

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CONSTITUTIONAL AND HUMAN RIGHTS DIVISION**

**CONSTITUTIONAL PETITION No. 102 OF 2013**

**IN THE MATTER OF: ALLEGED DENIAL, VIOLATION, 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DISCRIMINATION; THE RIGHT TO INFORMATION; AND THE RIGHT TO EFFECTIVE REMEDY AFFORDED BY SECTIONS 70, 71, AND 74 OF THE REPEALED CONSTITUTION OF KENYA AS READ WITH ARTICLES 19, 20, 21, 22, 23, 24, 25, 26, 27(1), 28, 29, 262, 263 AND 264 OF THE CONSTITUTION OF THE REPUBLIC OF KENYA, 2010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**IN THE MATTER OF: RULES 11, 12, 13, 14 AND 15 OF THE [REPEALED] CONSTITUTION OF KENYA (SUPERVISORY JURISDICTION & PROTECTION OF FUNDAMENTAL RIGHTS & FREEDOMS OF THE INDIVIDUAL) HIGH COURT PRACTICE & PROCEDURE RULES 2006 AS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 POLICE ACT, CHAPTER 84; ADMINISTRATION POLICE ACT, CHAPTER 85; PENAL CODE, CHAPTER 63; CRIMINAL PROCEDURE CODE, CHAPTER 75; INTERNATIONAL CRIMES ACT (ACT NO. 16 OF 2008); NATIONAL POLICE SERVICE ACT (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); OFFICES OF THE DIRECTOR OF PUBLIC PROSECUTIONS ACT (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 AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS; THE STATUTE OF THE INTERNATIONAL CRIMINAL COURT; TREATY OF THE EAST AFRICAN COMMUNITY**

**-BETWEEN-**

- 1. CITIZENS AGAINST VIOLENCE (CAVI)**
- 2. KALENJIN YOUTH ALLIANCE (KALYA)**
- 3. SOUTH RIFT HUMAN RIGHTS & ADVOCACY CENTRE (SRHRAC)**
- 4. INDEPENDENT MEDICO-LEGAL UNIT (IMLU)**

**-AND-**

- 1. THE ATTORNEY GENERAL**
- 2. DIRECTOR OF PUBLIC PROSECUTIONS**
- 3. INDEPENDENT POLICING OVERSIGHT AUTHORITY**
- 4. INSPECTOR-GENERAL OF THE KENYA NATIONAL POLICE SERVICE**
- 5. MOHAMMED HUSSEIN ALI**
- 6. KINUTHIA MBUGUA.....RESPONDENTS**

**PETITION**

**To:  
The Constitutional and Human Rights Division  
High Court of Kenya  
Millimani Law Courts  
NAIROBI**

**PETITIONERS**

1. The 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> Petitioners are Non-Governmental and non-profit making Organizations having their respective offices in Kisumu, Eldoret and Litein, and registered in Kenya for the purposes of promoting human rights and assisting victims of human rights violations.
2. The 4<sup>th</sup> Petitioner is a Non-Governmental Organization registered in Nairobi whose mandate is the promotion of the rights of torture victims and survivors, and the protection of all Kenyans from all forms of State-perpetrated torture by advocating for policy reforms, the monitoring of government adherence to human rights standards, rehabilitation of victims of torture and capacity building for key stakeholders.
3. The 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, and 4<sup>th</sup> Petitioners have brought this Petition on their own behalf, on behalf of the victims and relatives of victims petitioning herein, and other victims and

relatives of other victims, being the victims of the Police shootings during the post-election violence from December 2007 – March 2008 (hereinafter this period of violence in Kenya referred to as "PEV") and in the public interest of all police shooting victims during PEV.

