

The LEGAL MONITOR

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COST-FREE

Women score against Mudede

HARARE-Zimbabwean women have scored a major coup against a man forcing them to change their identities.

Thanks to the efforts of a brave woman, Fadeke Obatolu, Registrar General Tobaiwa Mudede can no longer force married women to change their surnames as a condition for acquiring birth certificates for their children.

A recent consent order granted by High Court Judge Justice Martin Makonese means that days are over when provincial registrars from Mudede's office would refuse married women a chance to acquire birth certificates for their children without changing their surnames to those of their husbands.

"It is an important ruling for women," said Sarudzayi Njerere, the prominent human rights lawyer who helped Obatolu get the order.

Obatolu took the matter to court after Mudede's officers turned her husband away, stating Obatolu's failure to change her surname to her husband's as the reason for refusing to register the couple's newly born son.

The Attorney General's Office, represented by Tinei Dodo, consented that there was no legal basis for this action.



Njerere, the lawyer who tamed Mudede

This resulted in Justice Makonese declaring that:

- There is no provision at law that compels married women to change their surnames to those of their husbands.
- The First Respondent (Mudede) shall not compel

or require the Applicant (Obatolu) to change her surname to that of her husband before or after registering the birth of Applicant's child.

The joy of giving birth to a baby boy on 7 August last year turned into bureaucratic agony for Obatolu and her husband, Cowden Mutizwa, when the RG's Office insisted on Obatolu, a Zimbabwean citizen, changing her surname to Mutizwa.

Trouble started when Cowden visited Mount Pleasant District Registry to procure a birth certificate for his son.

"He was advised to bring my national registration card. When he returned, armed with my national registration card he was asked if I was a citizen of Zimbabwe. I believe First Respondent is obliged to register all births that occur in Zimbabwe notwithstanding the citizenship of the mother," reads Obatolu's court application.

When Cowden returned to the registry for the third time on 25 October last year, two men, a Mr Marufu and Mr Zuze informed him that Obatolu had to change her surname to Mutizwa "before the birth of the child could be registered."

Two days later, Obatolu went to Mount Pleasant District Registry and spoke to Marufu and Zuze

who stood by their stance that she changes her surname first.

"I would then have to apply for and obtain a new registration card and passport. I would also have to change my banking cards. All my education certificates and even my certification of registration as a legal practitioner are in my surname. I can imagine the nightmare should I apply for a job using a surname foisted upon me by First Respondent," said Obatolu in her application.

"I believe I am, in terms of the Constitution, entitled to equal protection of the law. The law gives me a right to obtain a birth certificate for my son. The First Respondent is unlawfully tampering with this right by trying to force me to assume my husband's surname. The First Respondent has a constitutional duty to discharge his functions in accordance with the law. I believe he is in breach of his constitutional obligations not only to me but to the masses of women whom he summarily compels to assume the surnames of their husbands," said Obatolu in her application.

Obatolu's victory will come as a major relief to married women who were being turned away by Mudede's officers as they will now be able to rely on this precedent.



France honours WOZA leader

HARARE-Crusading human rights campaigner, Jenni Williams has been awarded the prestigious French National Order of the Legion of Honour for her outstanding virtues in serving her country and other people.

French Ambassador to Zimbabwe Francois Ponge handed the award to Williams, the founder and national coordinator of Women of Zimbabwe Arise (WOZA), on Friday during a commendation ceremony held at the French Ambassador's residence.

Ambassador Ponge said French President Nicholas Sarkozy honoured Williams on the back of a proposal by the French embassy in Zimbabwe to celebrate her achievements as a defender of democracy, human rights and the rights of women.

"It gives the holder strength to do even more, proving furthermore, their qualities that have justified their distinction," said Ambassador Ponge.

The French National Order of Merit is given to women and men bestowed with outstanding military or civil virtues and whose purpose above all is to serve their country, serve their values and also serve in favour of other people.

In her acceptance speech, Williams, who has been arrested on countless occasions for leading anti-government protests, paid tribute to fearless WOZA members for fighting tirelessly through non violent means.

"The National Order of Merit Award you have given me today is recognition that WOZA has empowered thousands of community activists, making them champions for change," said Williams.

