REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

HCCHRPET E228 OF 2023

KENYA HUMAN RIGHTS COMMISSION ....1ST PETITIONER

KATIBA INSTITUTE ....2ND PETITIONER

THE INSTITUTE FOR SOCIAL ACCOUNTABILITY (TISA)..3RD PETITIONER

TRANSPARENCY INTERNATIONAL KENYA ....4TH PETITIONER

INTERNATIONAL COMMISSION OF JURIST – KENYA (ICJ KENYA.................................. 5TH PETITIONER

SIASA PLACE…….. …...6TH PETITIONER

TRIBELESS YOUTH ....7TH PETITIONER

VERSUS

NATIONAL ASSEMBLY...1ST RESPONDENT

ATTORNEY-GENERAL... 2ND RESPONDENT

LAW SOCIETY OF KENYA…………………INTERESTED PARTY

Petition

1. Introduction

1. This petition concerns the constitutional validity of the Finance Act, 2023 passed by the National Assembly on 21 June 2023 and assented to by the President on 26 June 2023.

2. The Parties

2.1. The Petitioners

2. Kenya Human Rights Commission (KHRC), the 1st Petitioner, is a non-governmental organization whose objectives include promoting human rights and fundamental freedoms, good governance, and democracy.

3. 2nd Petitioner, Katiba Institute is a constitutional research, policy, and litigation institute formed to further the implementation of Kenya's 2010 Constitution.

4. The Institute for Social Accountability (TISA), 3rd Petitioner, seeks to support active and meaningful citizen engagement by enhancing the effectiveness of transparency, accountability, and participation in governance processes.

5. Transparency International Kenya, the 4th Petitioner, is a not-for-profit organisation founded in 1999 to develop a transparent and corruption-free society through good governance and social justice.

6. Founded in 1952, the International Commission of Jurists-Kenya (ICJ Kenya), the 5th Petitioner, is an international, non-partisan, and non-profit registered professional society with long-established and well-recognised expertise in the rule of law.

7. Amnesty International Kenya, the 6th Petitioner, is a non-governmental organisation registered in Kenya in 2012 engaged in strategic legislative and policy advocacy.

8. Siasa Place, the 7th Petitioner, promotes the peoples participation in democratic processes through research, trainings, civic education, networking and strategic partnerships.

9. Tribeless Youth, the 8th Petitioner, is a youth initiative established in 2016 in Nakuru County to promote peaceful coexistence among the youth in Kenya.

2.2. Interested Parties

10. Law Society of Kenya, the 3rd Petitioner, is a legal person founded by section 4 of the Law Society of Kenya (LSK) is founded by section 4 of the Law Society of Kenya Act, 2014. Section 4 requires LSK to 'uphold the Constitution of Kenya and advance the rule of law and administration of justice' and to 'protect and assist' the public in Kenya in legal matters.

2.3. The Respondents

11. The 1st Respondent is the National Assembly of the Republic of Kenya, while the 2nd Respondent is the Attorney-General of the Republic of Kenya.

3. Statement of Standing and Jurisdiction

12. This court has jurisdiction under Article 165(3) to test the constitutionality of any law.

4. Facts Supporting the Petition

13. The World Bank's Kenya Economic Update June 2023 indicates Kenya's 2022 economic growth momentum was not only affected by the multiple challenges experienced in the year, but also that the **cost of living** also rose due to surging inflation. The World Bank records:

> Multiple challenges loomed over the economy's growth momentum and raised **cost of living**. Inflation surged to multi-year highs in 2022 in the wake of **rising world food and fuel prices** caused by global supply chain disruption and the Russian invasion of Ukraine. On top of that, the adverse weather shock experienced by the East African countries in the form of the worst drought in four decades not only aggravated the inflationary pressures but also **subjected millions of people to severe food insecurity and loss of livelihoods**. The shilling remained under pressure throughout 2022 as major central banks set on a tightening cycle and Kenya's official foreign exchange reserves started to deplete in the context of high external financing needs amid difficulty of access to international capital markets.