4. The 5<sup>th</sup> Petitioner is an adult female of sound mind residing in Kisumu. She brings this petition as the wife of \_\_\_\_\_ who was shot and killed by the Police in Kisumu on 30<sup>th</sup> December, 2007, (hereinafter also referred to as the "Deceased", jointly and severally with other such deceased persons represented herein) on behalf of the estate and family of the Deceased to obtain remedies for the loss of life, the violations of fundamental rights, and the suffering sustained by his death.
5. The 6<sup>th</sup> Petitioner is an adult female of sound mind residing in Kisumu. She brings this petition as the wife of \_\_\_\_\_ who was shot and killed by the Police in Akala on 31<sup>st</sup> January, 2008, (hereinafter also referred to as the "Deceased", jointly and severally with other such deceased persons represented herein) on behalf of the estate and family of the Deceased to obtain remedies for the loss of life, the violations of fundamental rights, and the suffering sustained by his death.
6. The 7<sup>th</sup> Petitioner is an adult male of sound mind residing in Maragoli county. He brings this petition as the father of \_\_\_\_\_ who was shot and killed by the Police in Kisumu on 30<sup>th</sup> December, 2007, (hereinafter also referred to as the "Deceased", jointly and severally with other such deceased persons represented herein) on behalf of the estate and family of the Deceased to obtain remedies for the loss of life, the violations of fundamental rights, and the suffering sustained by his death.
7. The 8<sup>th</sup> Petitioner is an adult male of sound mind residing in Bomet, Kericho county. He brings this petition as the brother of \_\_\_\_\_ who was shot and killed by the Police in Mogogosiek on 31<sup>st</sup> December, 2007, (hereinafter also referred to as the "Deceased", jointly and severally with other such deceased persons represented herein) on behalf of the estate and family of the Deceased to obtain remedies for the loss of life, the violations of fundamental rights, and the suffering sustained by his death.
8. The 9<sup>th</sup> Petitioner is an adult male of sound mind residing in Bomet, Kericho county. He brings this petition as the father of \_\_\_\_\_ who was shot by the Police in Eldoret on 31<sup>st</sup> January, 2008 and died as a result of the injuries on 2<sup>nd</sup> February, 2008, (hereinafter also referred to as the "Deceased", jointly and severally with other such deceased persons represented herein) on behalf of the estate and family of the Deceased to obtain remedies for the loss of life, the violations of fundamental rights, and the suffering sustained by his death.
9. The 10<sup>th</sup> Petitioner is an adult male of sound mind residing in Litein. He brings this petition as the brother of \_\_\_\_\_ who was shot and killed by the Police in Litein on 5<sup>th</sup> February, 2008, (hereinafter also referred to as the "Deceased", jointly and severally with other such deceased persons represented herein) on behalf of the estate and family of the Deceased to obtain remedies for the loss of life, the violations of fundamental rights, and the suffering sustained by his death.

10. The 11<sup>th</sup> Petitioner is an adult female of sound mind residing in Litein. She brings this petition as the wife of \_\_\_\_\_ who was shot and killed by the Police in Litein on 5<sup>th</sup> February, 2008, (hereinafter also referred to as the "Deceased", jointly and severally with other such deceased persons represented herein) on behalf of the estate and family of the Deceased to obtain remedies for the loss of life, the violations of fundamental rights, and the suffering sustained by his death.
11. The 12<sup>th</sup> Petitioner is an adult female of sound mind residing in Kisumu. She brings this petition on her own behalf as a victim of police shooting in Manyatta, Kisumu on 28<sup>th</sup> December, 2007, to obtain remedies for pain, loss and suffering arising out of serious personal injuries and violation of her fundamental rights occasioned by the shooting.
12. The 13<sup>th</sup> Petitioner is an adult male of sound mind residing in Kisumu. He brings this petition on his own behalf as a victim of police shooting in Kogony, Kisumu county on 29<sup>th</sup> December, 2007, to obtain remedies for pain, loss and suffering arising out of serious personal injuries and violation of his fundamental rights occasioned by the shooting.
13. The 14<sup>th</sup> Petitioner is an adult male of sound mind residing in Migori county. He brings this petition on his own behalf as a victim of police shooting in Namba, Migori Town on 29<sup>th</sup> December, 2007, to obtain remedies for pain, loss and suffering arising out of serious personal injuries and violation of his fundamental rights occasioned by the shooting.
14. The 15<sup>th</sup> Petitioner is an adult male of sound mind residing in Ahero. He brings this petition on his own behalf as a victim of police shooting in Ahero on 30<sup>th</sup> December, 2007, to obtain remedies for pain, loss and suffering arising out of serious personal injuries and violation of his fundamental rights occasioned by the shooting.
15. The 16<sup>th</sup> Petitioner is an adult male of sound mind residing in Migori county. He brings this petition on his own behalf as a victim of police shooting in Wuoth Ogik, Migori on 31<sup>st</sup> December, 2007, to obtain remedies for pain, loss and suffering arising out of serious personal injuries and violation of his fundamental rights occasioned by the shooting.
16. The 17<sup>th</sup> Petitioner is an adult male of sound mind residing in Siaya county. He brings this petition on his own behalf as a victim of police shooting in Ligega on 2<sup>nd</sup> January, 2008, to obtain remedies for pain, loss and suffering arising out of serious personal injuries and violation of his fundamental rights occasioned by the shooting.
17. The 18<sup>th</sup> Petitioner is an adult male of sound mind residing in Mogogosiek. He brings this petition on his own behalf as a victim of police shooting in Mogogosiek on 31<sup>st</sup> December, 2007, to obtain remedies for pain, loss and suffering arising out of serious personal injuries and violation of his fundamental rights occasioned by the shooting.
18. The 19<sup>th</sup> Petitioner is an adult male of sound mind residing in Migori county. He brings this petition on his own behalf as a victim of police shooting in Migori town on 30<sup>th</sup> December, 2007, to obtain remedies for pain, loss and suffering arising out of