Chief Justice of Kenya: The First 120 days

REPUBLIC OF KENYA THE JUDICIARY PROGRESS REPORT ON THE TRANSFORMATION OF THE JUDICIARY

THE FIRST HUNDRED AND TWENTY DAYS

19TH OCTOBER, 2011

By: Dr. Willy Mutunga

Chief Justice/President

Supreme Court of Kenya

Fellow country women, men and friends:

It is with great pleasure that I submit the Progress Report on the Transformation of the Judiciary in Kenya.

The struggle to reform the Judiciary predates my rise to the Office of the Chief Justice. However, my assumption of office on June 20, 2011, following a rigorous vetting process where the institutions of the Executive, Legislature and the Judiciary, as well as the general public played significant roles, marked an important turning point. I want to thank all of them, and, in particular, the Judicial Service Commission (JSC) which, in many respects, has set the golden standard in the vetting of public officials.

In making this Report, I have elected to issue it on the eve of Mashujaa Day, a day so emblematic of our struggle for justice and freedom that it should remind us how an oppressive system of government can easily use courts to perpetuate a miscarriage of justice. The existence of courts alone provides no guarantee of justice. Rather, it is the values and quality of the people who lead it; the aspirations and design of the Constitution that creates it; and the vigilance and civic consciousness of the people who continuously demand better. In sad moments in our history, courts have failed to uphold the rule of law and to defend the rights of man and woman.

This is why Kenyans fought for a new Constitution. It is the reason we are reforming the Judiciary. It is the reason we must succeed in creating an institution of justice that can secure our democracy and fulfil its rich promise.

Today marks the 120th day since assuming the office of Chief Justice. I think it is opportune to give a review of our accomplishments so far, and, similarly, provide strategic direction for the future. My vision, as we move forward, is to transform the Judiciary to ensure equitable access to, and efficient and effective delivery of, justice. In leading this transformation agenda, I am guided by the constitutional principle that the people are the source of judicial authority. Those of us to whom this authority is delegated must exercise it only in their interest and for their benefit. This is the article of faith that I uphold as I execute my duties as the Chief Justice of the Republic of Kenya.

For the past 20 years, no less than four internal reports on the Judiciary have been published. These fairly robust and honest self assessments identified long standing problems that plague our system of justice, and in their pages are some very progressive recommendations. Most of these have remained unimplemented. There was lack of will and support to implement the recommendations. What is new is that we have the collective will of the Kenyan people, and the leadership in the judiciary to implement these reforms. In designing my reform agenda, We have borrowed heavily from these reports, while reviewing and updating them to reflect the context and demands of the Constitution.

Before I outline to the country the measures that we have taken and the strategic direction for the future, I think that it is important to briefly describe the Judiciary we found.

We found an institution so frail in its structures; so thin on resources; so low on its confidence; so deficient in integrity; so weak in its public support that to have expected it to deliver justice was to be wildly optimistic.

We found a Judiciary that was designed to fail. The institutional structure was such that the Office of the Chief Justice operated as a judicial monarch supported by the Registrar of the High Court. Power and authority were highly centralised. Accountability mechanisms were weak and reporting requirements absent. When we put people on a pedestal it is based on negative power and authority. That is the old order. The new order for the 21st Century demands we move to equality and work from the basis it is not about the individual's achievement but what a group of people, indeed, a collective has the potential to accomplish.

We are glad that the new Constitution has radically altered this ugly structure. We now have a decentralised Judiciary with the Supreme Court and the Court of Appeal having their own Presidents and the High Court having a Principal Judge at their respective helms. We must not take this dispersal of power for granted for the intoxicating nature of power can be true of the Judiciary as it is of the Executive.

In order to strengthen this collective and accountable use of the power envisaged in our constitutional architecture, I have taken additional administrative decisions to give effect to the intentions of the Constitution. I have set up a Leadership Committee which will act as a management team for the entire Judiciary. Its composition – from the Chief Justice as Chair, DCJ, President of Court of Appeal, Principal Judge of the High Court, as well as representatives from the magistracy and the paralegal fraternity – permits all the voices of the Judiciary to be heard in the management of this important institution. The operationalisation of this committee will take effect once the vetting process is completed, new judges are on board, and elections held for each level of representation.

