

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA IN NAIROBI**  
**HCCHRPET/E...../2024**

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In the matter of:	The Preamble of the Constitution of Kenya, 2010
In the matter of:	The violations of 1, 2(1) & (4), 3(1), 10, 19, 20, 21(1) (3) & (4), 22(1) & (2)(a), 23(1) & (3), 24, 36, 47, 73, 165(3)(a) & (b), 258(1) & (2), 259(1) of the Constitution of Kenya, 2010
In the matter of:	The violations of Sections 3(f), 4(1), 5(2)(e), 6(2)& (4), 7(b), 18, 34, 42(1)(a) and (h), 63, 66(1) and 69 of the Public Benefit Organisations Act No. 18 of 2013

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KENYA HUMAN RIGHTS COMMISSION ..... 1ST PETITIONER  
 THE INSTITUTE FOR SOCIAL ACCOUNTABILITY..... 2ND PETITIONER  
 TRANSPARENCY INTERNATIONAL..... 3RD PETITIONER  
 NATIONAL COALITION FOR HUMAN RIGHTS DEFENDERS KENYA ..... 4TH PETITIONER  
 THE AFRICA CENTRE FOR OPEN GOVERNANCE (AFRICOG)..... 5TH PETITIONER

VERSUS

PUBLIC BENEFITS ORGANIZATION .....  
 REGULATORY AUTHORITY ..... 1ST RESPONDENT  
 HON MWAMBU MABONGAH..... 2ND RESPONDENT  
 LINDON NICOLAS ..... 3RD RESPONDENT

AND

LAW SOCIETY OF KENYA ..... 1ST INTERESTED PARTY  
 INTERNATIONAL COMMISSION OF JURISTS-KENYA ..... 2ND INTERESTED PARTY

**TO: THE HIGH COURT OF KENYA**

**PETITION**

**A. Introduction**

1. Around 15 July 2024, state officials began a rhetorical campaign claiming that civil society organizations were funding the recently emerging movement of young Kenyans, commonly referred to as Gen Z, who are seeking greater accountability for the use of public resources, the exercise of public power, an end to egregious corruption, and the high cost of living compounded by high taxation.
2. The Respondents, in support of and furthering this rhetoric, issued a press release dated

22 July 2024 and posted on their X social media account (formerly Twitter), in which they claimed the Petitioners were not lawfully registered to carry out activities of benefit to the general public. Hence, they were operating illegal bank accounts, holding funds, and running projects that could not be accounted for.

3. Based on this determination of the Petitioners' legal status, the Respondents indicated that they had forwarded these and other public benefit organisations to the Directorate of Criminal Investigations (DCI) for investigation.
4. The Petitioners claim that the Respondents are in complete disobedience of the Constitution and the Public Benefits Organisations Act 2013 (PBO Act) through their actions. In the disguise of minimizing the evidently widespread nature and popularity of the Genz protests, state agencies have labelled reputable civil society organisations as financiers and supporters of violence, rhetoric that not only injures the reputation of these organisations but is also a threat to the Petitioners' right to freedom of association under Article 36 of the Constitution and the right to fair administrative action under Article 47 of the Constitution.

## **B. The Parties**

### **The Petitioners**

5. The 1st Petitioner, Kenya Human Rights Commission (KHRC), formerly registered under the Non-Governmental Organisations Coordination Act 1990, is a public benefit organisation whose objectives include promoting human rights and fundamental freedoms, good governance, and democracy.
6. The 2nd Petitioner, The Institute for Social Accountability (TISA), is registered as a trust, and it seeks to support active and meaningful citizen engagement by enhancing the effectiveness of transparency, accountability, and participation in governance processes.
7. The 3rd Petitioner, Transparency International Kenya, is registered as a company limited by guarantee, and is a not-for-profit organisation that seeks to develop a transparent and corruption-free society through good governance and social justice.
8. The 4th Petitioner, the National Coalition of Human Rights Defenders in Kenya, is a national membership organization that champions the safety, security and wellbeing of human rights defenders. It is registered as a trust.

