

**THE REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CONSTITUTIONAL AND HUMAN RIGHTS DIVISION**  
**CONSTITUTION PETITION NO. 122 OF 2013**

**IN THE MATTER OF**

**ALLEGED DENIAL, VIOLATION, AND INFRINGEMENT OF AND/OR THREAT TO THE RIGHT TO LIFE; THE PROHIBITION OF TORTURE; INHUMAN AND DEGRADING TREATMENT; THE RIGHT TO SECURITY OF THE PERSON; THE PROTECTION OF THE LAW; THE RIGHT TO EQUALITY BEFORE THE LAW AND FREEDOM FROM DISCRIMINATION; THE RIGHT TO INFORMATION; AND THE RIGHT TO EFFECTIVE REMEDY AFFORDED BY SECTIONS 70, 71 AND 74 OF THE REPEALED CONSTITUTION OF KENYA AS READ WITH ARTICLES 19, 20, 21, 22, 23, 24, 25, 26, 27(I), 28, 29, 262, 263 AND 264 OF THE CONSTITUTION OF THE REPUBLIC OF KENYA, 2010 AND SECTIONS 6, 7 AND 19 OF THE SIXTH SCHEDULE THEREOF;**

**IN THE MATTER OF**

**RULES 11, 12, 13, 14 AND 15 OF THE [REPEALED] CONSTITUTION OF KENYA (SUPERVISORY JURISDICTION & PROTECTION OF FUNDAMENTAL RIGHTS & FREEDOMS OF INDIVIDUALS) HIGH COURT PRACTICE & PROCEDURE RULES 2006 AS READ WITH SECTION 19 OF THE SIXTH SCHEDULE OF THE CONSTITUTION OF THE REPUBLIC OF KENYA, 2010;**

**IN THE MATTER OF**

**THE (REPEALED) POLICE ACT, CHAPTER 84 (REPEALED) ADMINISTRATION POLICE ACT, CHAPTER 85; PENAL CODE, CHAPTER 63, CRIMINAL PROCEDURE CODE, CHAPTER 75; SEXUAL OFFENCES ACT (ACT NO. 3 OF 2006); INTERNATIONAL CRIMES ACT (ACT NO. 16 OF 2008); NATIONAL POLICE SERVICE (ACT NO. 11A OF 2011); NATIONAL POLICE SERVICE COMMISSION ACT (ACT NO. 30 OF 2011); INDEPENDENT POLICING OVERSIGHT AUTHORITY ACT (ACT NO. 35 OF 2011); OFFICES OF THE ATTORNEY-GENERAL ACT (ACT NO. 40 OF 2012);**

**IN THE MATTER OF**

**THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS; THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT; THE UNIVERSAL DECLARATION OF HUMAN RIGHTS; THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS; THE STATUTE OF THE INTERNATIONAL CRIMINAL COURT; TREATY OF THE EAST AFRICAN COMMUNITIES**

**BETWEEN**

- 1. COALITION ON VIOLENCE AGAINST WOMEN**
- 2. INDEPENDENT MEDICO-LEGAL UNIT**
- 3. THE KENYAN SECTION OF THE INTERNATIONAL COMMISSION OF JURISTS**
- 4. PHYSICIANS FOR HUMAN RIGHTS**
- 5. JWM, a female victim of Sexual and Gender Based Violence**
- 6. PKK, a female victim of Sexual and Gender Based Violence**

- 7. **SMM, a female victim of Sexual and Gender Based Violence**
  - 8. **CNR, a female victim of Sexual and Gender Based Violence**
  - 9. **LGS, a female victim of Sexual and Gender Based Violence**
  - 10. **SKO, a female victim of Sexual and Gender Based Violence**
  - 11. **DOJ, a female victim of Sexual and Gender Based Violence**
  - 12. **FOO, a female victim of Sexual and Gender Based Violence**
- .....PETITIONERS

**AND**

- 1. **THE ATTORNEY GENERAL OF THE REPUBLIC OF KENYA**
- 2. **THE DIRECTOR OF PUBLIC PROSECUTIONS OF THE REPUBLIC OF KENYA**
- 3. **THE INDEPENDENT POLICING OVERSIGHT AUTHORITY**
- 4. **THE INSPECTOR-GENERAL OF THE NATIONAL POLICE SERVICE OF THE REPUBLIC OF KENYA**
- 5. **THE MINISTER FOR MEDICAL SERVICES OF THE REPUBLIC OF KENYA**
- 6. **THE MINISTER OF PUBLIC HEALTH AND SANITATION OF THE REPUBLIC OF KENYA.....RESPONDENTS**

**CERTIFICATE OF URGENCY**

**I, JULIE SOWETO AULLO** an Advocate of the High Court of Kenya practising as such in the firm of **SOWETO & COMPANY ADVOCATES** who have the conduct of this matter on behalf of the Applicant do hereby certify that the Application filed herewith is urgent and should be heard during as soon as practicably possible for the following reasons:

- 1. The
- 2. \*\*\*\*
- 3. \*\*\*

DATED at NAIROBI this **30<sup>th</sup>** day of **July** 2014.