The new team at the helm of the Judiciary brings with it the necessary political will to implement reforms that many had long identified. Some of these include excessive bureaucracy and silo mentality among organisational units and the court system; backlog of cases; endemic corruption; inefficient and ineffective case flow management; poor terms and conditions of service for judicial and administrative staff; poor infrastructure; absence of a clear transfer policy;



Mwai Kibaki and Raila Odinga formed Kenya's uneasy coalition government in 2008 after violence rocked the east African country following disputed elections

understaffing; artificial workloads occasioned by unfilled approved vacant positions; remuneration imbalances due to haphazard salary grading and compensation structures where, for example, magistrates are poorly remunerated relative to other court officers; weak institutional and staff performance management systems; blatant disregard for performance and financial audits; fragmented reform interventions; and inadequate implementation capacity of recommended institutional reforms by the various task forces.

Our transformation agenda seeks to address all these composite defects.

Since coming into office four months ago, I have listened keenly to the voice of the Kenyan people: unceasing and unequivocal in its invocation to the Judiciary: Clean Up, Now! This call is driven by the recognition that the transformation of the Judiciary constitutes the next most important stage in our democratic transition - a recognition that a Judiciary that upholds the rule of law, dispenses justice fairly and efficiently, validates and protects rights is not just good for our stability but also our economy. These are basic settled facts that are not just evidenced in literature but also in the experience of societies that have matured in their governance. As leaders and as a people, we must embrace them.

The ends of justice cannot be met when the Judiciary not only suffers an integrity deficit but is also perceived as the playground of the corrupt and the refuge of the inept. Corruption corrodes our humanity, undermines our institutions and sabotages our economy.

In my inaugural address as Chief Justice, I pledged that never again should it be possible to speak about corruption and the Judiciary in the same breath. I meant it. One of the first actions I undertook was to appoint an Ombudsperson to receive and respond to complaints by staff and the public. In just three months, the office has received over 700

complaints of various categories! Of these, 229 have been finalized while another 275 are presently actively being processed. I invite the public to make use of this office which we shall strengthen so that it can effectively serve the public.

Whereas I hasten to reassure my colleagues in the Judiciary that the Ombudsperson will not be used to conduct witch hunts, I appeal to the public not to hesitate to file any complaint against any judicial officer to this office.

Even where no complaints are raised, I give you my pledge that we shall hold ourselves up to the highest ethical standards in the conduct of our affairs. So far, the JSC has released a Code of Ethics and Conduct for judicial officers, and established a standing committee to handle enforcement and discipline.

Corruption in the Judiciary will, however, not be eliminated if we do not change the environment that incentivises it. Four months ago, when we took office, we found a Judiciary in which junior officers entrusted with paperwork in matters concerning billions of shillings lived lives that exposed them to influence-peddling and bribery. Many of the clerical staff, who ensure that the courts system works – or does not work – , and who are very critical in the administration of justice, earned an average of Ksh. 20,000 only. Staff morale was slow and career stagnation rampant. Many officers had been in one position for over 10 years. The disparities in pay between judges and magistrates, on one hand, and judicial officers and administrative staff, on the other, were acute.



The JSC has reviewed the terms and conditions of judicial officers and its proposals are awaiting the approval of the Salaries and Remuneration Commission. The JSC approved the creation of additional posts in the magistracy and Kadhis establishment and now has before it a recommendation from my office to immediately promote 278 magistrates and 12 Kadhis. We have assented to the formation of an association to represent the interests of paralegal staff, and hope to have structured engagement with them.

The Judiciary must be a place where the dignity of workers is respected and upheld. It is a place that must care for the welfare of its staff to take away any excuse to convert public goods and services into private gain.

The Kenyan public has expressed its frustrations with the inefficiencies in the Judiciary's case management system, which has contributed to huge backlogs. When judicial officers report to work late, sit for very short periods and casually adjourn cases, it is not surprising that the Judiciary would be swamped by close to one million case backlog.

