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Agnes Muzondo of ZLHR successfully represented Memory Mupanganyama who managed to have her child registered in order to write her Ordinary Level examinations.

MASVINGO-A 16 year-old girl will now write her Ordinary Level examinations after she managed to obtain a birth certificate following a protracted battle with authorities, which ended following the intervention of Zimbabwe Lawyers for Human Rights (ZLHR).

The 16 year-old minor was set to miss the registration deadline set by Zimbabwe School Examinations Council (ZIMSEC) for people seeking to sit for Ordinary Level examinations scheduled for early December.

The minor's mother, Memory Mupanganyama, had failed to obtain



All smiles and relieved...Memory Mupanganyama and her 16 year-old child after they obtained birth certificates and national registration documents

a birth certificate for her child because she did not have a national identity document to prove she is the girl's mother. The Registrar-General's Office (RG) in Bikita, Masvingo province, had declined to issue her with a national identity document claiming that she had previously obtained another national identity document, a claim she denied.

Mupanganyama told authorities that she had not been issued with any other national identity document before as insinuated by the RG's Office.

Fearing that her daughter would miss the registration deadline for

Ordinary Level examinations as set by ZIMSEC, Mupanganyama engaged Agnes Muzondo of ZLHR for assistance.

Muzondo wrote to the RG's Office protesting against the actions of authorities at the RG's Office, which she said amounted to a violation of her client's right to identity. The right to identity is enshrined in *Continued on Page 2*

Conundrums over acquisition of national documentation



Alondolozwe Sitsha of ZLHR during a mobile legal clinic held in Nyandeni in Gwanda



Prisca Dube of ZLHR addressing during a mobile legal clinic held in Mzimuni in Gwanda

GWANDA-It might be a fundamental right. But getting identity documents is a herculean task in Zimbabwe, where thousands struggle to access basic services such as education and health due to lack of documentation.

Section 35(3) of the Constitution states that all Zimbabwean citizens have a right to identity documents issued by the State. But corruption, underfunding, poor planning and sheer neglect have left many Zimbabweans scrambling to access and enjoy that right.

Working with agencies such as Zimbabwe Human Rights Commission, the Ministry of Social Service and community NGOs, Zimbabwe Lawyers for Human Rights has been fighting to ensure that citizens get access to identity documents.

Through Mobile Legal Clinics held in some of the most affected and remotest parts of the country – from Madlambuzi and Plumtree in Matabeleland South province to Dotito, Mount Darwin in Mashonaland Central – ZLHR has been seized with helping citizens navigate stumbling blocks in acquiring birth certificates, marriage certificates and death certificates.

Apart from awareness, ZLHR lawyers have consistently taken up cases to force authorities

to respect the right to identity. One case is that of 26 year-old Fransciska Macheke, who is suing the Registrar of Births and Deaths. Macheke is married in Gwanda, but her relatives reside in Harare. As per her custom, she went to Harare to deliver her first child in 2013.

The child is still undocumented because the Gwanda Registrar Office refuses to process the birth certificate. They informed Macheke that the birth confirmation record had expired. She was told to travel to Harare in order to process the birth certificate.

Lawyers engaged the Gwanda District Registrar, who advised that as long as the mother of the child meets all the requirements, she could be interviewed, and the birth certificate could be issued at the Gwanda Registry.

“The District Registrar requested that our client come and see her personally to determine if all the documents are in order,” said Prisca Dube of ZLHR, who added that ZLHR lawyers advised Macheke accordingly and await her feedback on her visit to the Gwanda registry offices. Lawyers took up matter to protect the right to prompt provision of a birth certificate as enshrined in section 81 of the Constitution. In another case, ZLHR on 30 June 2021, handled the case of 39 year-old Shylet Mangwanyana, who resides in Tsholotsho. Mangwanyana had her paper identity document and birth certificate destroyed in a fire

at her parents’ house in Kwekwe in 2013. She was born in a mission hospital in Kwekwe but does not recall the birth entry number. Both of her parents are deceased.