**SOWETO & COMPANY  
ADVOCATES FOR THE APPLICANT**

**DRAWN & FILED BY:**

SOWETO & COMPANY ADVOCATES  
 LANDMARK PLAZA (13<sup>TH</sup> FL)  
 ARGWINGS KODHEK ROAD  
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 +254 703 910 982; +254 703 041 256  
**Email:** [sc@sca.co.ke](mailto:sc@sca.co.ke)

**TO BE SERVED UPON:**

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3. THE DIRECTOR OF PUBLIC PROSECUTION
4. THE INSPECTOR-GENERAL OF THE NATIONAL POLICE SERVICE
5. INDEPENDENT POLICING OVERSIGHT AUTHORITY, NAIROBI
6. CABINET SECRETARY, MEDICAL SERVICES, NAIROBI
7. CABINET SECRETARY, PUBLIC HEALTH, NAIROBI
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- 4. PHYSICIANS FOR HUMAN RIGHTS**
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- 12. **THE MINISTER OF PUBLIC HEALTH AND SANITATION OF THE REPUBLIC OF KENYA.....RESPONDENTS**

**NOTICE OF MOTION**

*(Under Articles 2, 20, 21, 22, 23, 24, 25, 26, 27(1), 28, 29, 258 and 259 of the Constitution and Rule 6 and 19 of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013)*

**TAKE NOTICE** that his Honourable Court shall be moved on the \_\_\_\_\_ day of \_\_\_\_\_ 2014 or so soon thereafter as the Counsel for the Applicant, The REDRESS TRUST, may be heard on an application for ORDERS:

- 1. THAT leave be granted to the Applicant to be admitted in the Petition herein that was filed in Court on the 20<sup>th</sup> February 2013 as *Amicus Curiae*;
- 2. THAT that *Amicus Curiae* be granted an opportunity to submit written and oral arguments and any other relevant information on the Petition.
- 3. THAT there be no cost in relation to this Application.

**WHICH APPLICATION** is based on the Certificate of Urgency filed herewith and the Affidavit of CARLA FERSTMAN also filed herewith and upon further and other grounds and reasons to be adduced at the hearing hereof including the following:

- 1. The Petition will call for the Court’s interpretation of the positive and negative duties of the State under international human rights law relevant to the Petition, including the international conventions and treaties referenced by the Petitioners;

2. The Court may also find assistance in its interpretive task by referring to applicable comparative jurisprudence on the issues raised by the Petition;
3. REDRESS has extensive expertise and experience on the above matters and is in a position to assist the Court by providing submissions specifically addressing those issues;
4. The submissions by REDRESS (if admitted as *Amicus Curiae*) would address the international legal framework, including conventions, treaties and general principles, as well as international and regional jurisprudence and, where applicable, comparative jurisprudence on the following issues:
  - (i) obligations of the State of Kenya to prevent and respond to sexual and gender-based violence by state and non-state actors, with a focus on the obligation to provide reparation;
  - (ii) mechanisms and measures employed by courts and other bodies to afford reparation for sexual and gender-based violence.
5. The present case is of immense public interest in relation to the interpretation of various international general rules and conventions, all of which REDRESS has considerable expertise on, and which are relevant to the fundamental rights and freedoms of victims of widespread violence within the country as guaranteed by the Constitution of Kenya.

DATED at NAIROBI this **30<sup>th</sup>** day of **July** 2014.

**SOWETO & COMPANY  
ADVOCATES FOR THE APPLICANT**

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**NB**

*If any party served does not appear at the time and place above mentioned such orders will be made and proceedings taken as the court may think just and expedient.*

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**SUPPORTING AFFIDAVIT**

I, CARLA **FERSTMAN** of care of REDRESS, 87 Vauxhall Walk, London SE11 5HJ, United Kingdom, do solemnly make oath and state as follows:

