



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KERUGOYA
HCCHRPET/E010/2025

[AS CONSOLIDATED WITH HCCHRPET /E011/2025 AND HCCHRPET/E014/2025]

BETWEEN

LEVI MUNYERI 1ST PETITIONER
 GEMA WATHO ASSOCIATION2ND PETITIONER
 EUNICE NGANGA3RD PETITIONER

AND

THE ATTORNEY GENERAL.....1ST RESPONDENT
 THE CABINET SECRETARY, MINISTRY OF INTERIOR &
 NATIONALADMINISTRATION2ND RESPONDENT
 THE CABINET SECRETARY, NATIONAL TREASURY3RD RESPONDENT

AND

PROFESSOR MAKAU MUTUA1ST INTERESTED PARTY
 FAITH ODHIAMBO MONY2ND INTERESTED PARTY
 KENNEDY OGETO3RD INTERESTED PARTY
 IRUNGU HOUGHTON4TH INTERESTED PARTY
 DR. JOHN OLUKURU5TH INTERESTED PARTY
 DR. KENNEDY BARASA SIMIYU6TH INTERESTED PARTY
 DR. LINDA MUSUMBA7TH INTERESTED PARTY
 DR. DUNCAN OJWANG'8TH INTERESTED PARTY
 NAINI LANKAS9TH INTERESTED PARTY
 DR. FRANCIS MURAYA10TH INTERESTED PARTY
 JULIET CHEPKEMOI.....11TH INTERESTED PARTY
 PIUS METO12TH INTERESTED PARTY
 FATUMA KINSI ABASS13TH INTERESTED PARTY
 RAPHAEL ANAMPUI.....14TH INTERESTED PARTY
 RICHARD BARNO15TH INTERESTED PARTY
 DR. DUNCAN OKELO NDEDA16TH INTERESTED PARTY
 JERUSAH MWATHIME MICHAEL17TH INTERESTED PARTY
 DR. RAPHAEL NG'ETICH18TH INTERESTED PARTY
 KENYA NATIONAL COMMISSION ON HUMAN RIGHTS19TH INTERESTED PARTY
 CHAIRPERSON AND SECRETARY,
 VICTIMS PROTECTION BOARD20TH INTERESTED PARTY
 LAW SOCIETY OF KENYA21ST INTERESTED PARTY
 DAVID MWANGI NJERI.....22ND INTERESTED PARTY
 CLARIS OGANGAH – ONYANGO.....27TH RESPONDENT/INTERSTED PARTY

JUDGMENT

Introduction

- [1] The Consolidated Petitions seek principally the declaration of constitutional invalidity of, and consequential relief against, the Panel of Experts set up by the President of Kenya following a Proclamation dated 6/8/2025 in specific terms as follows:

“PRESIDENTIAL PROCLAMATION ON THE FRAMEWORK FOR COMPENSATION OF VICTIMS OF DEMONSTRATIONS AND PUBLIC PROTESTS

WHEREAS *The Constitution establishes the dual obligations of the State and its citizens to uphold the delicate balance between civic responsibility and the exercise of constitutionally guaranteed freedoms, as enshrined in the Bill of Rights.*

WHEREAS *Since the promulgation of the Constitution in 2010, the expanded democratic space has afforded Kenyans from all walks of life the liberty to express themselves through demonstrations and picketing, some of which regrettably have turned violent, resulting in bodily harm and loss of life.*

WHEREAS *There is compelling national interest in establishing a framework for accountability, redress and reparations for victims of demonstrations and public protests, including civilians and security personnel who lost their lives or suffered bodily harm during public protests and riots since the year 2017.*

NOW THEREFORE, I, WILLIAM SAMOEI RUTO, President and Commander in Chief of the Kenya Defence Forces in exercise of the authority vested in me by the Constitution, do **HEREBY**:

- I. *Establish a coordinating framework for **compensation of victims of protests and riots**, which shall be vested under the Executive Office of the President;*
- II. *The Executive Office of the President shall discharge this mandate in collaboration with the **Office of the Attorney General, Ministry of Interior & National Administration, The National Treasury and all the other relevant State agencies**;*
- III. *Designate **Prof. Makua Mutua**, Senior Advisor, Constitutional Affairs and Human Rights, as the **Principal Co-ordinator** of this State Intervention and Compensation framework; and*
- IV. *The tenure of this special co-ordination framework shall be 120 days from the date hereof.*

IN WITNESS THEREOF, I hereunto have set my **Hand and caused the Public Seal of the Republic** to be affixed to this Presidential Proclamation on this 6th Day of August in the **YEAR OF OUR LORD TWO THOUSAND AND TWENTY-FIVE**.

WILLIAM SAMOEI RUTO,

President

- [2] By Gazette No. NO. 12002 of 25/2025 the Head of Public Service gave effect to the Presidential Proclamation with terms of reference, powers of the Panel in the discharge of its mandate, time-limit of the mandate and the funding of the panel and the compensation scheme provided for as follows:

“GAZETTE NOTICE No. 12002

THE CONSTITUTION OF KENYA

APPOINTMENT OF A PANEL OF EXPERTS ON COMPENSATION OF VICTIMS OF DEMONSTRATIONS AND PUBLIC PROTESTS

WHEREAS by dint of Presidential Proclamation issued on the 6th August, 2025. the Head of State and Government acting in furtherance of the State's constitutional mandate to promote national healing and cohesion, established a Framework for the

Reparation and Compensation of Victims of Demonstrations, Public Protests. And Riots,

WHEREAS. the Proclamation reaffirms the dual responsibility of the State and its citizens to uphold the delicate balance between civic duty and the exercise of constitutionally protected freedoms as enshrined in the Bill of Rights:

WHEREAS Kenya is a signatory to all major continental and international human rights treaties, conventions, and instruments that uphold the rights to freedom of association and assembly; and

*WHEREAS. it is acknowledged that in the exercise of these rights particularly **the right to assemble, demonstrate, picket, and petition public authorities as guaranteed under Article 37 of the Constitution**, there have been regrettable incidents of violence resulting in loss of life and Life-altering physical injuries to both civilians and security personnel.*

NOW THEREFORE, it is notified for the general information of Public that His Excellency the President has appointed a Panel of Experts to effect the implementation of the Proclamation.