14. Accordingly, the **cost of living** is a recurrent theme in the Budget Policy Statement, 2023. The Budget Policy Statement is statutorily underpinned by section 25 of the Public Finance Management Act, 2012 and is formulated as part of the National Treasury's Article 225(1) financial control mandate. The 2023 Policy acknowledges a 'backdrop of global economic slowdown underpinned by the ongoing Russia-Ukraine conflict, elevated global inflation, the lingering effects of the COVID-19 pandemic, and persistent supply chain disruptions and the drought effects that have created **urgency on food security** and climate change effects'.

15. Acknowledging the resulting impact on the lives and livelihoods of Kenyans, the BPS states:

> Food inflation remained the main driver of overall year-on-year inflation in January 2023, contributing 5.2 percentage points, an increase, compared to a contribution

> of 3.2 percentage points in January 2022 (Figure 2.3). The increase was mainly attributed to relatively higher prices of key food items particularly cowpeas, maize grain (loose), beans, potatoes (Irish), green grams, and mangoes.

16. The Policy further states:

> Fuel inflation also increased to contribute 2.4 percentage points to year-on-year overall inflation in January 2023 from a contribution of 1.4 percentage points in January 2022. This was mainly driven by increases in electricity prices due to higher tariffs and increased prices of kerosene/paraffin, diesel and petrol on account of higher international oil prices and scaling down of the fuel subsidy.

17. Thus, under the theme of Agricultural Transformation and Inclusive Growth, the Budget Policy Statement, 2023 recommends:

> Cost of living. The cost of living can only be resolved by raising agricultural productivity. The battle is between farmers needing higher incomes and consumers who want low prices. Food accounts for 54 percent of household expenditures but poor households spend more than 60 percent.
>
> Ending poverty: Extreme poverty and vulnerability is also an agricultural phenomenon. Support to farmers to raise productivity would not only enable 4 2023 Budget Policy Statement them to feed themselves, but also generate a surplus that contributes to national food security and the economy.

18. Despite these concerns in June, the National Assembly passed, and the President assented to the Finance Act, 2023, imposing onerous tax burdens on Kenyans amidst the rising cost of living and a global economic recession. The Finance Act, 2023 comprises 159 pages and substantively amends the following 12 Acts:

- Income Tax Act, Cap 470
- Value Added Tax Act, 2013
- Excise Duty Act, 2015

- Tax Procedures Act, 2015
- Miscellaneous Fees and Levies Act, 2016
- Betting, Gaming and Lotteries Act, 1991
- Kenya Roads Board Act, 1999
- Kenya Revenue Authority Act, 1995
- Employment Act, 2007
- Unclaimed Financial Assets Act, 2011
- Statutory Instruments Act, 2013
- Retirement Benefits (Deputy President and Designated State Officers) Act, 2015

19. During the public hearings between 22-26 May 2023, many Kenyans protested the onerous and inequitable tax measures in the Bill citing the high **cost of living**. Only the additional benefits to the children of the retired Deputy President were part of the Bill. The additional retirement benefits for the children of selected retired state officers (other than a Deputy President) were not part of the Bill, so the public could not comment on them.

20. No one disputes that the National Assembly passed the Bill without the concurrence of the Senate. At a minimum, no one can dispute that those aspects of the Act concerning county government functions were passed without the concurrence of the Senate.

21. In July 2023 report to the House, Auditor General Nancy Gathungu stated that the country has no sufficient records of the State's public debt.

5. Legal Basis for the Petition

22. The Petition contests the constitutionality of the Finance Act 2023 amendments, contending that those amendments violate the Constitution.

5.1. Constitution of Kenya 2010 0726252609 5/654

23. The Preamble to the Constitution of Kenya 2010 proclaims the aspiration of Kenyans for a government based on the essential values of human rights, equality, freedom, democracy, **social justice**, and the rule of law.