An initial analysis of the case backlog lays bare the anatomy of the problem: close to two thirds of the cases are traffic-related. As an immediate response, I have appointed a Chief Magistrate to specifically deal with this issue in a comprehensive and speedy manner. Further, I will be writing to the Commissioner of Police asking him to indicate to us those cases he thinks his officers can no longer sustain so that we clear them out of our system.

At the High Court alone, we found 2,015 pending criminal appeal cases. Some have been not been heard for as long as 20 years because their files are missing or the records are incomplete. It is a mockery of the oft-quoted legal adage that justice delayed is justice denied, and we have taken decisive steps to right the situation. Civil cases in the courts hold up a great amount of resources needed for economic growth. Clearing the backlog

will not only serve the ends of justice but also free resources into the economy and deepen investor confidence.

First, I am happy to report that the Judiciary has now completed digitising 60 million pages of cases for the High Court across Kenya. The Court of Appeal has digitised 10,000 records covering the years 1999 to 2010. Some 1,042 cases that should be progressing in the High Court are waiting arguments at the Court of Appeal while some 942 main appeals are yet to be heard. We have asked parties in the oldest cases, filed as far back as 2004, to take dates within the month so that their matters can be disposed of. Within six months, I expect the Court of Appeal to be handling only fresh applications. I intend to reduce the waiting period for appeal cases from the current average of six years to less than a year.

Further, my office and the ICT department are in the process of creating an electronic-based system for monitoring and tracking overdue judgments and rulings with a view to taking remedial action. It is the policy of the Judiciary that once proceedings begin, cases will be heard back-to-back on a first filed, first heard basis. Queuing of cases will take away the incentive for corruption.

In the days to come, the public will be able to access case information by short text messages (SMS). We are also embarking on a major computerisation of the Judiciary that will ensure that proceedings are recorded electronically. As part of this programme, the Supreme Court will be established as a paperless Court. It is our intention to establish a modern e-library that can serve the interest of justice.

Judges of the High Court and the Court of Appeal shall, from now henceforth, be empanelled automatically using computer software that removes the human hand from the choice of those who hear cases. In future, cause lists will not contain the name of the judge, to shield judges from undue influence or being hunted down by litigants.

Kenyans have suggested extending the sitting time, having night courts. It is a proposal we are keen to consider operationalising as staff numbers in the Judiciary rise.

I have also redeployed three other experienced Chief Magistrates to clear the backlog of cases in civil, criminal and commercial appeals courts. These magistrates will report to the judges who head their respective divisions on their specific mandate.

Case backlogs also result from understaffing. In order to address this shortcoming, we have embarked on a major recruitment drive for the Judiciary. In the past 120 days, the Judiciary has hired 28 new High Court Judges, bringing the total number of to 80. We have advertised for 7 additional Court of Appeal Judges and another 160 magistrates. An amendment to the Judicature Act makes the High Court judges not to be less than 120 and the Court of Appeal not to have less than 30 judges.

In order to free judges to do what they are primarily mandated to do – hearing and deciding cases — we have completely separated the judicial function from the administrative. Judges will not be sitting on administrative committees for procurement and tendering; just as magistrates will no longer act as registrars in addition to hearing cases. We will have a policy that ensures judges and magistrates are in stations for specific periods. As work on a comprehensive transfer policy continues, we have ensured that judges and magistrates do not criss-cross stations to eliminate the problem of part-heard cases.

Once we lay down the burden of the case backlog, the Judiciary is determined to prevent a recurrence of this phenomenon.

I am instituting performance contracting in the Judiciary. Performance based management will be applied to both judicial and administrative staff. A fully fledged directorate of performance management is to be established and an advertisement has already gone out for the recruitment of its head.

I intend to strictly enforce deadlines on writing of judgments and the hearing of cases. In the days to come, I intend to review the rules on deadlines with a view to further shortening this period as more staff joins the Judiciary.

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Councillors await ruling

CHINHOYI-Two Movement for Democratic Change (MDC) councillors facing murder charges will learn of their fate next month when a Magistrate will rule on their application for refusal of further remand.

Givemore Hodzi and two Banket councillors Emmanuel Chinanzvavana and Fani Tembo, who were themselves victims of abduction and torture by State security agents in 2008, have been on remand for almost two years after they were accused of murdering Lancelot Zvirongwe. Zvirongwe was a ZANU PF special interests councillor in Banket.