9. The 5th Petitioner, Africa Centre for Open Governance (AFRICOG), is a company limited by guarantee and is a not-for-profit organisation founded in 2007 to provide cutting edge research and monitoring on governance and public ethics in both public and private sectors so as to address the structural causes of the crisis of governance in Kenya.

### **The Respondents**

10. The 1<sup>st</sup> Respondent is a regulatory authority established under section 34 of the Public Benefits Organization (PBO) Act, No. 18 of 2013. It has the power to register and deregister PBOs operating in Kenya and to institute inquiries to determine whether PBOs' activities do not comply with the Act.
11. The 2<sup>nd</sup> Respondent is the Chairman of the PBO Regulatory Authority, whose composition is provided for under section 35 of the PBO Act. He is sued in his personal and official capacity for his actions regarding the press release dated 22 July 2024.
12. The 3<sup>rd</sup> Respondent is the Acting Director/CEO of the PBO Regulatory Authority. He is sued in his personal and official capacity for his actions regarding the press release dated 22 July 2024.

### **The Interested Parties**

13. The 1<sup>st</sup> Interested Party is the Law Society of Kenya (LSK). LSK is mandated by Section 4 of the Law Society of Kenya Act 1962, to assist the government and the courts in matters relating to legislation and the administration of justice. It is also required to uphold the Constitution of Kenya and advance the rule of law and the administration of justice.
14. The 2<sup>nd</sup> Interested Party is the International Commission of Jurists—Kenya Section (ICJ), a non-governmental, non-profit, and membership organization registered as a society. It is a premier human rights organization promoting a just, free, and equitable society.

### **C. Statement of standing and jurisdiction**

15. The Petitioners institute this petition on the strength of Article 3(1) of the Constitution, which states that every person has an obligation to respect, uphold, and defend the

Constitution of Kenya 2010.

16. The Petitioners are the persons envisaged under Articles 22 and 258 of the Constitution, that gives every person the right to approach this Honourable Court and institute court proceedings, claiming that the Constitution has been contravened or is threatened with contravention.
17. The Petition is also brought pursuant to Article 258(2)(c) of the Constitution, which states that in addition to a person's action in their own interest, court proceedings under clause (1) may be instituted by a person acting in the public interest.
18. Under Article 165(3)(d)(i) and (ii) of the Constitution of Kenya, the High Court has jurisdiction to hear any question respecting the interpretation of this Constitution, including the determination of the question whether any law is inconsistent with or in contravention of this Constitution and whether anything said to be done under the authority of this Constitution or any law is inconsistent with, or in contravention of, the Constitution.

#### **D. Facts**

19. From 18 June 2024, young Kenyans, aggrieved by a poorly performing economy and the state of governance in the country, launched online and physical protests around the country. The protests, which began against the proposed imposition of more taxation through the Finance Bill 2024, morphed to include other governance issues such as egregious corruption, a captured Parliament, improper appointments to state office, and improper use of state power and resources. These are facts that the Court should take judicial notice of.
20. Sometime in early July 2024, state officials began a rhetorical campaign claiming that civil society organizations were funding this emerging accountability movement of young Kenyans, commonly referred to as Gen Z.
21. On 15 July 2024, the President of the Republic of Kenya, HE William Ruto, while attending a public rally in Nakuru, made a statement that the Ford Foundation was