24. The concept of popular sovereignty expressed in Article 1(1) of the

Constitution places all sovereign power in the people of Kenya to be exercised only under the Constitution, including directly by the people.

25. Under Article 2, the Constitution is the supreme law of the land, and it binds all per- sons and all State organs at both levels of government. No person may claim or exercise State authority except as authorised under the Constitution.

26. Article 3 of the Constitution requires the Respondents, like all Kenyans and State organs, to respect, uphold and defend the Constitution.

27. Article 4 establishes Kenya as a sovereign Republic and a multi-party democratic State founded on the national values and principles of governance in Article 10.

28. The national values and principles of governance listed in Article 10 bind all state organs and everyone who applies or interprets the Constitution or any law or performs any public duty. The national values and principles of governance pertinent to this Petition include: the rule of law, democracy, the participation of the people, equity, social justice, good governance, integrity, transparency, and accountability.

29. Nevertheless, as the list of national values and principles of governance under Article 10 is inclusive rather than closed, the Petitioner contends that free and fair elections form part of the national values and principles of governance under Article 10.

30. Article 22 and 258 creates a right for everyone to access courts whenever they have a dispute that is amenable to adjudication by the Courts. Article 48 guarantees the right to access to justice. Article 50(2)(e) grants a right to accused persons to have their trial begin and conclude without unreasonable delay.

31. Article 35(3) requires the State to publish and publicise any important information affecting the nation.

32. According to Article 201, the following principles of public finance must 'guide all aspects of public finance' in Kenya:

(a) there shall be openness and accountability, including public participation in financial matters;

(b) the public finance system shall promote an equitable society, and in particular—

(i) the burden of taxation shall be shared fairly;

(ii) revenue raised nationally shall be shared equitably among national and county governments; and

(iii) expenditure shall promote the equitable development of the country, including by making special provision for marginalised groups and areas;

(c) the burdens and benefits of the use of resources and public borrowing shall be shared equitably between present and future generations;

(d) public money shall be used in a prudent and responsible way; and

(e) financial management shall be responsible, and fiscal reporting shall be clear.

33. Article 260 of the Constitution defines the following terms:

a. public officer: (a) any State officer; or (b) any person, other that a State Officer, who holds a public office; and

b. public office: an office in the national government, a county government or the public service, if the remuneration and benefits of the office are payable directly from the Consolidated Fund or directly out of money provided by Parliament.

5.2. International Law

5.2.1. UN Declaration on the Right to Development

34. The UN Declaration on the Right to Development requires that States formulate national development policies that **equitably** improve 'the well-being of the entire population and of all individuals' (Article 2(3)); create 'national and international conditions favourable to the realization of the right to development' and take 'appropriate economic and social reforms to eradicate all social injustices' (Article 8).

5.2.2. Guiding Principles on Extreme Poverty and Human Rights

35. Under the Guidelines, fiscal policies, including those concerning revenue collection, budget allocations and expenditure, must comply with human rights standards and principles, particularly equality and non-discrimination.

5.3. Acts of Parliament

36. Section 3(a) of the Public Finance Management Act, 2012 restates the object that public finances are managed at both the national and the county levels of government must be managed in accordance with the principles of the Constitution. Under section 6, the PFM prevails over other legislation in the case of any inconsistency with another Act on raising revenue and making expenditures.

5.4. Statutory Instruments and Standing Orders

37. Section 120 of the Standing Orders of the National Assembly requires that a Finance Bill requires that only seven days pass between the publication of the Bill in the Gazette.

38. Section 127(1) of the Standing Orders states that bills designated as Finance Bills may not be referred to Committees other than the [Finance Committee], even if the Finance Bill proposes 'to amend more than one statute in its principal provisions' that would be relevant to those other committees.

39. Section 127(3) of the Standing Orders of the National Assembly requires the Committee to 'take into account the views and recommendations of the public… in its report to the House'.