They deny the charges.

Magistrate Gwitima was supposed to rule on the application for refusal of further remand last week but failed to do so because he was unavailable "due to an emergency".

He is now expected to rule on the application on 5 December, according to the councillors' lawyer Tawanda Zhuwarara of Zimbabwe Lawyers for Human Rights.

The State alleges that the councillors and Hodzi kidnapped Zvirongwe between Banket and Chinhoyi and dragged him to an area in Banket where they killed him with an unknown weapon and dumped his body into Kingston Dam two years ago.

Prosecutors claim that the deceased sent mobile text messages to Zimbabwe Broadcasting Corporation radio presenter Richmond Siyakurima, Assistant Inspector Chidakwa and to an unnamed District Administrator fingering the MDC officials for kidnapping him.

Chinanzvavana and Tembo said they were attending a Save the Children activity at Kuwadzana Hall in Banket at the time that the deceased was allegedly abducted while Hodzi said he was not in Banket.

They argue that their names are only mentioned in text messages, which are vague and contradictory in tense, meaning and sense.



From left... Chinanzvavana, Hodzi and Tembo

Zimbabwe's dying children

HARARE- At 92 percent, Zimbabwe boasts the highest literacy rate in Africa. But government is failing to keep its new born babies alive to join the proud statistics.

The country is way down the ladder in ensuring pregnant mothers deliver safely as well as ensuring that those that survive at birth make it past the age of five, according to figures provided by Prime Minister Morgan Tsvangirai as well as United Nations agency, UNICEF.

"Zimbabwe is one of the three countries in sub-Saharan Africa that have gone back by 22 percent in under five mortality rates. From 79 percent to 96 percent in 2009," Tsvangirai said at a recent launch of a donor driven \$400 million health fund to help pregnant mothers, most of who can't afford maternal fees charged at hospitals.

Prime Minister Tsvangirai put the blame on unaffordable hospital fees and government's failure to invest in public health.

"High (hospital) user fees are limiting children and women's access to intervention. I grew up in the rural areas. In the 1950s, my mother would carry me on a bicycle for 50km to a clinic. Fifty years later, women are walking the same distances," Prime Minister Tsvangirai said.

The \$400 fund is earmarked at providing free medical services for pregnant women and children less than five years of age.

According to UNICEF, 100 children under the age of five succumb to preventable deaths daily.

Zimbabwe spends about \$9 per person on health, compared to more than \$30 recommended by the World Health Organisation.

Once a beacon in Africa and the developing world, Zimbabwe's public health sector collapsed spectacularly as a result of a decade-long political and economic tumult.

The formation of a coalition government by fierce rivals President Robert Mugabe and Prime Minister Tsvangirai in February resulted in temporary recovery, before frequent disputes among governing parties set the country back on the path to instability.

It is not only the health sector that is in need of major surgery that government is failing to provide.

UNICEF has had to intervene to save the public education sector by funding the printing of millions of primary school textbooks after a once-model system fell victim to the crisis.

Still, a lot needs to be done to restore quality education at government schools despite the impressive literacy figures.

Vice President John Nkomo, who as a long-serving government official, has been part of the team that has presided over the collapse recently admitted as much.

"While the achievement is welcome, I urge you to cast your eyes wider and address the peripheries and ensure that pupils in those areas have a better future," he said after government received books under UNICEF's Education Transition Fund.

Mutunga's first 120 days

Continued from Page 2.

The hiring of 129 researchers, whose positions have only recently been advertised, will ensure that each and every judge has a research assistant. We shall spare no effort or resource to ensure that judicial officers deliver quality justice in an efficient and timely manner.

In order to promote sound management practices, we have also established the Judiciary Transformation Steering Committee chaired by the Deputy Chief Justice and where all stakeholders in the judicial system are represented. The Steering Committee, under the strong and able leadership of the Deputy Chief Justice Hon. Nancy Baraza, has developed an Integrated Comprehensive and Institutional Transformation Framework. The Judicial Transformation Comprehensive Strategic Plan whose 10 clusters will be given to all of you today is a product of this Steering Committee.