However, Mangwanyana remembers her identity number. She has lived in Tsholotsho for years and had gone to the registry offices in order to process a replacement identity document but was not assisted. Curiously, Mangwanyana was told to go to the district of her birth which is Kwekwe.

Lawyers dispatched by ZLHR engaged the Tsholotsho District Registrar, only identified as Mrs Mlotshwa, who advised that there was no need for their client to be referred to Kwekwe as she still remembered her identity number.

“Mrs. Mlotshwa punched in the number in the system and positively confirmed that it belonged to Shylet Mangwanyana and was also advised of her birth entry number. Mrs Mlotshwa asked Mangwanyana to visit the registry and see her directly in order to process the duplicate birth certificate and have finger prints recorded. We contacted Ms. Mangwanyana and informed her of the feedback from the district registrar,” said Dube.

ZLHR continues taking up such cases to protect the right to identity documents enshrined in Section 35 of the Constitution.

Know Your Rights

Section 35 of the Constitution: Zimbabwean citizenship

- Persons are Zimbabwean citizens by birth, descent or registration.
 - All Zimbabwean citizens are equally entitled to the rights, privileges and benefits of citizenship and are equally subject to the duties and obligations of citizenship.
 - All Zimbabwean citizens are entitled to the following rights and benefits, in addition to any others granted to them by law--
 - to the protection of the State wherever they may be;
 - to passports and other travel documents; and
 - to birth certificates and other identity documents issued by the State.
- Zimbabwean citizens have the following duties, in addition to any others imposed upon them by law—
- to be loyal to Zimbabwe;
 - to observe this Constitution and to respect its ideals and institutions;
 - to respect the national flag and the national anthem; and
 - to the best of their ability, to defend Zimbabwe and its sovereignty.

Section 81 of the Constitution: Rights of children

- Every child, that is to say every boy and girl under the age of eighteen years, has the right:
 - to equal treatment before the law, including the right to be heard;
 - to be given a name and family name;
 - in the case of a child who is--
 - born in Zimbabwe; or
 - born outside Zimbabwe and is a Zimbabwean citizen by descent;
- to the prompt provision of a birth certificate;

ZLHR ends mum and teen’s I.D and birth certificate anguish

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section 35(3)(c) of the Constitution, which states that every Zimbabwean citizen is entitled to a birth certificate and other identity documents issued by the State.

Mzondo said Mupanganyama first attempted to obtain a national registration document in Bikita, the place of her birth, in February 2020, but officials declined to issue her with one and instead referred her to Makombe Building offices in Harare.

In April 2020, when Mupanganyama approached the RG’s office at Makombe Building in Harare, she was referred to the RG’s office at Market Square, also in Harare. There officials referred her back to the Bikita office.

Tired of being shoved from pillar to post, Mupanganyama got Mzondo to write a letter to the RG’s Office protesting against the conduct of officers at the RG’s Office. Muzondo highlighted

that the authorities were violating her rights and those of her three minor children.

These rights include the rights of children guaranteed under Section 81(1)(c)(ii) of the Constitution, which provide that every child has a right to the prompt provision of a birth certificate and the right to education provided under Section 75 of the Constitution.

Muzondo asked authorities at the RG’s Office to urgently provide Mupanganyama with the required confirmation stating that she had not previously obtained a national registration document to enable her to get her national identity document. This would also allow her to obtain a birth certificate for her minor child who urgently needed it to register for the Ordinary Level examinations and for two other younger children.

“Our client is a simple woman of limited means and she does not know how to proceed..... Our client’s rights and that of her minor children are

currently being violated,” wrote Muzondo.

Muzondo threatened to take legal action against the RG’s Office if authorities failed to issue Mupanganyama with the national identity document as requested. In response to Muzondo’s letter, Ben Mpala, the Deputy RG undertook to ensure that officials complied with the request.

“We are in agreement that the matter was not handled properly by our officers who interacted with her (Mupanganyama). We are sorry on behalf of this department and assure you that corrective measures will be done for the necessary relief sought,” reads part of Mpala’s letter in response to Muzondo’s request.

Eventually, Mupanganyama was issued with a national identity document and managed to obtain birth certificates for her children.