I. The Panel of Experts shall be constituted as follows:

Principal Coordinator/Chairperson

Makau Mutua (Prof.),

Vice Chairperson

Faith Odhiambo Mony.

Members

Kennedy N. Ogeto.

Irungu Houghton,

John Olukuru (Dr.),

Rev. (Fr.) Kennedy Barasa Simiyu.

Linda Musumba (Dr.),

Duncan Ojwang' (Dr.),

Naini Lankas,

Francis Mwaya (Dr.),

Juliet Chepkemei.

Pius Metto,

Fatuma Kinsi Abass,

Raphael Anampiu.

Technical Lead

Richard Barno,

Co-Technical Lead

Duncan A. Okelo Ndeda (Dr.),

Joint Secretaries:

Jerusah Mwaathime Michael.

Raphael Ng'etich (Dr.).

II. Terms of Reference of the Panel shall be to:

(a) design and establish an operational framework to verify, categorise. and compensate eligible victims;

(b) engage with relevant stakeholders, including families of victims, State institutions mandated to address human rights issues. civil society organisations. and religious institutions to ensure inclusivity and fairness in the compensation process;

(c) authenticate data on eligible Victims from authoritative sources including IPOA. KNCHR. the National Police Service. the Ministry of Health, and civil society;

(d) where evidence so warrants, recommend reparations, prosecutions or other appropriate accountability measures to the Office of the Director of Public Prosecutions (ODPP) and other relevant oversight bodies;

(e) propose legislative and institutional reforms to address protests and culture of policing; and

(f) prepare and submit to the President Periodic progress reports and a Final Report.

III. In the discharge of its mandate, the Panel shall have the power to -

(a) access information and records from any State organ or public office subject to law;

(b) require the attendance of any person or institution to provide information or documents;

(c) constitute working groups;

(d) Co-opt technical experts, consultants, and technical resource persons;

(e) regulate its own procedure, including quorum and decision making;

(f) perform any other function ancillary to its mandate.

IV The term of the Panel shall be for a period of one hundred and twenty (120) days from the date hereof, or (or such other period as may be specified in the Kenya Gazette.

V Funding and Financial Accountability

(a) Funding for the Panel and the compensation scheme shall be provided in accordance with the Public Finance Management Act and any other applicable law, utilising auditable payment channels: and

(b) The Panel shall ensure transparent accounting, maintain records sufficient for an independent audit, and publish anonymised statistics and progress updates.

VI. A Bureau for the Secretariat of the Panel of Experts shall be located on the Ground Floor of the Kenyatta International Convention Centre (KICC). Its official mailing is P.O. Box 30510-00100 GP.O. Nairobi.

Dated the 25th August, 2025.

FELIX KOSKEI.

Chief of Staff and Head of the Public Service.

- [3] The lead file in which the proceedings were held is the first-in-time Petition **No. E010 of 2025**, and consequently the Petitioners in Petitions Nos. E011 of 2025 and E014 of 2025 become the second and third petitioners and the parties in the two latter petitions became the corresponding respondents or interested parties in the Consolidate Petition as the line-up in the petitions required.

Background

- [4] The facts around the Presidential Proclamation dated 6/8/2025 and the subsequent gazette by the head of Public Service of the establishment of the Panel of Experts are not in dispute. The background to the making of the Proclamation and the gazette Notice is given in the proclamation as the need reparations for victims of demonstrations and public protests, including civilians and security personnel who lost their lives or suffered bodily harm during public protests and riots since the year 2017, most markedly

noticeable being the violent demonstrations and protests against the Finance Bill 2024 in June 2024, when many people including the demonstrators were harmed, killed or injured, and property destroyed.

- [5] The Petitions are really matters of law challenging the constitutional validity of the Proclamation and the Panel of Experts citing the President's lack of authority to constitute the Panel which duplicates or usurps the roles of constitutional Commissions and statutory bodies the Kenya National Commission of Human Rights, the Victim Protection Board, threatens the violations of the principles of public finance under the Constitution and Public finance management Act, the right to privacy and data protection under the Data Protection Act, and without public participation.
- [6] Petition No. E010 of 2025 seek similar relief with Amended Pet. Nos E011 of 2025 dated 12/9/2025 (formerly Nyandarua HC Constitutional Petition NO. E005 of 2025) and Petition No. E014 of 2025 (formerly Nyahururu HC Constitutional Pet. No. E005 of 2025) sought relief by way of declarations of constitutional *ultra vires* and orders of certiorari and prohibition, respectively, to quash the Gazette Notice and Prohibit its implementation. The most expansive reliefs are sought in Amended Petition No. E011 of 2025 dated 6/11/2025 as follows:

"F. PRAYER FOR RELIEF

REASONS WHEREFORE, your Petitioner humbly prays for:

I. A DECLARATION be and is hereby issued that the purported establishment of the Presidential Panel of Experts on Compensation of Victims of Demonstrations and Public Protests by the President through the Presidential Proclamation dated 6th August 2025 and Gazette Notice No. 12002 Vol. CXXVII-179 dated 25th August 2025, or any other instrument, was ultra vires, unlawful, and inconsistent with the Constitution of Kenya, 2010;

