Mr N Chulu, Researcher

LAW ASSOCIATION OF ZAMBIA
Mr S Mulengeshi, Legal Practitioner
Mr M Lungu, Associate
Ms M Banda, Associate