The Ordinary Level student has since registered to write her examinations in December.

Acquiring national identity cards a monumental task

HARARE-Zimbabweans have called on government to devolve power to provinces, saying the continued concentration of power in the capital city is disenfranchising the rest of the country.

They say Harare enjoys better services as compared to other provinces, with many flocking to the capital city to get important documents such as national identity documents and passports.

This has resulted in long queues being witnessed at most issuance centres such as Market Square and Makombe Building in Harare. For Tawanda Mtetwa, a Form 4 student, he has visited the Register-General (RG)'s Office countless times in a bid to acquire an identity card at Makombe Building.

The queue at the RG's Office move at a snail's pace, with the officials saying they only serve 25 people a day, a number which is too low to match demand.

Mtewa says he has to be patient so that he manages to get the identification document.

"I first came in June and was told to come back on 23 July. I have been told to keep trying everyday as they don't know when my name will be called. Those who have not booked were told to come later on," he said.

"I have come here more than seven times. They only take less than 25 people and close the gate. The rest of the people are told to return on another date" said Mtetwa.

Zimbabwe is facing a huge backlog of national identity documents. In June, government opened up an identity documents application exercise for school going children due to sit for their final examinations this year.

The exercise, however, turned chaotic as thousands of people turned up. The exercise was largely characterised by disregard for coronavirus prevention regulations, with pushing and shoving being the order of the day.

Government ended up suspending the exercise citing rising cases of coronavirus. So considering the huge backlog and growing population in Harare, some of the national identity card seekers believe a target of 25 people per day is not sufficient.

Another identity document seeker remarked: "If we look at how big Harare is and they take just 25 people a day, it just tells you that we are doomed. They should also visit the high-density areas and issue out identity documents to people there. Decentralisation will ensure that at least they deal with the back log."

The latest development has resulted in growing calls for the decentralisation of the exercise so that more people can be served. Factors identified as hindering citizens to access to documentation included corruption at the RG's Office, lack of decentralisation of services, cumbersome requirements, inconsistent information from the RG's Office, negative attitudes and discriminatory practices by some staffers at the issuing offices.

Other barriers included lack of birth records, travel and subsistence costs, as well as payment modalities and resource constraints. Zimbabwe Human Rights Commission chairperson Elasto Mugwadi once noted that "there was a generational problem of acquiring documents and leads to citizens failing to fully enjoy fundamental human rights."

Access to documentation is a fundamental human right, one upon which other rights can be enjoyed. National documents establish the legal relationship between a citizen and his or her country and they give rise to rights and obligations for both.

They are documentary proof of one's nationality. This aspect of identity is critical to an individual's integrity as well as affecting his or her wellbeing. Notably, these documents afford a person access to fundamental human services within a country, including obtaining employment, medical care, qualifying for social benefits, inheritance, enrolment into educational institutions, local and international travel, voting, being voted for and requesting the issuance of official documents and permits, among others.

A person without documentation will have difficulties enjoying these rights and freedoms accorded to everyone, citizens or residents.

Right to identity a fundamental human right – Mugwadi

...unveils National Inquiry on Access to Documentation in Zimbabwe



Participants following proceedings at a mobile legal clinic organised by ZLHR and ZHRC in Mzimuni in Gwanda North.

HARARE-Access to national documentation is at the core of the enjoyment of fundamental human rights and freedoms, says Zimbabwe Human Rights Commission (ZHRC), Chairperson, Elasto Mugwadi.

In his foreword in the report of the National Inquiry on Access to Documentation in Zimbabwe released recently and clearly resonates with the work of Zimbabwe Lawyers for Human Rights (ZLHR) under its Right to Identity Campaign, Mugwadi said ZHRC launched the inquiry in order to address the plight of numerous people affected by lack of national documentation.

"This is ZHRC's first ever National Inquiry in its quest to address systemic violations of human rights. The findings contained in this report are an eye opener to the various challenges that confront people in accessing national documentation and the impact that lack of access has on their lives. A document such as a birth certificate enhances a person's ability to navigate through life and achieve personal fulfilment," Mugwadi said.