40. Section 245 of the Standing Orders state that:

> (1) Following the submission of the legislative proposal by the Cabinet Secretary under Standing Order 244C (Pronouncement of the Budget highlights and Revenue raising measures), the Departmental Committee of Finance and National Planning shall introduce the National Assembly the Finance Bill in the form in which the Bill was submitted as a legislative proposal by the Cabinet Secretary, together with the report of the Committee on the Bill.

(2) Any of the recommendations made by the Committee or adopted by the National Assembly on revenue matters shall –

(a) ensure that the total amount of revenue raised is consistent with the approved fiscal framework and the Division of Revenue Act;

(b) take into account the principles of equity, certainty and ease of collection;

(c) consider the impact of the proposed changes on the composition of the tax revenue with reference to the direct and indirect taxes;

(d) —consider domestic, regional and international tax trends;

(e) consider the impact on development, investment, employment and economic growth;

(f) take into account the recommendations of the Cabinet Secretary as provided under Article 114 of the Constitution; and

(g) take into account the taxation and other tariff agreements and obligations that Kenya has ratified, including taxation and tariff agreements under the East African Community Treaty.

(3) The recommendations of the Cabinet Secretary in paragraph (2)(f) shall be included in the report and tabled in the National Assembly.

(4) Not later than 30th June each year, the National Assembly shall consider and pass the Finance Bill with or without amendments.

6. Violations of the Constitution and the Law

6.1. Retrogressive tax measures

41. Articles 10, 21(3), and 201 require tax measures to be socially just, adequate, equitable, and progressive. However, the tax measures in the Finance Act 2023 are retrogressive, do not assess the potential human rights impacts, and

endanger the lives and livelihoods of the most vulnerable groups amidst the rising cost of living. The tax measures also disproportionally favour taxing wages and indirect consumption taxes (on food and fuel) instead of capital and direct taxes on property. Thus, the Finance Act 2023 disproportionately shifts the tax burden to the poor and marginalized in a manner that violates Article 201(b)(i), requiring the public finance system to promote an equitable society in which the burden of taxation is shared fairly.

6.2. Absence of opportunity for balanced influence from the public during public participation

42. The tax measures in the Finance Act 2023 are also unconstitutional and violate Articles 1, 10, 118, and 201 for denying the public a single opportunity for balanced influence on the Bill. Instead, the National Assembly ignored the bulk of public comments to lower the cost of living instead of increasing the tax burden.

43. Again, for many comments. the Report simply states, 'The Committee rejected the proposal by the Stakeholder' without providing any substantive reason for the rejection. A case in point is the rejection of Okoa Uchumi's comments to clauses 5(b)(fa) and 12(b)(iii), marked simply as 'rejected'. The Report ignores other Okoa Uchumi comments on clauses: 2(b), 6, 12(b)(ii), 20(a), (b) & (c), 24(b)(i), (v), (x) & (xi), 28, 29, 33(a)(iv), 33(a)(iii), (xvii), (xxx), (xix), 36, 43(a)(iv), 43(b)(iii), 43(c)(ii), 50, 54(b), 59, 67, 68, 70, 72, 76, 81, 82.

6.3. Specific violations

44. The amendment to section 5 of the Income Tax Act, Cap 470, by section 5 of the Finance Act, 2023 (exempting milage from taxation) is unconstitutional. The exemption violates Articles 210(3)(a) and (b), which forbid any law from excluding or authorising the exclusion of State officers from paying tax because of the office or the nature of their work. Moreover, since other employees are not exempted from taxation on their travelling allowance, the exemption of milage from tax violates Article 201(b)(i) in failing to distribute tax burdens fairly and Article 27 for disproportionately benefiting those likely to be paid mileage.