II. A DECLARATION be and is hereby issued that the said Presidential Panel of Experts on Compensation of Victims of Demonstrations and Public Protests, constituted as aforesaid, is unconstitutional, void ab initio, and of no legal effect;

III. A DECLARATION be and is hereby issued that the formation and operations of the Presidential Panel of Experts on Compensation of Victims of Demonstrations and Public Protests contravened, among others, Articles 1,2,10,27,35,59,73,74,75, 129, 131, 132, 159,201, 231, 232, 236, 248, 249, 250, and 254 of the Constitution of Kenya, 2010, as well as the Kenya National Commission on Human Rights Act, Victims Protection Act, and the National Cohesion and Integration Commission Act, by unlawfully usurping powers vested in independent commissions and offices;

IV. An ORDER of CERTIORARI be and is hereby issued setting aside and nullifying the Presidential Proclamation dated 6th August 2025, Gazette Notice No. 12002 Vol. CXXVII-179 dated 25th August 2025, and any other related documents, instruments, or executive orders purportedly establishing or related to the Presidential Panel of Experts on Compensation of Victims of Demonstrations and Public Protests;

V. A DECLARATION be and is hereby issued that any report, recommendations, decisions, or actions emanating from the said Presidential Panel of Experts on Compensation of Victims of Demonstrations and Public Protests are unconstitutional, unlawful, and without legal effect;

VI. An ORDER of PROHIBITION be and is hereby issued restraining the Respondents, their agents, officers, servants, or anyone acting under their authority, from implementing, enforcing, or relying upon the Presidential Panel of Experts on Compensation of Victims of Demonstrations and Public Protests, or any related instruments, reports, or recommendations;

VII. An ORDER of MANDAMUS be and is hereby issued compelling the relevant statutory government bodies and agencies constitutionally mandated to administer compensation and reparations for victims of demonstrations and public protests to

carry out their functions in accordance with the Constitution and applicable laws, excluding any ad hoc or unauthorized panels;

VIII. Pursuant to Article 226(5) of the Constitution, a DECLARATION be and is hereby issued holding the President personally accountable for the unconstitutional establishment of the Presidential Panel of Experts on Compensation of Victims of Demonstrations and Public Protests, and an ORDER be and is hereby issued directing the refund of any public funds expended on the said panel to the Consolidated Fund;

IX. An ORDER of MANDAMUS be and is hereby issued compelling the Respondents to fully comply with the provisions of the Constitution and all relevant laws relating to compensation and reparation for victims of demonstrations and public protests;

X. Any further or alternative relief that this Honourable Court may deem just, equitable, and appropriate to grant in the interests of justice and good governance;

XI. Costs of this Petition be and is hereby issued in favour of the Petitioners, considering the public interest nature of this matter.

XII. A DECLARATION be and is hereby issued that the 27th Respondent, -Claris Awuor Ogangah-Onyango, is unfit to hold the office of Chairperson of the Kenya National Commission on Human Rights (KNCHR) by virtue of accepting and serving in another appointment - the Vice Chairperson of the Presidential Panel of Experts on the Compensation of Victims of Demonstrations and Public Protests - whose mandate conflicts with that of the Commission, thereby contravening Articles 73(1 Ha)(i), 75(1), 249(2), and 252(1) of the Constitution of Kenya 2010, which guarantee integrity, independence, and the separation of constitutional functions.

XIII. An ORDER be and is hereby issued directing the 27th Respondent to refund all emoluments, allowances, and benefits received from the Kenya National Commission on Human Rights during the period she concurrently served as Chairperson of the Commission and Vice Chairperson of the said Presidential Panel of Experts, being benefits unlawfully obtained in violation of Articles 75(1)(b) and 226(5) of the Constitution of Kenya, 2010.

XIV. A DECLARATION be and is hereby issued that the 27th Respondent's concurrent service as Vice Chairperson of the Presidential Panel of Experts on the Compensation of Victims of Demonstrations and Public Protests undermines and compromises the independence, impartiality, and credibility of the Kenya National Commission on Human Rights, contrary to Articles 10, 59, 73, 249, and 252 of the Constitution of Kenya, 2010, and offends the constitutional architecture safeguarding the autonomy of Chapter Fifteen institutions from Executive control.”

- [7] The Amended Petition in Pet. No. E011 of 2025 was necessitated by the appointment of the 27th Respondent as a Vice-Chair to the Panel of Experts following the resignation of the 2nd Interested Party (10th Respondent in Pet.E011 of 2025).

The Petitioners' cases

- [8] The Petitioners are individuals and an association/society registered under the Societies Act comprising of over 2000 advocates of the High Court of Kenya committed to advancement of constitutionalism, human dignity and non-discrimination within Kenya's legal structures; suing on behalf of themselves and in public interest pursuant to Articles 22 and 258 of the Constitution of Kenya.