"On the other hand, lack of this seemingly insignificant document results in far reaching consequences and shuts doors to opportunities later in life. In particular, lack of access impedes enjoyment of fundamental human rights and freedoms such as the right to identity, freedom of movement, right to education among many others," added Mugwadi.

In conducting the national inquiry, ZHRC extensively engaged stakeholders to ensure that the findings would reflect the challenges of accessing documentation at the national level. The national inquiry has recommendations which ZHRC says are aimed at redressing "the grave and widespread problem of non-documentation, so that access to documentation, which is a fundamental human right is enhanced and enjoyed by all in Zimbabwe."

The recommendations address the following issues; policy and legal framework, administration of documentation, family structure,

gender and cultural dimensions of documentation and knowledge, attitudes and practices of duty bearers and citizens towards documentation.

The recommendations propose issues which include development of national and internal policies regulating registration, further decentralisation of DRG offices and services, investigation of allegations of corruption, formulation and implementation of policies and accelerated registration of all special interest groups such as persons with disabilities, Gukurahundi affected communities, minority groups, inter-sex persons, Tongogara Refugees and disaster affected communities.

The recommendations also include implementation of the policy prohibiting health institutions from withholding birth confirmation records for failure to pay hospital fees, implementation of the policy allowing schools to enroll children without birth certificates pending birth registration, undertaking by the DRG of a comprehensive institutional and staff capacity assessment and implementation of the findings, retraining and reorientation of DRG staff on registration procedures.

It also includes client service charter and Human Rights Based Approach to service delivery, ensuring regular and well-resourced mobile registration programmes, awareness raising on the importance and requirements of accessing national documentation among the public, in partnership with relevant stakeholders, among others.

The national inquiry established that a significant number of people were not documented and this lack of documentation adversely impacted on the enjoyment of their human rights. It also noted that generations of people without documentation have been created and many more have been left stateless or at the risk of statelessness.

The report covers numerous testimonies of witness experiences on challenges they faced in accessing documentation and how this affected their enjoyment of fundamental human rights and freedoms.

The right to identity



Introduction

Every Zimbabwean has the right to an identity inclusive of a name, nationality, ethnicity and spiritual practice. The right to identity protects an individual's important and knowable personal attributes such as biographical data and physical traits. It also extends to an individual's outward expression and the establishment of a network of important social relations, such as ties to family members, cultures, or religion.

The right to identity in Zimbabwe

In our Constitution the right to identity is not an independent or autonomous right which protects a distinct human interest, but it is an overarching "umbrella" or "core" right that collects and unifies several related human rights. Zimbabwe has a duty in terms of the Convention on the Rights of the Child (CRC) which explicitly recognises the human right to identity as an independent right. The obligation is to respect the right of the child to preserve his or her identity, including nationality, name, and family relations as recognised by law without unlawful interference.

This right exists implicitly in many provisions of our Constitution and it is associated with several other rights, such as:

(a) The right to a name and nationality

This is contained in section 81 of the Constitution. It states that, every child under the age of eighteen years, has the right to be given a name and family name. This right is one of the most fundamental human rights, but there are many children in our society who spend much of their lives without this legal identity and the benefits as well as the protection it affords.

If a child or a person is not registered they do not officially exist. The consequences are that, it makes it difficult for the children to be enrolled in school and it exposes them to a number of problems such as trafficking, exploitation as cheap labour, or involvement in prostitution, illegal adoption and criminal activities.

Nationality is the fact that an individual legally belongs to the population making up a State. The right to nationality is closely related to the right to citizenship guaranteed in the Zimbabwean Constitution in section 35. Nationality is confirmed through the issuing of a birth certificate and it allows establishment of the connection for an individual to a nation.

b) The right to family

This right involves the right to family name, family care and the right to found a family is also provided for in the Constitution. Section 81(1) (d) stipulates that every child under the age of eighteen years, has the right to family or parental care, or to appropriate care when removed from the family environment. Family is the most important unit of every society because it is where people find love, protection

and belonging. The right to a family obliges the state and the society to protect the family unit.