45. The amendment to section 5 of the Income Tax Act, Cap 470, by section 5

of the Finance Act, 2023 (exempting milage from taxation) is unconstitutional. The exemption violates Article 210(3)(a) and (b) forbidding any law from excluding or authorising the exclusion of State officers from paying tax because of the office or the nature of their work. Moreover, since other employees are not exempted from taxation on their travelling allowance, the exemption of milage from tax violates Article 201(b)(i) in failing to distribute tax burdens fairly and Article 27 for disproportionately benefiting those likely to be paid mileage.

46. Paragraph 1 of the Third Schedule to the Income Tax Act, as amended by the Finance Bill, violates Article 201(b)(i) because it poses a greater *actual* burden on lower wage earners.

47. The amendment to section 17 of the Value Added Tax Act, 2013 (treating compensation for the loss of a taxable supply as VAT taxable) by section 33 of the Finance Act, 2023 is unconstitutional. The amendment violates Articles 40 on the right to property besides Articles 10 and 201 for promoting double taxation.

48. The amendment to Paragraph 10 of the Third Schedule to the Income Tax Act (reducing tax on rental income from 10% to 7.5%) by section 26(b)(x) of the Finance Act, 2023 is unconstitutional for reducing capital and direct taxes (rental income) from 10% to 7.5% while increasing taxes on wages and indirect consumption taxes (on food and fuel). In the circumstances, the amendment violates Articles 10, 21(3), and 201 requiring tax measures to be socially just, adequate, equitable, and progressive.

49. Thus, the Finance Act 2023 disproportionately shifts the tax burden to the poor and marginalized in a manner that violates Article 201(b)(i), requiring the public finance system to promote an equitable society in which the burden of taxation is shared fairly. Increased taxes on wages and indirect consumption taxes disproportionately hit people with lower incomes hardest since any money that poorer people spend on items subject to these taxes will generally make up a larger share of their overall budgets than high-income people. The Respondents propose no affirmative action measures to mitigate the increased **cost of living** for the most vulnerable due to these taxes,

contrary to Articles 10, 21(3), and 201 of the Constitution.

6.3.1. VAT on malaria diagnostic testing kits

50. The amendment to section A part I of the First Schedule to the Value Added Tax Act, 2013 by section 37 of the Finance Act, 2023 (reversing the VAT zero rating for malaria diagnostic testing kits tariff 3002.11.00) is unconstitutional and violates the right to health and life of women and children under Article 26 and 43 of the Constitution. Malaria infection in pregnancy is a significant public health concern, with considerable morbidity and mortality endangering at least 1 million pregnant Kenyan women annually. Second, the measure further violates the state's obligation under Article 21(2) to take legislative, policy and other measures, including setting standards, to achieve the progressive realisation of the right to health under Article 43. Third, the measure violates the State's obligations under Article 21(3) to address the needs of vulnerable groups within society, including women, older members of society, and children in the malaria-endemic regions of Kenya.

6.3.2. VAT on milk specially prepared for infants and immunological products

51. The amendment to section A part I of the First Schedule to the Value Added Tax Act, 2013 by section 37(a)(iii) of the Finance Act, 2023 (removing VAT exemption for milk specially prepared for infants tariff '0402.29.10' and antisera, blood fractions, and immunological products tariff numbers, '3002.19.00') threatens the right to health and life of children under Article 26 and 43 of the Constitution. Second, the measure further violates the state's obligation under Article 21(2) to take legislative, policy and other measures, including setting standards, to achieve the progressive realisation of the right to health under Article 43. Third, the measure violates the State's obligations under Article 21(3) to address the needs of vulnerable groups within society, including women, older members of society, and children in the malaria-endemic regions of Kenya.

6.3.3. VAT on vaccines for human medicine and vaccines for veterinary medicine

52. The amendment to section A part I of the First Schedule to the Value Added

Tax Act, 2013 by section 37(a)(iii) of the Finance Act, 2023 (deleting vaccines for human medicine 3002.20.00 and vaccines for veterinary medicine tariff number 3002.30.00) threatens the right to health and life under Article 26 and 43 of the Constitution. The removal of the exemption on VAT on vaccines for veterinary medicine tariff number 3002.30.00 further threatens the right to life and livelihoods both from livestock losses to disease and from the consumption of diseased animals or cross-infection of humans with zoological diseases. The measure further violates the State's obligations under Article 21(3) to address the needs of vulnerable groups within society, including the marginalised pastoralist communities. Besides, the measure is discriminatory because other categories of farmers have their inputs zero-rated; thus, the burdens of taxation are contrary to Article 201(1)(a) and not equally distributed.