The 1st Petitioners' case

- [9] The 1st Petitioner's case is summarized in the succinct submissions dated as follows:

“Introduction

1. *The question dispositive of this Petition is simple and straight forward: whether the President has power to assign the function of investigating 21 complaints of abuses of human rights, and redress of the same to the Panel of Experts on Compensation of Victims of Demonstrations and Public Protests (Panel). It is the Petitioner's premise that the function is given to the Kenya National Commission on Human Rights (KNCHR) by- Article 59 of The Constitution of Kenya.*

Background

2. *On 25th August, 2025 the Head of Public Service notified through the Kenya Gazette, of the establishment by the President, of the Panel. The ultimate function of the Panel is to receive, verify, categorise, compile and submit to the President, a report for compensation of victims of demonstrations and protests. The Gazette Notice did not locate the legal basis for the action was taken by the President.*

Power to investigate and redress abuses of human rights

3. *Article 59 of The Constitution of Kenya elaborates the manner of receipt, verification, categorisation and redress of complaints of abuses of human rights. It is a constitutional duty specifically given to the KNCHR as an independent constitutional commission separate from the Executive. The intention behind the separation is clear: insulate the KNCHR from Executive interference.*
4. **The Victims Protections Act, No. 17 of 2014** effectuates the performance by the KNCHR of the constitutional function given to it by Article 59 of The Constitution of Kenya. The preamble is illustrative of the purpose of The Victims Protections Act, No 17 of 2014:

AN ACT of Parliament to give effect to Article 50 (9) of the Constitution; to provide for protection of victims of crime and abuse of power, and to provide them with better information and support services to provide for reparation and compensation to victims; to provide special protection for vulnerable victims, and for connected purposes.”

5. *The Victims Protection Fund (Fund) is established under Section 27 of the Victims Protections Act, No 17 of 2014. It is from this Fund that payment of compensation is made. The Victims Protection Board (Board) is established under Section 31 of the Victims Protections Act, No 17 of 2014 with clear mandate enumerated under Section 32 thereof.*
6. *The Board reports to the Cabinet Secretary for the time being responsible for matters relating to justice, in this case, the Attorney General, and the National Assembly in terms of Section 33 of the Victims Protections Act, No 17 of 2014. Evidently, the matter of investigating complaints of abuses of human rights, and redressing the same is beyond the power of the President.*
7. *Article 2 (2) of The Constitution of Kenya prohibits the President from exercising authority not given to him. Article 2 (3) of The Constitution of Kenya voids any action or decision that is inconsistent with The Constitution of Kenya. Undoubtedly, the President is required by Article 10 of The Constitution of Kenya to act only in accordance with The Constitution of Kenya and the law.*
8. *Two decisions entrench the power of the High Court to invalidate unconstitutional, and unlawful actions and decisions of the President. In *Azimio La Umoja One Kenya Coalition Party v President of Kenya & 9 others; Kenya National Commission on Human Rights (Interested Party) (2024) eKLR* a similar action by the President was invalidated, the Court holding as follows:*

140. On the basis of these findings, I am satisfied that the President assigned the Commission of Inquiry into Shakahola Tragedy a mandate that the Constitution specifically set aside for Independent constitutional bodies and Offices as demonstrated in the foregoing. The President had no authority to confer specific constitutional mandates belonging to Independent Constitutional Commissions and independent offices based using the powers derived from a Statute hence that action is unconstitutional.

9. Another determination was made in *Benjamin v Attorney General & Others; Maraga & 23 Others (Interested Party)* (2024) eKLR. Instructive is the holding that: 92. Be that as it may, the President cannot under the guise of exercising executive Authority under Article 129 (1) & (2) or 131 (1) (b) or 132 (2) (a) assign specific functions of an Independent Constitutional Commission to any other body or person. He has no constitutional authority to divest a specific responsibility assigned to an independent constitutional commission to any other person or body. That is an abrogation of the Constitution and sovereignty of the people.
10. The end to the Panel as sought in the Petition is exhaustively determined by the express provisions of The Constitution of Kenya, the Victims Protections Act, No 17 of 2014 and caselaw.

Conclusion

11. **There is no lack of clarity on who should undertake investigations on complaints of abuses of human rights, and report on their redress. That is an exclusive role of the Kenya National Commission on Human Rights. It is performed through the Victims Protection Board. The President had no power to assign the role and function of the two to the Panel of Experts on Compensation of Victims of Demonstrations and Pubic Protests.** It is asked of the Court to allow the Petition dated 5th September, 2025.”

The 2nd Petitioner’s Case

[10] The 2nd Petitioners urged that the President acted *ultra vires* the Constitution as he had no jurisdiction pointing out in rejoinder submissions to the case of the 3rd and 27th Respondents dated 17/11/2025 that “neither the Presidential Proclamation nor the subsequent gazette notice makes any express reference to any specific powers (constitutional or statutory) that grant the President the power to appoint the Panel of Experts [and] the Gazette Notice only cites the general powers of the President to ensure the protection and observance of human rights, this in the Petitioner’s consideration is not sufficient.”

[11] The 2nd Petitioner’s case is encapsulated in its Submissions on the issue of usurpation of functions of other constitutional bodies as follows:

“ii. Whether or not by establishing the Panel of Experts the President usurped the mandate of Constitutional Commission and Statutory Bodies.

28. Your Lordship, the Petitioner has interrogated the Terms of Reference of the Panel of Experts specifically- Authenticate data on eligible Victims from authoritative sources including IPOA, KNCHR, the National Police Service, the Ministry of Health, and civil society and submits that the same violates the Commission’s Constitutional and Statutory mandate. As such; it infringes on the Constitution and the KNCHR Act by purporting to arrogate the functions of the KNCHR to the Panel of Experts.

29. Article 59(2) (e) outlines the KNCHR mandate to receive and investigate complaints about alleged

abuses of human rights and take steps to secure appropriate redress where human rights have been violated.

30. Section 8(d) of the KNCHR Act stipulates one of the core mandates of the KNCHR as the receipt and investigation of complaints about alleged abuses of human rights and take steps to secure appropriate redress where human rights have been violated.

31. Courts of Law have unequivocally found that the President's executive powers under Article 129, 131 and 132 of the Constitution do not permit the President to arrogate the functions or mandates of Constitutional Commissions/Statutory Bodies to any other entity. In such cases, the courts interrogate the Terms of References of the Task Forces or Committees appointed by the President vis-a vis the functions and mandate of Independent Constitutional Commissions and Statutory Bodies. (See the case of **Azimio la Umoja One Kenya Coalition Party vs President of Kenya & 9 Others** (2024) (*supra*).

