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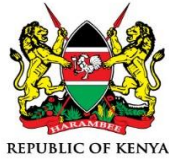
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CHIEF JUSTICE'S SPEECH AT THE 'CHILD JUSTICE SUMMIT' –STRATHMORE UNIVERSITY, 7TH OCTOBER 2021

The Vice –Chancellor, Strathmore University,
The Dean, Strathmore School of Law,
Judges and Judicial Officers Present,
Law Students from various Law Schools represented in
the Summit,
Distinguished Guests,
Ladies and Gentlemen,
Good Morning

A.INTRODUCTION

- 1.I want start by thanking the Organisers, being the NCAJ Special Taskforce on Children Matters, the Strathmore Institute for Family Studies and Ethics, and the Strathmore Law Clinic, for jointly organising the Child Justice Summit.



REPUBLIC OF KENYA

THE JUDICIARY



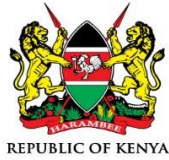
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2. I want to also appreciate all the Law Schools represented at this inaugural Child Justice Summit. I applaud and celebrate the Law Students participating in the Summit who have expressed an interest in the administration of Justice for Children.

3. I note that the Child Justice Summit is geared as part of the activities intended to be part of the build-up of activities leading to the celebration of the National Council on the Administration of Justice 10th year since establishment.

4. The aim of the 'Child Justice Summit' which is addressing the challenges faced by children in the justice system, particularly those in conflict with the law is a noble one and should be encouraged. It is even more heartening that the organizers of the 'Child Justice Summit' are directing their efforts to address the gap among many Law Students in understanding the child justice system and the various actors in safeguarding children's rights.



REPUBLIC OF KENYA

THE JUDICIARY



THE SUPREME COURT

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5. Children are vulnerable to myriad forms of physical and economic exploitation and abuse. This is because they are mostly dependent on adults for their needs.
6. Over the years, there have been concerted efforts to protect children given their vulnerability. This is also informed by the recognition that the state has an interest in the welfare of children under the doctrine of *parens patriae* i.e. the state and courts have public policy power to intervene to protect a child in need of protection.
7. To further protect children, the principle of the “best interest of the child” has been recognised as an overriding consideration in matters relating to children. This principle is now well protected in international human rights law, our Constitution and various legislations.
8. Despite these laudable advancements geared towards protection of children, children remain a



REPUBLIC OF KENYA

THE JUDICIARY



THE SUPREME COURT

OFFICE OF THE CHIEF JUSTICE / PRESIDENT, SUPREME COURT OF KENYA

vulnerable group within our society. Sadly, this state of affairs is evident in the justice sector where our laws, policies, procedures and practices have tended to reinforce and not ameliorate the plight of children who are victims of crimes or those in conflict with the law.

B. TOWARDS SOCIAL JUSTICE FOR VULNERABLE CHILDREN: THE WORK OF THE NCAJ SPECIAL TASKFORCE ON CHILDREN MATTERS

9. It is to help resolve such systemic problems in the justice sector that the Judicial Service Act, specifically sections 34-37 establishes the National Council on Administration of Justice (NCAJ). The overall mandate of NCAJ is to coordinate the administration of justice and reforms in the justice sector in an efficient, effective and consultative manner.

10. Alive to the constitutional concern for children as a vulnerable group in the society as provided in



REPUBLIC OF KENYA

THE JUDICIARY



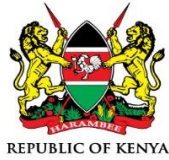
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Article 21(3) of the Constitution, Emeritus Chief Justice Dr. Willy Mutunga in January 2016 appointed a Multi-Agency Taskforce on children matters with the mandate to review how children's rights and interests are being protected within the justice sector.

11. By constituting the Special Task Force, Chief Justice Mutunga was responding to the rallying call in the Constitution that we should create a just society and give effect to the value and principle of social justice that underlies the post-2010 constitutional order.