- sponsoring violence, anarchy, and chaos in the country by financing the Genz protests.
22. The President claimed, “If they are going to sponsor violence in Kenya, if they are going to sponsor anarchy, we are going to call them out and tell them that they either style up or they leave.” On the same date, the President posted a message of similar tenor on his official X social media account(@WilliamsRuto).
  23. This accusation was strongly opposed by the Ford Foundation, which on 15 July 2024 released a statement on its official website ([www.fordfoundation.org](http://www.fordfoundation.org)) stating, “We did not fund or sponsor the recent protests against the finance bill and have a strictly nonpartisan policy for all of our grantmaking”.
  24. On 18 July 2024, Dr. Korir Singoei, the Principal Secretary for Foreign Affairs wrote a letter to the Ford Foundation alleging that the protests in Kenya had resulted in the loss of lives and destruction of property. In pertinent part, Dr. Singoei stated, “It is noteworthy that several of your grantees below mentioned received a total of US\$ 5.78 million... between April 2023 and May 2024 – with unexplained expedited funding amounting to US\$ 1.49 million... – over the last month alone. Deeply concerning is that most of the grantees have been at the centre of the Anti-finance Bill protests and the subsequent anarchic mobilizations that have sought to upend the peace and the security of the State”.
  25. He isolated 16 civil society organisations (including the Petitioners) and claimed that they were involved in attempts to “topple the country’s democratically elected and constitutionally sanctioned government under the guise of the right to demonstrate and assemble”. The Ford Foundation responded to this letter on 19 July 2024, once again through a statement on their official website stating, “Our grantmaking is transparent and readily available on our website”.
  26. Following the same trajectory, and seeming to endorse the content of the letter by Mr. Singoei, the PBO Regulatory Authority, the 1<sup>st</sup> Respondent, issued a media release on 22 July 2024. The media release referenced the letter by Dr. Singoei.
  27. Specifically, the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents signed a press release with the following

information in pertinent part, “[f]or clarity, the Authority wishes to state that out of the 16 organisations listed in the correspondence by [Dr. Singoei] only three (3) organisations are registered under the PBO Act, 2013, whereas the rest are registered by both the Registrar of Societies and Companies.”

28. The press release further noted that “the Authority has further forwarded to the DCI for further investigations PBOs that are currently in operation without obtaining the requisite registration, and yet the PBOs in question are receiving funding that they are not accountable for, running bank accounts that have not been authorized, and implementing projects that cannot be quantified or accounted for.”
29. The statements above, especially those by the Respondents and Mr. Singoei, do not provide further details evidencing the Petitioners’ alleged criminality, misconduct, or actual conduct.
30. The Court should take judicial notice that in the past when such statements were made against civil society organisations, they were followed by diverse actions, including the freezing of bank accounts, raiding of offices and attempts to deregister.
31. The PBO Act was passed by parliament and assented to on 14 January 2013. The Act became operational on 14 May 2024, following the publication of the Kenya Gazette dated 9 May 2024 by the Cabinet Secretary for Interior and National Administration. The publication was in compliance with Section 1 of the PBO Act, which designated its date of commencement as the date that the Cabinet Secretary would publish in the Kenya Gazette.
32. Regulations prescribing the procedure and the fees for application for registration or application for the grant of PBO status are yet to be passed by the Cabinet Secretary.

### **C. Legal basis for the Petition**

#### **a. Constitution of Kenya 2010**

33. The Preamble to the Constitution, in performing the throat-clearing exercise, recognises the aspirations of all Kenyans for a government based on the essential values of human rights, equality, freedom, democracy, social justice, and the rule of law.

34. Article 1(1) of the Constitution of Kenya 2010 embodies the concept of the sovereignty of the people and states that ‘All sovereign power belongs to the people of Kenya and shall be exercised only in accordance with this Constitution’.
35. Articles 2(1) and (4) of the Constitution provide that the Constitution is the supreme law of the Republic and binds all persons. Any law that is inconsistent with the Constitution is void to the extent of the inconsistency, and any act or omission in contravention of the Constitution is invalid.
36. Articles 2(5) and (6) recognise that the general rules of international law shall form part of the laws of Kenya and that any treaty or convention ratified by Kenya shall form part of the law of Kenya under the Constitution.
37. Article 3(1) states, ‘Every person has an obligation to respect, uphold and defend this Constitution.’
38. Article 10 establishes the national values and principles of governance. Article 10(1):  
The national values and principles bind all State organs, State officers, public officers, and all persons whenever any of them—
- (a) applies or interprets this Constitution; and
  - (b) enacts, applies or interprets any law.
39. Article 10(2) asserts that the national values and principles of governance include:
- (a) patriotism, national unity, sharing and devolution of power, the rule of law, democracy and participation of the people;
  - (b) human dignity, equity, social justice, inclusiveness, equality, human rights, non-discrimination and protection of the marginalised; and
  - (c) good governance, integrity, transparency and accountability.