32. The Petitioner submits that it has demonstrated that by establishing the Panel of Experts and conferring on it the mandate he did under Term of Reference-Authenticate data on eligible Victims from authoritative sources including IPOA, KNCHR, the National Police Service, the Ministry of Health, and civil society), the President usurped its Constitutional and Statutory mandate. We therefore urge this Honourable Court to grant the reliefs sought in the Petition.”

[12] In reply for the 3rd Petitioner at the oral hearing, the 2nd Petitioner’s counsel emphasized the objection that as to the time limit of the work of the Panel of Experts which excluded, and therefore would deny compensation for, longer past victims of human rights abuses.

The 3rd Petitioner’s case

[13] The 3rd Petitioner presented her case by submissions dated 17/10/2025 justifying the prayers for the reliefs sought in her Petition by urging on the principal issue whether the establishment of the panel of experts on Compensation of Victims and Public Protests gazette Notice No. 12002 Vol. CXXVII No. 179 Nairobi, 25th August 2025 and appointment of its members is constitutional and lawful. Under the following rubrics, the Petitioner submitted that:

- a. ***Duplication/replication/overlap, usurpation and undermining functions & powers of constitutional offices: Article 50(9), 59,244, 248 (2) (a), 252, 254*** – that-

“The duplication/replication/overlap of the impugned Panel's powers, roles, duties and procedures with those of the Victim Protection Board, the Kenya National Commission on Human Rights and IPOA is glaring, undeniable and indefensible. The natural consequence is that the functions, role, functions and powers of these constitutional and statutory offices are usurped and undermined.”

- b. ***Exercise of presidential executive power: Articles, 1,2,3,129,131,132, 232,233,234*** – citing Law Society of Kenya v. Office of the Attorney General & Another; Judicial Service Commission (Interested party) Constitutional petition 203 of 2020 [2021] KEHC 454(KLR); Azimio case; Benjamin v. Maraga and the LSK v. Attorney General & 26 others Pet. E355 of 2024, it was urged that

“The courts are thus emphatic: Articles 129, 131 and 132 of the Constitution of Kenya 2010, do not confer on the President executive powers tabula rasa. Any presidential action or decision that overlaps, duplicates the powers/functions/role of an existing Constitutional or statutory body usurps/undermines such office, interferes with the independence of such office and is thus unconstitutional.

- c. ***Presidential executive power and establishment of public offices: holistic interpretation of the Constitution: Articles 20(4) and 259(1)*** – citing Supreme Court decisions *In the matter of the*

Kenya national Human rights Commission, Advisory Opinion No. 1 of 2012 [2014] eKLR; Advisory Opinion Reference No. 2 of 2014, *In the Matter of the National Land Commission* (2015) eKLR; and *In the Matter of the Interim Independent Electoral Commission Constitutional Application No. 2 of 2011* [2011] eKLR, it was urged holistic interpretation of the Constitution and contextually bearing the in mind the history of the issues in dispute and the prevailing circumstances in the light of regretted memories of all powerful President and urged that -

*“In birthing the new Constitution, **Kenyans resolutely rejected the imperial powers of the Presidency in establishing public offices.** Permanent independent commissions and offices were established under Chapter 15 of the Constitution. Where such offices were not expressly established under the Constitution, the Constitution empowers Parliament to establish them through Acts of Parliament to achieve constitutional objectives.”*

It was contended that Panel replicated the work of other institutions and report to him would not be accountable to the people as follows:

“42. The Petitioner submits that the Panel established unilaterally by the President to replicate the work of constitutional and statutory Offices and report to him would not be accountable to the People. Independence and impartiality of such a Panel in working and reporting to the same appointing authority under whose pleasure they serve is equally questionable.

43. The establishment of the Panel presupposes that the Victim Protection Board, the Kenya National Commission on Human Rights, the Independent Policing Oversight Authority have failed, are incapable or incompetent in their constitutional and statutory mandate to address police brutality during and after the protests.

44. However, both the Constitution and existing Statutes do not proscribe establishment of an additional entity at tax payers' expense, to perform parallel functions of those constitutional and statutory offices in addressing gaps or inadequacies in such constitutional offices and/or in such Officers for that matter. Instead, the Constitution and Statutes provide for removal and replacement of non-performing or under-performing Officers.

45. Consequently, if there exists legislative lacuna and/or other gaps including incapacity and budgetary constraints that hinder effective performance, the solution in the Petitioner's humble view is to legislate accordingly, adequately fund, build capacity and empower the existing constitutional and statutory Offices for effective performance of their respective mandates.

46. The Petitioner is of the view that ad hoc, temporary, unpredictable Commissions of inquiry/ Task Forces/Panels established at irregular periods through a vague secretive unilateral appointing process, to serve at the President's pleasure, for different periods of service and at unwarranted public expenditure, similar to the impugned Panel are untenable under the new constitutional dispensation.