- 9. I am the Director of REDRESS the Applicant herein and I have authority to swear this affidavit on its behalf.
- 10. REDRESS was established on 10 December 1992 with the mission to seek justice for survivors of torture, to combat impunity of governments and individuals who perpetrate it, and to develop and promote compliance with international laws and standards.
- 11. REDRESS is a private company limited by guarantee and also registered as a charity in the United Kingdom. Annexed herewith and marked as **Exhibit “CF - 1”** is a copy of the Certificate of Registration and the Memorandum and Articles of Association.
- 12. REDRESS adopts a broad-based approach to advancing its goals through a combination of legal support and advocacy. Internationally, REDRESS works to ensure that victims’ rights are recognized and protected by international treaties and that the institutions charged with interpreting these treaties do so with the aim of promoting justice for survivors. Examples of areas and work that

REDRESS has been involved in include: the drafting of the United Nations *Basic Guidelines on the Rights to Remedy and Reparation for Victims of Gross Violation of International Human Rights Law and Serious Violation of International Humanitarian Law*, adopted by the United Nations General Assembly in 2005; the drafting of the United Nations Committee Against Torture's *General Comment No. 3 on Article 14 (Right to Redress)*, adopted in 2012; involvement as a member of the Working Group on drafting the *International Protocol on International Protocol on the Documentation and Investigation of Sexual Violence in Conflict*, published in June 2014 as part of the United Kingdom's G8 Preventing Sexual Violence Initiative; and facilitating the International Criminal Court Victims' Rights Working Group (VRWG), a network of over 300 national and international civil society groups and experts that works to ensure that victims' rights are effectively protected and respected throughout the International Criminal Court's judicial process.

13.I have an LL.B. from the University of British Columbia and an LL.M. from New York University and am working to complete a DPhil at the University of Oxford. I have published and am a regular commentator on victims' rights, the International Criminal Court and the prohibition against torture.

I was called to the Bar in British Columbia, Canada in 1994 and practiced there as a criminal law barrister. I have also worked with the UN High Commissioner for Human Rights on legal reform and capacity building in post-genocide Rwanda, with Amnesty International's International Secretariat as a legal researcher on trials in Central Africa, and as Executive Legal Advisor to Bosnia and Herzegovina's Commission for Real Property Claims of Displaced Persons and Refugees (CRPC).

In 2012/13, while on sabbatical from REDRESS, I was a Jennings Randolph Senior Fellow at the United States Institute of Peace.

14.REDRESS is also staffed with other lawyers and legal experts who have wide ranging expertise on International Criminal Law and International Human Rights Law.

15. REDRESS has appeared as counsel or *amicus curiae* in several leading cases before international human rights bodies, such as the United Nations Human Rights Committee; regional human rights bodies, such as the European Court of Human Rights, both the Inter-American Court and Commission on Human Rights and the African Commission on Human and Peoples' Rights; international and hybrid criminal courts such as the International Criminal Court and the Special Court for Sierra Leone; and national courts, including the House of Lords in the United Kingdom, the Court of Appeal of England and Wales, the Québec Court of Appeal, as well as the Supreme Court of the United States and Canada.

### **REDRESS' Intended Contribution to the Petition**

16. REDRESS recognizes that Articles 2(5) and (6) of the Constitution of Kenya 2010 sets down that the general rules of international law and any treaty or convention ratified by Kenya shall form part of the law of Kenya. The Court therefore must interpret the positive and negative duties of the State under international human rights law relevant to the above Petition, including the international conventions and treaties referenced by the Petitioners. The Court may also find assistance in its interpretive task by referring to applicable comparative jurisprudence.

17. Given its extensive expertise and experience, REDRESS is in a position to assist the Court by providing submissions specifically addressing these issues.

18. The submissions by REDRESS (if admitted as *Amicus Curiae*) would therefore address the international legal framework, including conventions, treaties and general principles, as well as international and regional jurisprudence and, where applicable, comparative jurisprudence on the following issues:

- (iii) obligations of the State of Kenya to prevent and respond to sexual and gender-based violence by state and non-state actors, with a focus on the obligation to provide reparation;
- (iv) mechanisms and measures employed by courts and other bodies to afford reparation for sexual and gender-based violence.

19. The present case is of immense public interest in relation to the interpretation of various international general rules and conventions, all of which REDRESS has considerable expertise on, and which are relevant to the fundamental rights and freedoms of victims of widespread violence within the country as guaranteed by the Constitution of Kenya.

20. No prejudice whatsoever shall be occasioned to any party to these proceedings if the REDRESS is enjoined herein as *Amicus Curiae*.

21. What is stated herein is true to my own knowledge, save as to matters deposed to on information and belief, the sources and grounds whereof have been set out and disclosed.

**SWORN IN LONDON** )  
By the said **CARLA FERSTMAN** ) \_\_\_\_\_  
This **30<sup>th</sup>** day of **July** 2014 ) **DEPONENT**  
**BEFORE ME** )  
)  
)  
)  
)  
**NOTARY PUBLIC** )

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