40. Chapter Four of the Constitution establishes the Bill of Rights. Article 19(1) states that '[t]he Bill of Rights is an integral part of Kenya's democratic state and is the framework for social, economic and cultural policies'. According to Article 19(2), human rights and fundamental freedoms are protected to 'preserve the dignity of individuals and communities and to promote social justice and the realisation of the potential of all human beings'. Article 19(3) provides that the rights and fundamental freedoms guaranteed in the Bill of Rights:
- (a) belong to each individual and are not granted by the State;
  - (b) do not exclude other rights and fundamental freedoms not in the Bill of Rights, but recognised or conferred by law, except to the extent that they are inconsistent with this Chapter; and
  - (c) are subject only to the limitations contemplated in this Constitution.
41. Article 20 addresses the application of the Bill of Rights. Articles 20(1)-(4) state that:
- (1) The Bill of Rights applies to all law and binds all State organs and all persons.
  - (2) Every person shall enjoy the rights and fundamental freedoms in the Bill of Rights to the greatest extent consistent with the nature of the right or fundamental freedom.
  - (3) In applying a provision of the Bill of Rights, a court shall—
    - (a) develop the law to the extent that it does not give effect to a right or fundamental freedom; and
    - (b) adopt the interpretation that most favours the enforcement of a right or fundamental freedom.
  - (4) In interpreting the Bill of Rights, a court, tribunal, or other authority shall promote—
    - (a) the values that underlie an open and democratic society based on human dignity, equality, equity and freedom; and
    - (b) the spirit, purport and objects of the Bill of Rights.
42. Article 21(1) addresses the implementation of rights and fundamental freedoms. It states that "It is a fundamental duty of the State and every State organ to observe, respect, protect, promote and fulfil the rights and fundamental freedoms in the Bill of Rights".
43. Article 23(1) gives this Court's jurisdiction, in accordance with Article 165, to hear and



determine applications for redress of a denial, violation or infringement of, or threat to, a right or fundamental freedom in the Bill of Rights. In proceedings alleging that a fundamental right or freedom has been denied, violated, infringed, or threatened, this Court may grant appropriate relief, including:

- (a) a declaration of rights;
- (b) an injunction;
- (c) a conservatory order;
- ...
- (e) an order for compensation; and
- (f) an order of judicial review.

44. Article 24(1) states that ‘A right or fundamental freedom in the Bill of Rights shall not be limited except by law, and then only to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including-

- a) the nature of the right or fundamental freedom;
- b) the importance of the purpose of the limitation;
- c) the nature and extent of the limitation;
- d) the need to ensure that the enjoyment of rights and fundamental freedoms by any individual does not prejudice the rights and fundamental freedoms of others; and
- e) the relation between the limitation and its purpose and whether less restrictive means exist to achieve the purpose.

45. Article 36 of the Constitution provides that every person has the right to freedom of association, including the right to form, join or participate in any association of any kind. Article 36(3) further provides that any legislation that requires registration of an association of any kind shall provide that

- a) Registration may not be withheld or withdrawn unreasonably; and
- b) There shall be a right to have a fair hearing before a registration is cancelled.

46. Article 47 guarantees every person the right to expeditious, efficient, lawful, reasonable, and procedurally fair administrative action.

47. Article 73 (1)(a) of the Constitution of Kenya, 2010 provides that the Authority assigned to a state officer is a public trust to be exercised in a manner that is consistent with the purposes and objects of this Constitution; demonstrates respect for the people; brings honour to the nation and dignity to the office; and promotes public confidence in the integrity of the office.

#### **b. Acts of Parliament**

##### **Public Benefits Organizations Act, No. 18 of 2013 of the Laws of Kenya**

48. Section 3 of the Act provides that one of the objects of the Act is to:

- (a) encourage and support public benefit organisations in their contribution to meeting the diverse needs of the people of Kenya by—
  - (i) creating a conducive environment for the growth of the public benefit organisations sector and for the operations of the registered public benefit organisations;
  - (b) give meaningful protection to the internationally recognised freedoms of expression, association, and peaceful assembly
  - (f) provide registration procedures, which are transparent, and which will facilitate the establishment of public benefit organisations while safeguarding freedom of association.