*47. The Petitioner implores the Court to find that Gazette Notice No. 12002, Vol. CXXVII-No. 179 Nairobi, 25th August, 2025, establishing the "**Panel Of Experts On Compensation Of Victims Of Demonstrations And Public Protests**" contravenes Articles 129, 131, 132, 233 and 234 and is thus unlawful and unconstitutional.”*

- d. **Prudent management of public resources, meritorious appointment and public participation** – citing Article 201 which requires public participation in financial matters and the decision of Supreme Court in *Institute of Social Accountability & Another v. National Assembly & 5 Others* (Pet. No. 1 of 2018) [2022]KESC 39 (KLR) it was urged that it would be imprudent, inefficient management and wastage of public funds as the roles were being duplicated or overlapping with

those of existing constitutional and statutory offices. As regards appointment of the Panel, the decision of *Matindi & 3 others v. The National Assembly & 4 Others; 50 Others (Interested Parties)* [2023] KEHC 19534 (KLR) on the appointment of Chief Administrative Secretaries was relied on for the proposition that failure to follow constitutionally prescribed process of establishing a public office and for lack of public participation made the appointment unconstitutional.

The cases for the Respondents and Interested Parties

- [14] The Respondents filed Grounds of Opposition dated 18/10/2025 asserting the President's executive authority under Articles 131, 132 and 21 of the Constitution and a Replying Affidavit by Arthur Osiya of 8/10/2025 urging the authority of the President to promulgate the Panel to give effect to his constitutional obligations and relying on Article 130 (2) (e) obligation on the President to respect, uphold and safeguard the Constitution, promote national unity, protect human rights and the rule of law and on 132(1) e (i) –(ii) requiring the president to take specific measures to realize national values and to report such measures annually to the nation and in the gazette. In their Submissions dated 14/10/2025, Relying on the *Mumo Matemba v. Trusted Society of Human Rights Alliance & 5 others* [2013] eKLR underscoring public aspiration towards “cleaning up our politics and governance structure”, it was urged that the Constitution vests the president with both the mandate and moral duty to promote the national values and principles of governance under Article 132(1) (c) and to ensure the protection of human rights as guaranteed in chapter four of the Constitution.
- [15] On whether the establishment of the panel violated the mandates of constitutional commissions, independent offices, Parliament and other institutions, it was that the power flows directly from the duty to promote national unity protect human rights and safe guard the constitution which are executive's functions, as follows:

“ii. Whether the establishment of the Panel violates the mandates of constitutional commissions, independent offices. Parliament or other institutions under Articles 59 94 and 95 of the Constitution the Bill of Rights, and the principle of public finance, or data protection laws.

My Lord, the Respondents' Replying Affidavit makes it clear that the Panel of Experts does not purport to exercise the exclusive mandates of constitutional commissions or independent offices. Rather, it performs a consultative and facilitative role designed to coordinate the realization of national values, human rights protection, and integrity governance, in line with Articles 10, 21, 131(2)(e) and 132(1)(c) of the Constitution.

The President's power to appoint such a Panel flows directly from his duty to promote and enhance the unity of the nation, ensure the protection of human rights and fundamental freedoms: and Safeguard and uphold the Constitution which is an executive function of coordination and implementation not a legislative or quasi-judicial one.

My lord, it is our humble submission that the Constitution envisages cooperation, Not competition, between State organs. Article 6(2) enshrines the principle of mutual respect and assistance among all State organs and levels of government. The Panel complements the work of constitutional commissions by strengthening the national coordination

framework for human rights, integrity, and good governance.

Article 254 expressly provides for parallel reporting obligations: the President, commissions and independent offices all report on measures taken to implement the

Constitution. This demonstrates that their roles are not mutually exclusive but parallel and complementary.

Article 59 does not give the Kenya National Commission on Human Rights (KNCHR) an exclusive monopoly over human rights promotion. *The Constitution places a similar duty on "all State organs and all persons" to "observe, respect, protect, promote and fulfil the rights and fundamental freedoms in the Bill of Rights" under Article 21(1). Thus, The Executive acting through the President is constitutionally empowered to advance human rights through mechanisms such as the Panel.*

My Lord, the Panel's terms of reference show that it merely seeks data and information from relevant bodies and proposes reforms for consideration by competent authorities. It neither investigates complaints nor enforces rights. There is, therefore, no usurpation of KNCHR's or the Victim Protection Board's mandates. o My lord it is our submission that the Panel does not violate parliamentary mandates under Articles 94 and 95. These Articles vest legislative authority in Parliament. The Panel's role is purely advisory to identify policy gaps and recommend legislative or administrative

CD reforms. It cannot enact or amend laws, nor can it bind Parliament. On the contrary. Its work assists Parliament in performing its constitutional mandate under Article 95(2) to "deliberate on and resolve issues of concern to the people."

My Lord, we submit that the Panel promotes rather than violates the Bill of Rights, as it aims to strengthen policy and institutional measures for the realization of fundamental freedoms under Chapter Four. There is full compliance with Article 201 on public finance as the Panel intends to operate within approved budgetary allocations and under existing administrative structures. It does not create a parallel financial entity.

On data protection, the Respondents' Replying Affidavit affirms that the Panel will seek data from relevant State bodies, not collect or process personal data independently. Where such data is shared, the Panel remains subject to the Data Protection Act, 2019 and the oversight of the Data Protection Commissioner.

My Lord, the Respondents respectfully submit that the appointment of the Panel is constitutionally grounded, rational, lawful, and consistent with the President's executive mandate under Articles 130, 131, 132, 10, 21 and 259 of the Constitution."

[16] The members of Panel of Experts, were the 1 - 18 Interested Parties (Pet. E010/2025) are variously referred in their capacity as 9-26 Respondents (E011 of 2025) and 4-20 Respondents (Pet. E014 of 2025), where they have been so referred in the consolidated petitions, save for the 2nd IP who was struck out of the proceedings by order of Court on application and the 27th IP (27th respondent) who was added upon her appointment as the Vice Chairperson of the Panel on resignation of the 2nd Interested Party.