serious personal injuries and violation of his fundamental rights occasioned by the shooting.

19. The 5<sup>th</sup> to 11<sup>th</sup> Petitioners (both inclusive) have brought these proceedings under Article 22 of the Constitution of the Republic of Kenya on their own behalf, on behalf of the Deceased, and in the public interest of other victims of police shootings during the PEV from December 2007 – March 2008 and their dependents.
20. The 12<sup>th</sup> to 19<sup>th</sup> Petitioners are adults of sound mind residing within the Republic of Kenya and they bring this Petition on their own behalf for damages for pain and suffering as a result of personal injuries, psychological trauma, and the violation of their fundamental rights which were sustained during and as a direct result of the police shootings which occurred between December 2007 and March 2008. They also bring this Petition in the interest of other victims of police shootings during the PEV from December 2007 – March 2008 and their dependents.

### **RESPONDENTS**

1. The 1<sup>st</sup> Respondent is the Attorney General of the Republic of Kenya and the principal legal adviser to the Government of Kenya and is constitutionally charged with the duty of representing the national government in court in proceedings of this nature.
2. The 2<sup>nd</sup> Respondent is the Director of Public Prosecutions of the Republic of Kenya, with power under Article 157 of the Constitution to direct the Inspector-General of the National Police Service to investigate any information or allegation of criminal conduct.
3. The 3<sup>rd</sup> Respondent is the Independent Policing Oversight Authority and is a statutory body whose objectives are to hold the Police accountable to the public in the performance of their functions, and inter alia, to ensure independent oversight of the handling of complaints by the Kenya Police Service.
4. The 4<sup>th</sup> Respondent is a male adult and the Inspector-General of the National Police Service and he is charged with the duty to investigate any particular offence or offences and to enforce the law against any particular person or persons.
5. The 5<sup>th</sup> Respondent is a male adult and the former Commissioner of Police, who was in charge of the Kenya Police Force at the time of the PEV from December 2007 – March 2008.
6. The 6<sup>th</sup> Respondent is a male adult and the former Commandant of the Administration Police, who was in charge of the Administration Police at the time of the PEV from December 2007 – March 2008. For the avoidance of doubt, the use of the term "Police" hereinafter also refers to and includes members of the Kenya Police Force any or all administration police officer and other disciplined forces deployed during the PEV period.