In terms of section 78 which deals with marriage rights, every person who has attained the age of eighteen years has the right to found a family. This means that men and women of full age without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.

c) The right to language, culture and religion

Zimbabwe has 16 officially recognised languages, and a diverse range of communities. These language rights are recognised by our Constitution in section 6. Our Constitution places an obligation on the state and all institutions and agencies of government at every level to ensure that these languages are treated equally.

Language is central to human nature and it indicates a means by which a people may express their cultural identity. It is also the means by which the individual expresses his or her personal identity and sense of individuality. Language is so intimately related to the form and content of identity that there cannot be true identity if one is prohibited from using the language of one's choice.

The Constitution also guarantees the right to culture in section 16, it places an obligation on the State and all institutions and agencies of government at every level to promote and preserve cultural values and practices which enhance the dignity, well-being and equality of Zimbabweans.

The preservation of the identity of a people is important in the advancement of respect for human rights. The enjoyment of culture and use of language presupposes that a community of individuals with similar rights.

Traditional African culture in Zimbabwe also recognised the importance of identity - hence the collective groupings that existed defined along the lines of one's totem; e.g. Dube, Khumalo, Dlodlo, Moyo, Shumba, Ndlovu, etc.

Culture religion and language are the means of expression of a common sense of identity. Identity links an individual to a society, and from that link, the individual derives benefits and privileges that could not otherwise be claimable if they were not a part of the group.

The Constitution guarantees every person the freedom of conscience in section 60 which includes freedom of thought, opinion, religion or belief. This means that an individual has the right to belief, to express such belief public and to manifest such belief by worship and practice.

The progressive nature of our Constitution allows for parents or guardian of a minor child to determine the child's moral and religious upbringing as long as it is not contrary to the rights to which their child are entitled to under the Constitution, including their rights to

education, health, safety and welfare.

d) The right to a birth certificate, national ID and citizenship

From as early as birth, an individual's identity is formed and preserved by registration.

I. Birth certificate

It is a national document issued by government to record a person's birth and identify them by name, place, date of birth and parentage. A birth certificate is an important document that shows the name of the person, his/her parents' name, date of birth and place of birth.

Section 35(3) (C) of the Constitution states that all Zimbabwean citizens are entitled to birth certificates and other identity documents issued by the State. A birth certificate is important because it is proof of when someone was born and therefore proves their age.

It also enables one to fully participate in society and economic activities such as access to education, formal employment, opening bank accounts and credit facilities amongst other benefits that require a national identity.

A person who fails to obtain a birth certificate is excluded from important socio-economic activities that improve their life, such as education and formal employment. Obtaining a birth certificate is a right for every Zimbabwean. However, certain requirements need to be met before this document is issued.

The requirements differ according to where the child was born, the marital status of the parents, whether one or both of the parents are deceased and the time taken to register the birth.

II. National ID

It is a national document issued by government to verify aspects of a person's personal identity. This right is also contained in section Section 35(3) (C) of the Constitution. A national ID is important because it is used to connect a person to information about the person in a database and this information includes the place of birth, age and image of the person, gender and most importantly a unique identification number.

It is proof of when someone was born and therefore proves their age and it enables one to exercise rights, such as voting. If a person fails to obtain this document they remain stateless as there is no proof of their citizenship and their identity cannot be verified with certainty. Lack of a complete registration system means that government, not knowing the true number of its citizens, is hampered in planning for their needs. A person is required to apply for National Registration at the age of 16.

III. Citizenship

It is one of the most important rights in the Constitution of Zimbabwe. It is associated with identity and it gives individuals access to other rights, such as the right to vote, work, live in a country, to acquire birth certificates and other identity documents, such as passports. It is enshrined in section 35 of the Constitution. A person can acquire Zimbabwean citizenship in 3 ways, namely by birth, descent or registration.

Conclusion

The right to identity lasts for life, it is an enabler for our other rights to function. It is the bedrock of a healthy and diverse society. When the right to an identity is not upheld, intolerance and abuse can flourish. Those who look or sound different may become targets of violent attacks, maybe on the basis of race, sexuality, gender, religion, appearance.

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