6.3.4. Vaccines for human medicine

53. The amendment to section A part I of the First Schedule to the Value Added Tax Act, 2013 by section 37(a)(iii) of the Finance Act, 2023 (deleting vaccines for human medicine 3002.20.00 and vaccines for veterinary medicine tariff number 3002.30.00) threatens the right to health and life under Article 26 and 43 of the Constitution. The removal of the exemption on VAT on vaccines for veterinary medicine tariff number 3002.30.00 further threatens the right to life and livelihoods both from livestock losses to disease and from the consumption of diseased animals or cross-infection of humans with zoological diseases. The measure further violates the State's obligations under Article 21(3) to address the needs of vulnerable groups within society, including the marginalised pastoralist communities.

6.3.5. VAT on renewable energy

54. The amendment deleting paragraph 66A of section A part I of the First Schedule to the Value Added Tax Act, 2013 (moving from exempt to zero-rated, liquefied petroleum gas and Bioethanol vapour (BEV) Stoves classified under HS Code 7321.11.00 (cooking appliances and plate warmers for liquid fuel) by section 37(a)(iii) of the Finance Act, 2023 threatens the right to a clean and healthy environment. The equivalent amendment to section B of the Second Schedule to the Miscellaneous Fees and Levies Act, 2016 (inserting

Bioethanol vapour (BEV) Stoves classified under HS Code 7321.11.00 (cooking appliances and plate warmers for liquid fuel) by section 73 of the Finance Act, 2023 is equally unconstitutional.

6.3.6. **Housing Fund**

55. The amendment to Section 31B of the Employment Act, by Section 84 of the Finance Act, 2023 (to create a mandatory affordable housing fund), is unconstitutional. First, the amendment violates Article 10 on the rule of law for defying subsisting court orders. Second, imposing a blanket housing levy of 1.5 per cent from each employee's income is directly discriminatory and violates Articles 27 and 201 because non-employment income is left untouched so that the burden of taxation is not shared fairly. Third, contrary to Article 27, imposing a mandatory uniform deduction indirectly discriminates against those already owning homes, paying mortgages, the uninterested, and low-income earners. Fourth, the mandatory contribution to a housing scheme violates the right to property under Article 40 by compelling choice and by forcing people to contribute a benefit to others. Fifth, the amendment is vague and overbroad as to the meaning of employee; it would compel remote or foreign employees with no interest in housing in Kenya to contribute to the scheme. Sixth, the amendment usurps county functions and was, at any rate, not passed by the Senate though county housing is a county government function. Seventh, the amendment, although substantive, was contained in a miscellaneous amendment without sufficient capacity for public participation.

6.3.7. **Statutory Instruments Act**

56. Sections 88 and 89 of the Finance Act, 2023, amending the Statutory Instruments Act, 2013 (by deleting the heading to Part V and substituting the heading, 'Part V – Purpose for Review of Statutory Instruments' and repealing section 21) are unconstitutional. First, the amendment is not a money Bill, but is contained in a money Bill and is therefore unconstitutional under Article 114(1). Second, the amendment has nothing to do with the Memorandum of Objects in the Bill or the Act's long title (amend the laws relating to various taxes and duties), contradicting the rule of law requiring normative precision.