Further, I have moved to strengthen the office of the Chief Justice. Under the new Constitution, the canvass of responsibility for the Office of the Chief Justice has expanded considerably – judicially, administratively and in terms of policy making. The CJ is a judge of the Supreme Court, and is expected to sit in court, hear cases and write judgements. He is also the president of that Court, which bestows managerial responsibilities. He is the head of the entire Judiciary, which has enormous administrative implications. He is the Chair of the Judicial Service Commission and the National Council for Administration of Justice. He also plays ceremonial duties and functions such as swearing in of Constitutional office holders and advocates. To deliver on this broad mandate the office needs executive competence. The office of the Chief Justice cannot operate as it does now with two secretaries and six bodyguards and still discharge its functions effectively as well as hold the other arms of government to account. This state of affairs imperil our democracy as the imperative of checks and balances effectively becomes inoperative when the balance of power is heavily tilted in disfavour of the judicial arm, as it is now.

To remedy this problem, I have appointed a Chief of Staff to oversee the establishment of the Executive Office of the Chief Justice. Both the President of the Court of Appeal and the Principal Judge will also have to establish nimble but efficient executive offices to be able to perform their functions. We must modernise our Judiciary informed by known models and practices of 21st century management science.

The reform of the administrative limb of the Judiciary is one that rarely receives sufficient public attention. The work that judicial officers do is determined to a large extent by the quality and efficiency of the support system that they have. However, this part of our human resource needs immediate attention. We have launched an accelerated professionalization programme of the administrative staff of the Judiciary. We have advertised for six positions of Directors for Finance, ICT, Procurement, Administration and Chief Accounts Controller and five Registrars, each to serve the Supreme Court, the Court of Appeal, the High Court, the subordinate courts and the

Judicial Service Commission. I appeal to Kenyan professionals to make applications for these jobs as the cause of justice would only be better served if our country's best and brightest offer to serve in its bastions. We have also launched the Sexual Harassment Policy to protect our own staff from predatory social behaviour that not only undermines our professionalism, violates staff rights but also creates artificial barriers to career growth and development.

As part of efforts to reorganise the Judiciary and to optimise efficiency, the Supreme Court is now operational following the establishment of its registry and publication of its interim rules of procedure. Its courtroom is being restructured to make it modern with a view to launching it before the end of January. The Court of Appeal is to be decentralised to Garissa, Nyeri, Eldoret, Kisumu and Mombasa. The construction of some of these Courts are at an advanced stage.

I have reorganised and reconstituted the divisions of the High Court in an attempt to honour and respect the spirit of the Constitution and the popular aspirations of our people as expressed through their sovereign will in the referendum. There are now divisions for Land and Environment, Judicial Review, Commercial and Admiralty, and Constitution and Human Rights. The Commercial and Admiralty division will accelerate the adjudication of commercial disputes and reduce the transaction costs of justice for the private sector.

The Constitution and Human Rights division will be the court of first instance in constitutional cases; and will play a leading role in addressing the many issues around the interpretation and enforcement of our expanded Bill of Rights. The Land and Environment division will deal with the critical issues of sustainable development and equitable distribution of resources. We intend to reinforce these divisions as the Judiciary recruits more staff.

In the meantime, we are considering the modalities for fast-tracking certain matters relating to children, victims of sexual offences and older persons. We also recognise the need to fast track and conclude cases that have been in court for over three decades.

In pursuing the important objective of bringing justice closer to the people, we are establishing 14 new courts in places where the Judiciary has never before had a footprint. Additionally, 8 mobiles courts have been set up and 38 new vehicles released to serve court stations in historically marginalised areas. For the first time in Kenya's history, a judge of the High Court of Kenya has been posted to Garissa. More court stations will be subsequently established in Lodwar, Isiolo and other marginal districts including Archer's Post, Wamba, Kakuma, Lokitaung, Lokichoggio and Loitokitok, as a way to reduce the cost of justice for litigants.

We wholeheartedly embrace the culture of continuous learning, vigorous debate and peer review. Until now, there has been no organised training for judicial officers. A curriculum is under development for the Judicial Training Institute and a full time Director has been appointed. Justice Paul Kariuki we have a well respected and innovative Director. The JTI will provide the intellectual anchor in making our Courts the home and hearth of a robust jurisprudence.