49. Section 4 provides for the government's responsibility to the PBOs as follows:

- (1) Consistent with its obligation to respect the freedoms of association and assembly, it is the duty of the Government to provide an enabling environment for public benefit organizations to be established and to operate.

50. Section 5(2)(e) provides that a society within the meaning of the Societies Act is not a PBO.

51. Sections 6 (2) and (4), which govern the registration of PBOs, provide that no organization registered under any other law in Kenya shall be registered under this Act while its registration under that other law subsists; and that where an organization is registered under this Act and under any other law, that organization shall be deemed registered under this Act, and that other registration shall be deemed invalid.

52. Section 7(b) governs the grant of PBO status and provides, “where registered under any other written law in Kenya or not registered under any other written law in Kenya, the Authority has bestowed on that organization the status of a [PBO]”.
53. Section 18 governs the procedure for suspension or cancellation as follows:
- (1) Where a public benefit organisation registered under this Act is in violation of its provisions, the Authority may serve the organization with a written default notice specifying the nature of the default.
  - (2) Upon receipt of the default notice, the public benefit organization may make representations in writing to the Authority regarding remedy or rectification of the default or violation of the Act.
  - (3) Where the public benefit organization has failed to remedy or rectify the default or ensure compliance with the provisions of this Act within the time specified in the default notice or has not made satisfactory representations to the Authority, the Authority shall fine, suspend, or cancel the organization’s certificate of registration...
  - (4) A public benefit organization that has been fined or whose certificate has been suspended or cancelled may, within sixty days of receiving notice of the decision, apply to the Authority for review of the decision to fine it, suspend, or cancel the certificate if it is dissatisfied with the reasons for such fine, suspension, or cancellation.
54. Section 34 establishes the PBO Regulatory Authority.
55. Section 42(1)(a) provides the functions of the Authority to include, the power to register and deregister [PBOs] in accordance with the Act. While section 42(1)(h) mandates the Authority to institute inquiries to determine if the activities of [PBOs] do not comply with the Act or any other law. Section 63 provides further details on the operation of section 42(1)(h).
56. Section 66(1) provides that “a [PBO] may engage freely in... advocacy in respect to any issue affecting the public interest, including criticism of the policies or the activities of the State or any officer or organ thereof”.
57. Section 69 provides for the creation of regulations to better implement the provisions of the Act.

### c. International law

#### **African Charter on Human and Peoples' Rights**

58. Article 10 of the African Charter on Human and Peoples' Rights (African Charter) recognizes that 'Every individual shall have the right to free association provided that he abides by the law'.

#### **International Covenant on Civil and Political Rights (ICCPR)**

59. Article 22 of the International Covenant on Civil and Political Rights recognizes the right to freedom of assembly as follows:

- (1) Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.
- (2) No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others."

#### **African Commission Guidelines on Freedom of Association and Assembly in Africa**

60. The guidelines recognise the following principles to be used in the interpretation of the right to freedom of association:

- i. Presumption in favor of the right: The presumption shall be in favor of the exercise of the rights to freedom of association and assembly.
- ii. Enabling framework: Any legal framework put in place or other steps taken relative to the rights to freedom of association and assembly shall have the primary purpose of enabling the exercise of the rights.
- iii. Political and social participation of an independent civil society: The independence of civil society and the public sphere shall be ensured, and the participation of individuals in the political, social and cultural life of their communities shall be enabled.
- iv. Human rights compliance: All constitutional, legislative, administrative and other measures shall comply with the full extent of regional and international human rights obligations, deriving from the rights to freedom of association and assembly and all other guaranteed rights.