## CLAIMS

1. Immediately following the announcement of election results of Kenya's national elections on 30 December 2007, areas of the country erupted into violence. Violence continued from late December 2007 until March 2008, and eventually impacted up to 136 constituencies in six of Kenya's eight provinces.
2. The response of the Police was brutal, often indiscriminate and frequently lethal.
3. According to Government reports, a minimum of more than 1,100 people were killed during the PEV, of which at least 405 died as a direct result of Police shootings. A yet unknown number of victims were seriously injured as a direct result of Police shootings. As alleged in this Petition, these Police shootings, and the failure to investigate and prosecute the perpetrators, and failure to provide effective remedies to the victims violate the fundamental rights of the victims, including:-
  - i. The Right to Life, as protected by, inter alia, Article 71 of the repealed Constitution, Article 26 of the Constitution, the International Covenant on Civil and Political Rights, the African Charter on Human and Peoples' Rights, and the Rome Statute of the International Criminal Court;
  - ii. The Prohibition of Torture, Inhuman and Degrading Treatment as protected by, inter alia, Article 74 of the repealed Constitution, Article 25 of the Constitution, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the International Covenant on Civil and Political Rights, the African Charter on Human and Peoples' Rights, and the Rome Statute of the International Criminal Court;
  - iii. The Right to Security of the Person as protected by, inter alia, Article 70 of the repealed Constitution, Article 29 of the Constitution, the International Covenant on Civil and Political Rights, the African Charter on Human and Peoples' Rights;
  - iv. The Right to Protection of the Law as protected by, inter alia, Article 70 of the repealed Constitution, Articles 10 & 19 of the Constitution, the International Covenant on Civil and Political Rights, the African Charter on Human and Peoples' Rights;
  - v. The Right to Equality Before the Law and Freedom from Discrimination as protected by, inter alia, Article 82 of the repealed Constitution, Article 27 of the Constitution, the International Covenant on Civil and Political Rights, the African Charter on Human and Peoples' Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the International Convention on the Elimination of All Forms of Racial Discrimination;
  - vi. The Right to Information as protected by, inter alia, Article 35 of the Constitution and the International Covenant on Civil and Political Rights; and
  - vii. The Right to Remedy and Rehabilitation as protected by, inter alia, Article 84 of the repealed Constitution, Article 23 of the Constitution, the International

Covenant on Civil and Political Rights; International Convention on the Elimination of all Forms of Racial Discrimination; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Rome Statute of the International Criminal Court.

4. The Petitioners allege that the 1<sup>st</sup>, 5<sup>th</sup>, and 6<sup>th</sup> Respondents were aware or ought reasonably to have been aware and were therefore forewarned that adequate security measures were required to prevent the occurrence of violence during and in the period immediately following the 2007 General Election.
5. The Petitioners allege that the following:-
  - i. Failures to take adequate security measures, particularly the failure to train Police in lawful methods of conducting law enforcement operations;
  - ii. Failures to plan and prepare law enforcement operations conducted during civil unrest;
  - iii. Unlawful orders and instructions given to Police during the post-election violence; and/or
  - iv. Failures to respond to allegations of allegations of unlawful conduct by the Police;

caused or contributed to the deaths of the Deceased, the serious injuries to Petitioners 12 to 19 (both inclusive) and the deaths and injuries caused to other victims of Police shootings.

6. The Petitioners bring this action against the 1<sup>st</sup>, 5<sup>th</sup>, and 6<sup>th</sup> Respondents for the (a) failure to train Police in lawful methods of conducting law enforcement operations during political demonstrations and civil unrest, and (b) the failure to ensure that such operations were conducted lawfully. These acts and/or omissions by the 1<sup>st</sup>, 5<sup>th</sup>, and 6<sup>th</sup> Respondents caused the deaths of the Deceased, and the severe personal injuries to Petitioners 12 to 19 in violation of the rights listed in paragraph 3 above.
7. The Petitioners bring this action against the 1<sup>st</sup>, 5<sup>th</sup>, and 6<sup>th</sup> Respondents for the failure to plan and prepare law enforcement operations during the post-election violence. These acts and/or omissions by the 1<sup>st</sup>, 5<sup>th</sup>, and 6<sup>th</sup> Respondents caused the deaths of the Deceased, and the severe personal injuries to Petitioners 12 to 19 in violation of the rights listed in paragraph 3 above.
8. The Petitioners bring this action against the 1<sup>st</sup>, 5<sup>th</sup>, and 6<sup>th</sup> Respondents for issuing unlawful orders and omitting to issue lawful and proper instructions regarding the use of firearms and/or lethal force during the post-election violence from December 2007 – March 2008. These acts and/or omissions by the 1<sup>st</sup>, 5<sup>th</sup>, and 6<sup>th</sup> Respondents caused the deaths of the Deceased, and the severe personal injuries to Petitioners 12 to 19 in violation of the rights listed in paragraph 3 above.
9. Prior to and during the incidents complained of in this Petition, the 1<sup>st</sup>, 5<sup>th</sup>, and 6<sup>th</sup> Respondents ordered, permitted, condoned, and tolerated the intentional and/or criminally negligent use of excessive and lethal force against the Deceased,