[17] The 1, 3 – 18 Interested parties and the 27th IP/Respondent are members of the Panel (save that the 27th IP and Respondent filed own submissions together with the 19th IP/3rd Respondent KNCHR for which she was recently appointed chair). The Replying Affidavit of the Panel's CEO Jerusah Mwaathime Michael and Submissions filed on behalf of the Panel set out its response that the Panel did not usurp the functions of the Victim protection Board or the Kenya National Commission for Human Rights and constitutional other organs and it was rather a time-bound administrative mechanism for the design of a framework for the access to justice for the victims of the protests and demonstrations consistent with internationally orthodox approach for the design of such reparation programmes, as summarized at paragraphs 75 - 80 of Replying Affidavit, as follows:

[18] By its Submissions dated 16/10/2025, the Panel justifies its existence by a contention that Presidential authority and function contemplates the power to empanel as follows:–

“[T]he Constitution's design of the presidency. Articles 131 and 132 vest the President with the authority and duty to coordinate national executive functions and to report to the Nation, including through the Kenya Gazette. **That textual architecture contemplates precisely the kind of non-coercive, time-bound advisory mechanism that gathers information, organises options, and delivers a public-facing report that other organs may then act upon.** The power is not freestanding; it is tethered to coordination and accountability through formal reporting. That is what the proclamation and Gazette notice effectuate.”

[19] The Panel further urges against grant of the reliefs sought in the Petition contending that the petition is premature and based on fears that may never be realized in the operations of the Panel, as follows:

“58. This Petition asks the Court to prophesy illegality. It invites pre-emptive relief on the hypothesis that: (i) the Panel will spend public money unlawfully; and (ii) share personal data outside the Data Protection Act (DPA); even though the constitutive instrument makes the Panel time-bound and advisory, hard-wires PFMA and DPA

compliance, and embeds multi-agency collaboration. On first principles of ripeness and constitutional avoidance, that is not justiciable now.

59. Kenyan courts have been clear that constitutional litigation must rest on concrete facts, not conjecture. In the **Okiva all/latah Okoiti v Communication Authority of Kenya & 8 others** the High Court captured the doctrine crisply:

“Suffice it to say that the doctrine of ripeness serves useful purpose of highlighting that the business of a court is generally retrospective. It deals with situations or problems that have already ripened or crystalized, and not with prospective or hypothetical ones.”

60. The Supreme Court's **constitutional-avoidance** canon in **Communications Commission of Kenya & 5 others v Royval Media Services Limited & 5 others** (Petition 14, 14A, 14B & 14C of 2014) points the same way:

The appellants in this case are seeking to invoke the "principle of avoidance", also known as "constitutional avoidance". The principle of avoidance entails that a Court will not determine a constitutional issue, when a matter may

properly be decided on another basis. In South Africa, in *S v. Mhlungu*, 1995 (3) SA 867 (CC) the Constitutional Court Kentridge AJ, articulated the principle of avoidance in his minority Judgment as follows [at paragraph 59]:

“I would lay it down as a general principle that where it is possible to decide any case, civil or criminal, without reaching a constitutional issue, that is the course which should be followed.”

61. If and when the reparations scheme matures to spending, Kenya's finance architecture makes unlawful outflows structurally difficult: Article 201 entrenches the principles of public finance; openness and accountability; prudent use of resources. Article 206 requires all national monies to flow through the Consolidated Fund; no withdrawal occurs without legal authorisation. Article 228(5) vests a Controller of Budget veto: "The Controller shall not approve any withdrawal from a public fund unless satisfied that the withdrawal is authorised by law." Article 223 tightly polices any urgent expenditure pre-appropriation (caps, justification, documentation, and prompt parliamentary regularisation).

62. *The Gazette Notice explicitly provides as follows; Funding for the Panel and the compensation scheme shall be provided in accordance with the Public Finance Management Act and any other applicable law, utilising auditable payment channels. The panel has therefore been bound by the President as per the gazette notice to ensure that is it PFMA Complaint, and it is therefore legitimately expected that it will comply with PFMA as directed. Any allegation as to non- compliance is hypothetical and not ripe.*

63. *The Data Protection Act is not a prohibition against Data sharing; it is a framework of guardrails for lawful processing/sharing of Data. The ODPCs handbook distils the binding principles: lawfulness, fairness, transparency; purpose limitation; data minimisation,' accuracy; storage limitation; integrity & confidentiality. Those principles are codified in the Data Protection Act and fleshed out by the Data Protection (General) Regulations. 2021, which require; where appropriate; a Data Protection Impact Assessment (DPIA) before initiating high-risk processing.*

64. *Critically, the constitutive instrument here subordinates any information-access/sharing to law and requires anonymised statistics in public reporting. That is exactly how the DPA expects public bodies to act: share where there is a lawful basis (e.g., task in the public interest/official authority), minimise data fields, record and secure processing, execute DSAs/DPIA where risk warrants, and publish aggregates.*

65. *On today's facts, there is no unlawful processing to judicially censure; the Petition simply assumes there will be. That is ripeness error, squared.*

66. *The Petition rests on feared future PFMA and DPA violations, contrary to a Gazette that commands compliance and to a constitutional architecture that fences both money flows and data processing. Under the ripeness doctrine ("courts are generally retrospective; they deal with problems that have ripened or crystallised, not hypothetical ones") and constitutional avoidance, this challenge is premature. The Court should decline anticipatory relief, allow the time-bound Panel to complete its coordination/design work within PFMA/DPA constraints, and reserve judgment for any concrete breach; if it ever occurs.*

C. CONCLUSION

67. *In the end, the Petition is built on a category error and conjecture. Read holistically and purposively, the Constitution authorizes the President to issue the Proclamation and to constitute the Panel as per the subjected Gazette Notice. Further, the Petition asks the Court to prophesy illegality where none exists and for that reason it must fail. We pray that this Honorable Court does dismiss the Petition with costs."*