12. I was privileged to Chair the Special Multi-Agency Task Force on Children Matters for four (4) years. From January 2016 to November 2019, the Taskforce grappled with the question on what should be done to make the administration of justice to children in Kenya effective, efficient and accountable? After travelling throughout the country and engaging with those dealing with matters



REPUBLIC OF KENYA

THE JUDICIARY



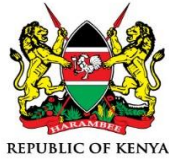
THE SUPREME COURT

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related to juvenile justice, we came up with a report that is a “Call to Action” to the state and other actors in the child justice space to work individually and collaboratively to make the justice system to give effect to the principle of the best interest of the child.

13. Our Report reveals a broken chain-link that denies children, both as victims and accused, their rights. The Report indicates that the child justice chain-link is broken at multiple points and can only be fixed with vision, commitment, collaboration and political will.

14. Given that the Children’s Act, enacted in 2001, is yet to be aligned with the provisions of the 2010 Constitution, and emerging issues affecting children, the Multi-Agency Taskforce recommended law review, development of policies, practice directions and standard operating procedures intended to protect the rights of children.



REPUBLIC OF KENYA

THE JUDICIARY



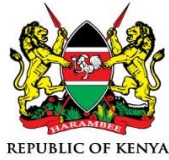
THE SUPREME COURT

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15. In the end, the Taskforce recommended Legal, Policy and Procedural reforms under the banner of “the Big 7 call to action”. The Task Force developed recommendations and products that address the gaps identified. These include the Children Bill, Rules of Procedure, Protocols, Policies and several reports on different aspects of children matters in the administration of justice.

16. As we continue to call on the various actors to implement the terms of the Taskforce’s Report, we in the Judiciary are moving ahead to ensure that judicial processes are children-friendly. Indeed, if you go through our Vision for the Judiciary, which goes under the mantra of ‘**Social Transformation through Access to Justice (STAJ)**’, you will notice that it pays special attention to enabling vulnerable groups access justice in our judicial system.

17. However, one of the major challenges that the NCAJ Special taskforce noted was that there were Courts which did not have lawyers to take up



REPUBLIC OF KENYA

THE JUDICIARY

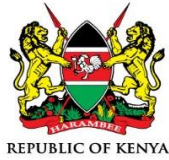


THE SUPREME COURT

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children matters. This unacceptable state of affairs prevails despite the support of a pauper brief scheme, through which the Judiciary offers a stipend to lawyers who take up cases of children in conflict with the law. It is noteworthy that there are Courts which did not have panel of advocates ready to represent children.

18. Let me use this opportunity to call on the government to optimize the operation of the Legal Aid Act, 2016 which establishes the Legal Aid Fund that is supposed to fund indigent persons. The statute recognizes that funding for legal aid is a constitutional function of the Executive branch and not the Judiciary. Thus, ideally and constitutionally, the Judiciary should not be bearing the financial burden of funding representation of indigent persons as this is a function assigned to the Executive branch.



REPUBLIC OF KENYA

THE JUDICIARY



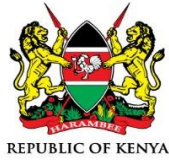
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C.THE CALL FOR A NEW GENERATION OF COMPASSIONATE LAWYERS: SOLDIERING FOR CHILDREN’S RIGHTS

19. To realise the Constitution’s objective of creating a just state and society demands a new way of thinking, feeling, and behaving from the members of the legal profession. It demands a new consciousness that is intolerant to inequity and exclusion. This means that those of us in the legal community, be it law students, advocates, law scholars, magistrates and judges, are required to adopt and cherish the spirit of inclusiveness and accommodation of other members of the society, especially the vulnerable.

20. It means that we should aspire to ensure that children as a vulnerable group are protected and enabled to access justice. I am sure you must be asking in your mind: How do we do this?