Petitioners 12 to 19, and other victims of Police shootings, by Police officers acting always as members of a disciplined force under command of the said Respondents. These acts and/or omissions by the 1<sup>st</sup>, 5<sup>th</sup>, and 6<sup>th</sup> Respondents caused the deaths of the Deceased, and the severe personal injuries to Petitioners 12 to 19 in violation of the rights listed in paragraph 3. above.

10. The Petitioners bring this action against the 1<sup>st</sup>, 5<sup>th</sup>, and 6<sup>th</sup> Respondents for the failure to adequately supervise subordinates, including the intentional failure to date, to punish police involved in unlawful shootings. These acts and/or omissions by the 1<sup>st</sup>, 5<sup>th</sup>, and 6<sup>th</sup> Respondents caused the deaths of the Deceased, and the severe personal injuries to Petitioners 12 to 19 in violation of the Rights listed in paragraph 3. above.
11. The above-described actions of the 1<sup>st</sup>, 5<sup>th</sup>, and 6<sup>th</sup> Respondents and of the Police officers under them, including:-
  - i. The inadequate regulation of the use of firearms;
  - ii. The failure to plan, prepare and control operations to minimize deaths;
  - iii. The policy of the Government for conducting policing operations during civil unrest;
  - iv. The unlawful use of lethal force which was unjustified, unnecessary and disproportionate; and/or
  - v. The failure to protect life during law enforcement operations as a result of unlawful orders;violated the fundamental Rights of the Deceased persons and of the Petitioners by resulting in the deaths of the Deceased, and personal injury to Petitioners 12 to 19.
12. As a direct and proximate result of the above-mentioned unconstitutional and unlawful acts of the 1<sup>st</sup>, 5<sup>th</sup>, and 6<sup>th</sup> Respondents, always acting as the agents, servants or employees of the Government of the Republic of Kenya, the Deceased sustained severe physical injuries from which they died, and Petitioners 12 to 19 were severely injured in violation of the Rights listed in paragraph 3. above.
13. The Petitioners aver that the unlawful and fatal shootings by the Police have not been investigated at all or, in the alternative, if there have been any investigations, they have not been prompt, independent, impartial, effective, subject to public scrutiny, and capable of leading to prosecutions of the material and intellectual perpetrators, and that the Petitioners, the families of the Deceased, and other victims of Police shootings have therefore not obtained justice in connection with the investigation and prosecution of those responsible for the said unlawful acts.
14. The Petitioners further aver that the failure to obtain justice by the Petitioners and the families of deceased victims was due to the intentional failure by the Kenya Government to conduct any meaningful and sustained investigation into the acts in question.