6.3.8. Children of entitled retired State officers

57. Section 5(1)(f), 5A, 5B, and 6 of the Retirement Benefits (Deputy President and Designated State Officers) Act, 2015 5(1) as amended by sections 96, 92, 93, 94, and 95 of the Finance Act, 2023 (extending the medical cover for retired Speakers of Parliament, Chief Justice, Deputy Chief Justice, Prime Minister from their 'spouse' to their 'spouse, children below eighteen years or are under twenty-five years of age and are undergoing a course of full-time education, and in the case of female children are not married or cohabiting with any person') is unconstitutional. These amendments were not part of the Bill and therefore did not form part of the public participation package despite Articles 10 and 201(1)(a) demanding public participation in financial matters.

58. Section 7 of the Retirement Benefits (Deputy President and Designated State Officers) Act, 2015 5(1) as amended by section 96 of the Finance Act, 2023 (extending the medical cover for a retired Deputy President and their 'spouse' to a retired Deputy President's 'spouse, child who is below eighteen years or is under twenty-five years of age and is undergoing a course of full-time education, and in the case of a female child is not married or is not cohabiting with any person') is unconstitutional.

59. First, contrary to Article 27 of the Constitution, these amendments discriminate against the children of other state officers to whom no similar benefit extends. Second, the amendments expand the burden on taxpayers to provide medical cover to the retired state officer's children for that retired State officer's lifetime, constituting an insensitive, imprudent, and irresponsible use of public money under Article 10 and Article 201(1)(d) of the Constitution. The amendments are also inconsistent with the national values of good governance for expanding the public wage bill during an economic recession.

60. Then, these amendments are not money Bill amendments but are contained in a money Bill and are therefore unconstitutional under Article 114(1).

6.3.9. Liquor control: a county function

61. The amendment to section 31 of the Alcoholic Drinks Control Act 2010, by section 86 of the Finance Act, 2023 (to control liquor pricing), is

unconstitutional. First, the amendment concerns county functions but was made without engaging the Senate. Second, the amendment infringes county functions because liquor licensing is a county function under para 4(c) of the Fourth Schedule to the Constitution.

6.3.10. Bill concerning county government

62. In so far as the Finance Act 2023 amends legislation concerning county functions (like liquor licensing and county housing) but was not passed by the Senate, the entire Act is unconstitutional and invalid.

6.3.11. Money Bills

63. Overall, the Finance Act 2023 is invalid for containing items (like housing, retirement benefits, and statutory instruments) outside the money Bill issues under Article 114(1) of the Constitution. That Article prohibits a money Bill from containing anything besides: taxes; the imposition of charges on a public fund or the variation or repeal of any of those charges; the appropriation, receipt, custody, investment or issue of public money; the raising or guaranteeing of any loan or its repayment; or matters incidental to any of those matters.

7. Relief Requested

64. The Petitioners pray for the declarations and orders below:

1. A declaration that the Finance Act, 2023 is unconstitutional.
2. A declaration that Articles 10, 21(3), and 201 require tax measures to be socially just, adequate, equitable, and progressive and must not disproportionately shift the tax burden to the poor and marginalized.
3. A declaration that Article 109(5) only limits the introduction of money Bills to the National Assembly but does not preclude debate by the Senate if a money Bill concerns county governments.
4. A declaration that principles of openness and accountability, public participation, and sustainable development guaranteed under Articles 10(2)(a), (c) & (d), and 201(a) of the Constitution require that the State disclose information regarding public debt during public participation on

public finance bills.

5. A declaration that information regarding public debt is important information that must be published or publicised by the State under Article 35(3) of the Constitution.

6. A structural interdict directing the Respondents to conduct a human rights impact assessment of the tax measures proposed to fund the 2023 budget.

7. A structural interdict directing the Respondents to immediately disclose information regarding the public debt.

8. A permanent injunction barring the Respondents from imposing any tax without conducting a human rights impact assessment of that tax measure under Articles 10, 21(3), and 201 of the Constitution.

9. A permanent injunction barring the Respondents from passing any bills regarding public finance without first disclosing updated and comprehensive information regarding the State's public debt.

Date 04 July 2023, Nairobi.

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To be served on

National Assembly

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