REPUBLIC OF KENYA

THE JUDICIARY

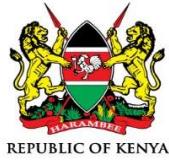


THE SUPREME COURT

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21. There are many ways of articulating, advocating and advancing the cause of children's rights and welfare. I am sure a number of you will be involved in policy making within the government's bureaucracy, others will be in the law making space in the legislature, another group will be in advocacy either at the Bar or as members of the Civil Society, and yet another group will engage in adjudication as members of the Bench. In all these spheres of influence that you will work in, there will always be an opportunity to advance the cause of social justice by championing the rights and welfare of children.

22. This quest for advancing a just society for children and other vulnerable groups should be informed by compassion. It is what will provoke our conscious and move us to stand up and take action to change our society. Compassion is the prerequisite and foundation for appreciating and empathising with the plight or condition of others in society. Thus, it is often the case that in the absence of compassion, people tend to find it easy to



REPUBLIC OF KENYA

THE JUDICIARY



THE SUPREME COURT

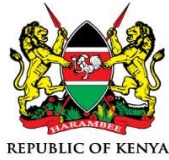
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rationalise ways to avoid caring for the others in the society.

23. Without compassion, we tend to turn away from the job at hand and expect solutions to come from others. So it is compassion that will motivate us to act to help the sections of our society that need our help, and to act just because it is the right thing to do and not be solely motivated by financial reward.

24. For lawyers who are responding to the constitutional call to be “**Warriors for Social Justice**”, compassion should not be random and isolated acts of kindness. Compassion should be ingrained and infused in all our activities. This is so because it is informed and conscious compassion that will enable us to identify, question, and recognise laws, policies and practices that harm vulnerable groups, including children.

25. Thus, **my call to you today, as Law Students, is that you should embrace compassion in your**



REPUBLIC OF KENYA

THE JUDICIARY



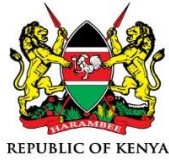
THE SUPREME COURT

OFFICE OF THE CHIEF JUSTICE / PRESIDENT, SUPREME COURT OF KENYA

work when you join the legal profession. It is compassion that will compel and move you to take action to ameliorate the conditions and plight of the vulnerable in our society, including children.

26. Do not feel or think that you are powerless to take positive action to create a socially just society including for the vulnerable groups in our midst. Equipped with the knowledge and skills you have gathered during your studies, I am sure you can and will find the courage to protect and promote the rights and interests of children and other vulnerable members of our society.

27. Given that Law Schools are represented in this Summit, let me take this opportunity to urge our Law Schools to incorporate courses on 'Children and the Law' as a compulsory part of your Curriculum so as to sensitize all lawyers in training on their obligations to ensure that vulnerable children, who will be their clients, go through a child friendly Justice system.



REPUBLIC OF KENYA

THE JUDICIARY

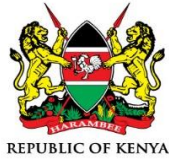


THE SUPREME COURT

OFFICE OF THE CHIEF JUSTICE / PRESIDENT, SUPREME COURT OF KENYA

28. I also wish to applaud the NCAJ Special Taskforce on Children Matters which is launching the **Wakili Wa Watoto Clubs** to be established in every Law School to continue the conversation and sensitization around child justice. I implore all the law students to take advantage of this platform moving forward to gain more knowledge and explore the extensive opportunities available in the child justice sector. In addition, I call on development partners and other interested groups to support the clubs to make sure that they achieve the goals that has informed their establishment.

29. I wish to congratulate the Winners and all participants of the Cindy Wakio Moot Court competition. I hope that the moot court has given you the opportunity to acquaint yourself to the needs of the child in the justice system and the interventions you can make in your capacity as an advocate or as an officer of the Court.



REPUBLIC OF KENYA

THE JUDICIARY



THE SUPREME COURT

OFFICE OF THE CHIEF JUSTICE / PRESIDENT, SUPREME COURT OF KENYA

30. I remain in support of the Law Students as you continue to pursue your dreams and goals as young lawyers. I wish you the very best and I look forward to next year's Child Justice Summit.

Thank you.

Hon. Justice Martha Koome, EBS

Chief Justice and President of the Supreme Court of Kenya.