15. The Petitioners aver that information from the Ministry of Health and/or Ministry of Medical Services and/or Ministry of Public Health and Sanitation attributed shootings to Police officers, and that this information was disseminated to, amongst others, the President and the Prime Minister, and to institutions of Government through various reports, including the Report of the Commission of Inquiry into Post-Election Violence ("the Waki Report") and the Report of the Kenya National Commission on Human Rights, amongst others. Despite such dissemination, the Government of Kenya, including, inter alia, the Respondents, under them have failed to take any steps towards ensuring the redressing of gross human rights violations perpetrated through the shootings in question.
16. In particular, the Petitioners contend that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents have failed to exercise their power to direct the Commissioner of Police or the Inspector-General of the National Police Service to independently and effectively investigate information or allegations of criminal conduct by members of the Police and/or other security forces, nor instituted or undertaken criminal proceedings against persons before any court in respect of offences committed against the Deceased, Petitioners 12 to 19, and other victims of Police shootings during the post-election violence.
17. The Petitioners contend that the 1<sup>st</sup> Respondent is liable for the conduct of his predecessor in office, who failed properly to direct his mind that the said unlawful shootings required the conducting of independent investigations, and that he further failed to require and direct the Commissioner of Police to independently investigate the same as impliedly required by him by Section 26(4) of the repealed Constitution.
18. The Petitioners contend that the 3<sup>rd</sup> Respondent has failed to exercise its authority to investigate allegations and information related to criminal offences committed by the Police during PEV and to recommend to the 2<sup>nd</sup> Respondent to prosecute the material and intellectual perpetrators.
19. The Petitioners bring this action against the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, and 4<sup>th</sup> Respondents for the said failures to investigate and prosecute the perpetrators of Police shootings of the Deceased, Petitioners 12 to 19, and other victims of Police shootings committed during the post-election violence, in violation of the Rights listed in paragraph 3 above.
20. Accordingly, the Petitioners contend that the failure to independently investigate the said shootings is systemic. The Petitioners further claim that this failure to independently investigate the said shootings is a deliberate policy decision that seeks to avoid an independent investigation, whose outcome could implicate very senior Police officers and top administrators in the executive arm of Government, past and present, in the gross human rights violations committed during the post-election violence.
21. The Petitioners therefore plead that the failure to independently investigate is a policy decision which has been maintained and perpetuated by a Government whose officers holding constitutional and statutory powers presently have deliberately ignored their constitutional and/or other legal obligations to investigate. In particular, the Petitioners aver that despite being in possession of information in Reports on the

post-election violence as set out above, the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, and 4<sup>th</sup> Respondents have failed to take any steps under their respective mandates towards ensuring the prompt, independent, impartial, thorough and effective investigation capable of leading to the prosecution of the material and intellectual perpetrators of the gross human rights violations in question, in respect of the Deceased, Petitioners 12 to 19, and other victims of Police shootings during the post-election violence.

22. The Petitioners further contend that the shootings in question amounted to Crimes against Humanity, which the Government of Kenya is obligated to investigate and prosecute as such under, inter alia, the Constitution read together with the Rome Statute of the International Criminal Court and Customary International Law. The shootings amounted to Crimes against Humanity as a result of the following factors, amongst others, taken disjunctively or conjunctively:-
- i. The fact that the Police and security force shootings targeted a civilian population;
  - ii. The fact that Police shootings were carried out pursuant to orders given to members of disciplined forces;
  - iii. The fact that, viewed objectively, the shootings were or appeared to be well coordinated and systematic;
  - iv. The fact that Police officers, as agents of the Government of Kenya acted pursuant to or as part of plan or policies of the Kenyan state;
  - v. The number of victims involved;
  - vi. The number of Police officers deployed and involved in the shootings;
  - vii. The geographic scope and widespread and systematic nature of the shootings across Nyanza Province, Rift Valley Province and other locations in Kenya;
  - viii. The fact that victims of shootings disproportionately were members of certain ethnic groups;
  - ix. The long time frame within which the shootings occurred; and/or
  - x. The lack of any legal justification for the shootings.
23. The Petitioners bring this action against the 1<sup>st</sup> Respondent for the failure to provide for the rehabilitation of the Petitioners and other victims of Police shootings during the post-election violence, including restitution, compensation for general damages, medical and psychosocial care and legal and social services, access to the relevant information concerning the violations and reparations mechanisms, and a Public apology that acknowledges the facts of Police shootings during post-election violence and accepts responsibility on behalf of the Government of Kenya for the harms and suffering of the victims. The Petitioners aver that the lack of reparations violates the Right to Remedy.