It is pivotal to a successful Judiciary. It was never facilitated to meet the training needs of the courts. Going forward, the Institute will have its own conference and residential facilities and staff as it moves towards awarding degrees. The JTI must become our judicial think tank, an institute of excellence, the nerve centre of robust and rich intellectual exchange, where the interface between the judiciary and contemporary developments in society occurs. I see the institute hosting conferences on critical issues, attended by judges, magistrates, and paralegals where our collective intelligence can be harnessed for the benefit the country.

An important component of the reform of the Judiciary is the vetting of judges and magistrates as called for in the Constitution, and further provided for in the Vetting of Judges and Magistrates Act. Given the enormity of public interest in this matter and its direct bearing on the confidence of my judicial officers, I directed that the constitutional case filed on this matter be fast-tracked and a quick and fair determination made on it. A ruling on this matter is expected in November. When it does take place, the position of the Chief Justice and the JSC is that it should not be on the basis of witch hunt but must be fair and transparent and concluded in the most reasonable time possible. Should this process not be concluded within a reasonable time, the case backlog will become a Sisyphean boulder we keep pushing uphill only for it to roll back. I also urge the Executive to expedite the process of appointment of foreign members to the Vetting Board and do so in a consultative manner.

Throughout what appear like tumultuous changes, I pay special tribute to the Judicial Service Commission that enjoys an expanded role under the new Constitution. It has stuck to the law and ensured that the hiring of officers of the Judiciary benefits from public participation. I look forward to its support as we execute our transformation programme.

In conclusion, I would like to point out that the Judiciary will not change until those who serve in it and the public change their attitude and behaviour. When we say that judicial authority is derived from the people the implication is that the people should be law abiding – make use of other fora of justice such as family, churches and mosques and other alternative dispute resolution mechanisms because court actions are, in their very nature, adversarial. Kenyans must see themselves as the change they wish to see in the Judiciary.

Dear Kenyans, this is the judicial transformation journey I have embarked on. It is my hope that through this I have brought a future to the present. Please walk with me.

Thank you.

Hon. Dr. Willy Mutunga, SC

Chief Justice/President of Supreme Court

Republic of Kenya

Cisomm engages residents

HARARE-Residents of Glenview were recently afforded a rare opportunity to engage with a number of local authorities and organisations at a community consultation organised by the Civil Society Monitoring Mechanism (CISOMM), a coalition of non-governmental organisations that monitors and evaluates the implementation of the Interparty Political Agreement (IPA).

CISOMM in collaboration with Glenview community leader Vimbai Mbisva, convened the meeting on 18 November at Old farm house in Glenview 2 suburb to provide residents with the opportunity to hear presentations from, and pose tough questions to the Zimbabwe Republic Police, the local councillor, Childline, youth development organisations and the Zimbabwe Lawyers for Human Rights (ZLHR).

Some of the pressing issues raised by the residents

were about difficulties they encounter to access identity documents and birth certificates, the legal remedies against domestic violence, payment of council levies against poor service delivery of water and electricity and how to assist abused child.

A very important case raised by the residents at the meeting concerned the precariousness of their property tenure. Lawyers from ZLHR's Public Interest Litigation Unit undertook to assist affected residents.

Speakers at the meeting stood up well to the interrogation by the community, who noted that for most of them, it was the first time to be engaged in such an interaction. Organisers of the consultations noted that participants at the meeting appreciated the open dialogue and community exchange of ideas.



Vimbai Mbisva and a police officer addressing residents

Student charged over anti-Mugabe slur

GWERU-Police here have summoned a university law student to stand trial for allegedly insulting President Robert Mugabe after he alleged that the ZANU PF leader was presiding over a failed State.

Police summoned Tawanda Takaindisa, a final year law student at the Midlands State University to stand trial at Gweru Magistrate Court on Tuesday on charges of contravening Section 33 (2) (a) (iii) of the Criminal Law (Codification and Reform) Act.

Police accuse Takaindisa of blaming Mugabe for presiding over a failed State. They claim that Takaindisa recently insulted the octogenarian leader when he told the police at Gweru Police Station where he had gone to rescue a friend, who had been arrested that Mugabe was responsible for the country's political and economic ills.