- v. Impartiality of governance agencies: Authorities with governance oversight shall conduct their work impartially and fairly.
  - vi. Simple, transparent procedures: Procedures relating to the governance of associations and assemblies shall be clear, simple and transparent.
  - vii. Limited sanctions: Sanctions imposed by states in the context of associations and assemblies shall be strictly proportionate to the gravity of the harm in question and applied only as a matter of last resort and to the least extent necessary.
61. Paragraph 21 of the guidelines states, ‘The body that registers associations must perform its functions impartially and fairly. Only one body should be tasked with registering associations.’
62. Paragraph 47 of the guidelines provides that ‘Reporting requirements shall be constructed on the basis of the presumed lawfulness of associations and their activities, and shall not interfere with the internal management or activities of associations’.

#### **African Commission Declaration on the Promotion of the Role of Human Rights Defenders and their Protection in Africa**

63. Paragraph 2 provides that ‘Everyone has the right, individually or in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the local, national, regional and international levels’.
64. Paragraph 3.14 accords Human rights defenders the right to be free from any form of intimidation or reprisal on the grounds of or in association with his or her status, activities or work as a human rights defender.
65. Paragraph 3.15 accords human rights defenders the right to be free from any form of defamation, stigmatisation, or other harassment, whether offline or online, and whether by public authorities or private actors, in association with their status, activities, or work as human rights defenders.
66. Paragraph 4.1 requires each Member of the African Union to have a prime responsibility and duty to protect, promote, and implement all human rights and fundamental freedoms, inter alia, by creating a safe and conducive economic, social, and political

environment to ensure that all human rights defenders can enjoy all those rights and freedoms in practice.

67. Paragraph 4.2 states that each Member of the African Union shall adopt such legislative, policy, administrative and other steps as may be necessary to ensure that the rights and freedoms referred to in the present Declaration are effectively guaranteed.

#### **68. Violations of the Constitution and the Law**

##### **a) Violation of the right to freedom of association**

69. Civil society organisations play an essential role in the development and realisation of democracy and human rights, in particular through the promotion of public awareness, participation in public affairs and securing the transparency and accountability of public officials and authorities.
70. However, the Respondents' actions, as reflected in their press release of 22 July 2024, constitute a threat to the Petitioners' right to freedom of association under Article 36 of the Constitution.
71. Article 36 of the Constitution provides that every person has the right to freedom of association, including the right to form, join, or participate in any association of any kind. Freedom to mobilise resources for association activities is part and parcel of that right.
72. The Petitioners, as pleaded in paragraphs 5 to 9 of this Petition, are duly registered under various legal regimes but generally as societies, trusts, companies limited by guarantee and public benefit organisations. Instructively, the PBO Act per section 70 only repeals the NGO Coordination Act 1990. This means associations carrying out activities beneficial to the public generally are free to register under any enabling legal regime, including the PBO Act.
73. Further, the Respondents knew or ought to have known that, as per paragraph 5(1) of the fifth schedule to the PBO Act, NGOs previously registered under the NGO Coordination Act are automatically deemed to be registered under the PBO Act upon its

commencement. Per the same provision, these organisations have a year from the commencement date of the PBO Act to regularise their status.

74. In addition, the Respondents knew or ought to have known that, as per section 6(4) of the PBO Act, an organisation registered under another law loses its registration under that law only after registration is conferred under the PBO Act. Therefore, the Respondents knew there was no legal lacuna and that all the Petitioners were duly registered to conduct their activities in Kenya under various legal regimes.
75. Further, the Respondents knew or ought to have known that the PBO Act under section 7(b) envisages that organisations carrying out public interest work can be registered under a different law but recognised as a PBO upon application and grant of that status by the Authority.
76. Moreover, even if the 2<sup>nd</sup> to 5<sup>th</sup> Petitioners wanted to bring themselves under the ambit of the PBO Act, they would not be able to as no regulations have been passed to facilitate the process. Therefore, intimating that the 2<sup>nd</sup> to 5<sup>th</sup> Petitioners had wilfully failed to register under the PBO Act, knowing full well that there was no enabling legal framework, was malicious and in bad faith.
77. Regrettably, the Respondents then compounded their bad faith by publishing that they were referring PBOs, including the organisations named in Dr Singoei's letter dated 18 July 2024, to DCI for investigation for operating illegally. This action, read in the light of history, can lead to the closure and freezing of civil society organisations' bank accounts.
78. The Respondents' actions detailed above constitute a violation of and a threat to the Petitioners' right to association.
79. Due to the principle of interrelatedness and interdependence of rights, the respondents' actions affect other interrelated rights. Since the said press releases were published in both print and electronic media, it created the impression that the petitioners are illegal entities engaged in illegal activities exposing them to public anger, ridicule and stigma. Further,

the actions of the respondents can potentially endanger the lives of officials and officers of the petitioners both from the members of the public and security forces due to the emerging trend of abductions in Kenya.