## RELIEF SOUGHT

24. By reason of the matters aforesaid, the Petitioners, as well as other persons for whose benefit these proceedings have been instituted, suffered and continue to suffer grave loss and damage, and accordingly they pray for:
- i. A declaratory order to the effect that the Right to Life, the Prohibition of Torture, Inhuman and Degrading Treatment, the Right to Security of the Person, the Right to Protection of the Law, the Right to Equality and Freedom from Discrimination, the Right to Information, and the Right to Remedy were violated in relation to the Deceased, Petitioners 12 to 19 (both inclusive), and other victims of Police shootings during the post-election violence, as a result of the Police shootings;
  - ii. A further declaratory order to the effect that the failure to conduct independent and effective investigations and prosecutions of Police crimes during the post-election violence is a violation of the positive obligation to investigate and prosecute violations of the Right to Life, the Prohibition of Torture, Inhuman and Degrading Treatment, and/or the Right to Security of the Person;
  - iii. A further declaratory order to the effect that the failure to establish an independent and effective investigations and prosecutions of Police crimes committed during the post-election violence as Crimes against Humanity is a violation of Kenya's obligations under the Rome Statute of the International Criminal Court, international human rights law and statutory law which requires the investigation and prosecution of Crimes against Humanity of murder, torture, persecution, and other inhuman acts;
  - iv. A further declaratory order to the effect that the failure to provide emergency medical care and ongoing access to medical services to victims of Police shootings during the post-election violence is a violation of the Right to Life, the Prohibition of Torture, Inhuman and Degrading Treatment, the Right to Security of the Person, the Right to Equality and Freedom from Discrimination, and/or the Right to Remedy;
  - v. A further declaratory order to the effect that the failure to provide compensation, rehabilitation, medical and psychological care as well as legal and social services, and the failure to publicly acknowledge the scope and nature of Police shootings during the post-election violence and to publicly apologize the harms suffered by the victims, is a violation of the Right to Remedy;
  - vi. A conservatory order for the preservation of all files, reports, books, papers, letters, copies of letters, electronic mail (email) and other writings and documents and any other form of evidence, in any medium, including but not limited to films, photographs, videotapes, radio and television broadcasts or any other recording in the custody, possession or power of the National Police Service relating to the shootings in question, and for the detention of the same by or subject to the direction of this Honourable Court;
  - vii. An order compelling the National Police Service to produce before this Honourable Court and publicly release a full report on all incidents of Police

shootings during the post-election violence and the internal inquiries, if any, conducted into Police conduct during the post-election violence;

- viii. A further order compelling the 2<sup>nd</sup> Respondent and the Task Force on Post-Election Violence to produce before this Honourable Court and publicly release the results of its categorization of crimes with a view to further investigations and possible prosecution;
- ix. A further order compelling the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents to collaborate in the taking of such appropriate steps within their respective mandates as shall be necessary for the establishment of an internationalized Special Division within the Office of the 2<sup>nd</sup> Respondent for the investigation and prosecution of the shootings in question;
- x. A further order compelling the 1<sup>st</sup> Respondent to report periodically to this Honourable Court on the implementation of the judgment until its full implementation.
- xi. Inquiry for damages;
- xii. General damages;
- xiii. Order for exemplary damages for unlawful killings and grievous bodily injuries committed by the Police during the post-election violence;
- xiv. Such other or further Orders as this Honourable Court may deem fit to grant; and
- xv. Costs of this Petition

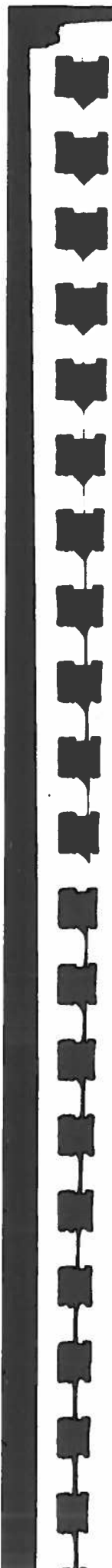
**DATED** at **NAIROBI** this 13<sup>th</sup> day of February, 2013

**Drawn & filed by:-**

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**KENYA**

**To be served upon:-**

- 1. THE ATTORNEY GENERAL, NAIROBI**
- 2. DIRECTOR OF PUBLIC PROSECUTIONS, NAIROBI**

- 
3. **INDEPENDENT POLICING OVERSIGHT AUTHORITY, NAIROBI**
  4. **INSPECTOR-GENERAL OF THE KENYA NATIONAL POLICE SERVICE, NAIROBI**
  5. **MOHAMMED HUSSEIN ALI, NAIROBI**
  6. **KINUTHIA MBUGUA, NAIROBI**