Takaindisa is also charged under section 30 of the Criminal Law (Codification and Reform) Act for allegedly denigrating the police.

Takaindisa joins several human rights and political activists arrested and charged for allegedly insulting Mugabe. These include senior aides of Prime Minister Morgan Tsvangirai such as his party spokesman Douglas Mwonozora and deputy chairperson Morgan Komichi.

In Mwenezi, Magistrate Bvudzijena recently granted \$50 bail to a Rutenga man, Fortune Makonzo, charged with undermining and insulting Mugabe early this month in contravention of Section 33 (2) (b) of the Criminal Law (Codification and Reform) Act. Makonzo was arrested on 13 November at the National Railways of Zimbabwe Social Club after he allegedly pointed a finger at the image of the ZANU PF leader as he appeared on ZTV and stated that; "mudhara uyu achembera". The police charged that Makonzo's alleged statement was abusive, indecent and obscene.



Reject militarism as a facet of violence against women



Zimbabwe Lawyers for Human Rights (ZLHR) joins the global community in commemorating the 16 Days of Activism Against Gender Violence-an international campaign which seeks to raise awareness about gender based violence.

The campaign is commemorated between 25 November (International Day for the Elimination of Violence Against Women) and 10 December (International Human Rights Day), symbolically linking women and human rights, and confirming that Gender-Based Violence (GBV) is a human rights violation.

This year, the international theme is "From Peace in the Home to Peace in the World: Let's Challenge Militarism and End Violence Against Women!"

Militarism is 'an ideology that creates a culture of fear and supports the use of violence, aggression, or military interventions for settling disputes and enforcing economic and political interests.' Militarism therefore refers to an attitude that occurs at all levels of society, from the home, to the workplace, to institutions and organs of state.

Despite the relevance of this topic to gender struggles worldwide - including Zimbabwe, the national campaign appears to have been censored and stripped of its substance, so that this is the message permitted: "From Peace in the Home to Peace in the World: Let's Challenge All Forms of Gender-based Violence".

ZLHR returns to the original question, in the well-founded belief that it is the perseverance of women, human rights and peace movements that have challenged the social structures which allow violence and discrimination to continue, and sought to define security as one that emphasises peace and the fulfillment of human rights as the way to achieve genuine security for all.

Zimbabwe is a signatory to many international instruments, protocols and tools which seek to protect and respect women's rights such as the Beijing Platform for Action, the Covenant on the Elimination of Discrimination Against Women (CEDAW), the United Nations Human Rights Council, the United Nations Security Council's Resolutions 1325, 1820, 1888, 1889, 1960 on

Women, Peace and Security and more. Zimbabwe took the lead in the SADC region by being the second state to ratify the SADC Protocol on Gender and Development, a key regional instrument for advancing women's rights and gender equality. It contains substantive targets for achieving gender equality by 2015, including that of reducing by half current levels of GBV, making this initiative a global front-runner!

Zimbabwe has made great progress in accepting these standards for women; however, there remain major gaps in implementation and in accountability for implementation.

Regrettably, in 2011 there have been significant violations of women's rights, against such obligations.

These consist of arbitrary arrests and detention of women Human Rights Defenders (HRDs) including mothers with minors, denial of medical treatment for women activists in detention, discrimination, sexuality, baiting, discriminatory stereotyping of women HRDs, and violations of women's

rights to freedom of expression, association and peaceful protest in contravention of CEDAW, one of the most highly endorsed international human rights conventions.

Gender-based violence is a deliberate outcome of discrimination, gender hierarchies and militaristic behaviour. Of particular note is the use of sexual violence such as rape, as a tactic to create fear and to humiliate or punish women and their communities. Attention must be paid to the violation of women's rights when they are victimised as part of a political process-during election times for example.

On this occasion, ZLHR challenges individuals, communities, traditional leaders, the Police and Prisons Services, the National Youth Training Programme, Youth and Women's Caucuses, the Security Forces, the Courts and the Inclusive Government; to reject militarism as a facet of violence against women; to advocate for standards of peace and equality in all relations; and to make progress towards the elimination of gender-based violence by ending the culture of impunity.