80. Further, the actions of the Respondents have threatened the enjoyment of the petitioner's economic and social rights in that potential collaborators and partners may be dissuaded from joining their activities, Further the actions of the Respondents have threatened the enjoyment of the petitioners economic and social rights in that potential collaborators and partners may be dissuaded for joining their activities thereby threatening their current and future opportunities and operations.

81. This is also a violation of the negative and positive obligations of the Respondents, as the State as follows:

- a) The obligation not to interfere with the Petitioners and persons exercising their right to freedom of association under Article 3 and Article 21(1) of the Constitution - a negative duty to observe and respect the rights in the Bill of Rights.
- b) ) Under Article 21 (1) of the Constitution, there is a negative obligation not to interfere with the organisation's operational mandate, including its finances.
- c) Positive obligation—Section 4(1) of the PBO Act requires the government to provide an enabling environment for PBOs to operate. In this instance, the Respondents ought to have created an enabling environment for the Petitioners to operate by efficiently enacting Regulations to provide the registration mechanism instead of hindering PBOs' work by threat of criminal investigations and sanctions.

82. In complete disregard of these obligations, the Respondents want to interfere with the right to freedom of association by singling out a few civil society organisations, out of thousands, for sanction. The only inference that can be made is that the State finds the activities of these organisations to be contrary to its interests. These organisations seek transparency and accountability for the exercise of public power and good governance.

#### **b) Violation of the right to fair administrative action**

83. Article 47 of the Constitution guarantees every person the right to expeditious, efficient, lawful, reasonable, and procedurally fair administrative action. This is echoed in section 4(1) of the Fair Administrative Action Act, 2015 (FAA).



84. Section 4(2) of the Act provides that persons have the right to be given written reasons for any administrative action against them.
85. Section 5 provides that in any case where any proposed administrative action is likely to materially and adversely affect the legal rights or interests of a group of persons or the general public, an administrator shall—
- (a) issue a public notice of the proposed administrative action inviting public views in that regard;
  - (b) consider all views submitted in relation to the matter before taking the administrative action;
  - (c) consider all relevant and material facts; and
  - (d) where the administrator proceeds to take the administrative action proposed in the notice—
    - (i) Give reasons for the decision of administrative action as taken;
    - (ii) issue a public notice specifying the internal mechanism available to the persons directly or indirectly affected by his or her action to appeal; and
    - (iii) specify the manner and period within which such an appeal shall be lodged.
86. Under section 7 of the Fair Administrative Action Act, this Court is entitled to review administrative action where:
- The administrator—
- a. denied the person to whom the decision relates a reasonable opportunity to state the person's case...
  - c. was biased or may reasonably be suspected of bias.
  - d. acted in excess of jurisdiction or power conferred under any written law.
- Further, where an administrative action:
- a. is not proportionate to the interests or rights affected
  - b. was materially influenced by an error of law;
  - c. is unfair or procedurally unfair;
  - d. is unreasonable or not informed by the reasons given for it.
  - e. is taken or made in abuse of power.

87. The Respondents, by referencing the letter dated 18 July 2024 by Dr Singoei in their press release, without dissociating themselves from the contents of the letter, is an endorsement of the contents of the letter. This means the Respondents associate themselves with the sentiments that the Petitioners are sponsoring protests in Kenya meant to overthrow the legally elected government and engage in other criminal activities. The Respondents did not allow the Petitioners to respond to these allegations in violation of Article 47 of the Constitution and Section 5 of the FAA on the right to fair administrative action.
88. In addition, forwarding names of PBOs, including the Petitioners' names, to the DCI for investigation is an administrative action. Stating that the Petitioners were operating illegally was detrimental to their reputation. The petitioners were not allowed to be heard before this action was taken and is, therefore, a violation of their right to fair administrative action. The obligation of the Respondents to do this for the Petitioners is provided under the PBO Act and FAA.
89. Besides, the 2nd to 4th Petitioners are registered as trusts, societies and companies limited by guarantee; therefore, the Respondents have no mandate over them and acted ultra vires.
90. To declare some civil society organisations to be conducting illegal activities without, according to the affected parties, a hearing violates the rules of natural justice under Articles 47 and 50 and sections 4(1), 7(2)(a)(v) and 7(2)(c) of the FAA.

**c) Violation of the freedom from discrimination**

91. Article 27(1) provides equality before the law, and everyone deserves equal protection. This provision requires that everyone enjoys the protection of the law and be seen and treated equally. No association should be singled out and treated differently just because of its beliefs, mandate, or expression.
92. The Respondents' decision to single out organisations that it considers problematic or undesirable based on their activities is discriminatory and contrary to Article 27(1) of the Constitution.
93. The law and criminal justice system should be enforced fairly and not actively to stifle expression and association.

**d) An objective normative value-based system and unchecked powers under Article 10**

94. The objective normative value-based system established in the Constitution was not accidental. Instead, it was Kenyans' reaction to the unchecked powers vested in the executive branch. To constrain these powers, Kenyans decided to preclude the exercise of arbitrary power. They envisioned a society founded on values and principles, as in Article 10 of the Constitution. Therefore, the organisational governance framework was meant to give effect to this normative value-based system.
95. The different State officials, including the Respondents, made and/or endorsed statements made in public rallies and media releases in a manner that was meant to limit constitutional rights, operating outside Article 24 of the Constitution and is a violation of the values and principles of the Constitution under Article 10. To resort to media releases to malign and harass civil society organisations without giving them a chance to be heard or availing evidence of illegality and misconduct is an attack on Article 10.
96. For the Respondents to usurp the authority they do not have by declaring that the Petitioners are engaging in unlawful activities and are unregistered is a violation of Article 10 of the Constitution.
97. The Respondents' actions, as shown above, attack this Constitutional provision. They threaten and violate the values of the rule of law, accountability, good governance, human dignity, human rights, and non-discrimination. They also threaten the objective normative value-based system imposed by the 2010 Constitution.

**e) Abuse of powers and office**

98. Article 73 (1)(a), read together with Sections 8 and 9 of the Leadership and Integrity Act, provides that the authority assigned to a State officer is a public trust to be exercised in conformity with the Constitution, promoting respect for the people and ought to bring honour to the nation and dignity to the office.
99. The factual matrix above demonstrates that the Respondents' actions do not demonstrate that they are aware of their obligations under Article 73(1)(a).

100. Neither can the actions of threatening or violating constitutional rights or selectively determining which civil society organisations ‘to punish’ can be said to be an exercise of authority in conformity with the Constitution, in promoting respect for the people and bringing honour to the nation and dignity to the office.

### **I. Reliefs Requested**

101. As a result, invoking Article 23 of the Constitution, the Petitioners seek the following or other appropriate reliefs:
- a) A declaration that the Respondents’ actions violate Articles 3, 10, 19, 20, 21, 27, 36, 47, and 73 of the Constitution of Kenya.
  - b) A declaration that the Respondents’ action of issuing the Press Statement dated 22 July 2024 has violated Articles 10, 19, 20, 21, 27, 36, 47, and 73 of the Constitution of Kenya and Sections 3(f) and 4(1) of the Public Benefits Organisations Act.
  - c) An order of permanent injunction barring the Director of Criminal Investigation or any other state agency from acting on the contents of the Press Statement dated 22 July 2024 or any other directive of a similar nature, whether published or unpublished.
  - d) Any other prayers this Court deems fit.

Dated 02 August 2024, Nairobi



**Joshua Malidzo Nyawa**  
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**Drawn and filed by**

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