The 2nd IP

[20] *The 2nd IP was struck out by order of the Court upon ruling on application in that behalf filed by the party following her resignation from the Respondent Panel. The Ruling dated 10/11/2025 is attached to this Judgment.*

The 19th IP's Case

[21] *The 19th IP (3rd Respondent in Pet. Pet. NO. E011 of 2025 and 2nd IP in E014 of 2025) and the 27th IP, the KNCHR initially supported the Petitions on three principal grounds that the Panel was a usurpation of its constitutional and statutory mandate; that the president has no constitutional and statutory mandate to constitute the Panel; and that the creation of the Panel was offensive to the constitutional scheme of independence of Commissions and independence offices at paragraphs 21 - 28 of Affidavit of Dr. Bernard Mogesa of 7/10/2025.*

[22] Upon the subsequent appointment of the 27th IP as Chairperson, the KNCHR changed tune and sought to withdraw the affidavit of the CEO Dr. Bernard Mogesa of 7/10/2025 in support of the Petition. By a Notice of Withdrawal of Affidavit and Submissions dated 10/11/2025, 19th IP withdrew the documents in their entirety, and did not rely on them.

[23] The said Chief Executive Officer of the KNCHR (3rd Respondent/ 19th IP), Dr. Bernard Mogesa, now filed an affidavit sworn on 11/11/2025 supporting the establishment of the panel of Experts as follows:

“26. **THAT** the 3rd Respondent is cognizant of Article 23(3) of the Constitution which provides for appropriate reliefs for human rights violations including **an order for compensation;**

27. **THAT** Kenya has witnessed public protests and demonstrations christened "Gen Z- protests" to which the State responded by among others unnecessary and excessive use of force resulting in police brutality, abductions, enforced disappearances and extra-judicial killings;

28. **THAT** the 3rd Respondent in line with its Constitutional and Statutory mandates under Article 59 (2) of the Constitution and Section 8 of the KNCHR Act, has strongly condemned the various violations that occurred during the protests (submitted to Parliament and the Office of the President), Advisories and Public Interest Litigation with an aim of having the victims access redress. (Attached and marked "BM-I" is a bundle of documents attesting to the same);

29. **THAT** the 3rd Respondent has continuously demanded accountability from the State as the primary duty bearer and other key stakeholders and as such the 3rd Respondent believes that the establishment of the Panel of Experts is the State's response to the recommendations for accountability and redress.

30. **THAT the government of Kenya having international human rights obligations is expected to take steps (including through the legal process and through reparations) to address human rights violations as they occur and with a commitment to non- repetition and necessary reforms for protection of human rights.**

31. **THAT** the 3rd Respondents believes that the establishment of the Panel of Experts is an opportunity for reforms especially in the adoption of a legal framework for reparations.

32. **THAT** the 3rd Respondent having been included as part of the panel of Experts through the appointment of its chairperson (the 27th Respondent) sees this as an opportunity to develop a sustainable framework for reparations and compensation and to avoid the ad hoc way this has historically been undertaken.

33. **THAT** in view of the above the 3rd Respondent supports the establishment of the Panel of Experts and prays that this Honorable Court allows victims of human rights and victims of demonstrations and public protests to get redress.

34. **THAT I swear this affidavit in Opposition of the Amended Petition herein.”**

[24] The 27th IP filed an Affidavit supporting the establishment of the Panel and her involvement in similar terms.

[25] Ultimately, in Submissions dated 13/11/2025, the KNCHR and its chairperson, now named the Vice-chairperson of the Panel of Experts based their support for the mechanism on a submission of the imperative of the Latin maxim **ubi jus ibi remedium** and on the need for collaborative effort among

agencies for purposes of implementing reparations for violations without specifically addressing the issue of validity of the Proclamation on the empanelment of the Panel of experts, as follows:

“IV. SUBMISSIONS

1. The 3rd & 27th Respondents herein submits that it is a well settled principle of law that for every violation there must be a remedy (***Ubi jus, ibi remedium***). The principle ensures that no wrong goes unaddressed and that victims of human rights violations are guaranteed access to justice for violations of their fundamental rights. The 3rd and 27th Respondents further submit that victims of human rights violations are entitled to compensation as a matter of international obligation, even in the absence of a specific national legislation. The right to an effective remedy including compensation is a fundamental principle enshrined in the **Universal Declaration of Human Rights in Article 8 and in Article 2 (3) of the International Covenant on Civil and Political Rights (ICCPR) both of which Kenya has ratified and both of which have become part of national laws as provided in Articles 2 (6) of the Kenyan Constitution** that provides that 'Any treaty or convention ratified by Kenya shall form part of the law of Kenya under this constitution.’”

[26] Citing several international human rights conventions and resolution on human rights, it was urged that -

“19. The United Nations Principles relating to the Status of National Human Rights Institutes (Paris Principles) provides that **National Human Rights Institutions (NHRIs)** are to **recommend reparation** and monitor implementation, through investigations, recommendations and follow up on State Compliance.

20. Further the United Nations General Assembly Resolution 60/147 (Basic principles and guidelines on the right to a remedy and reparations, 2005) provides that the State has a duty to ensure effective remedies and **may do so through NHRIs when judicial remedies are inadequate.”**

[27] In further submission, the central role of **National Human Rights Institutions (NHRIs)** such as the KNCHR was, perhaps unwittingly, underscored as follows:

“27. The Office of the High Commissioner for Human Rights (OHCHR) **Basic Principles and Guidelines on the Right to a Remedy and Reparation (2005)** **encourage States to use independent national bodies, including NHRIs, to: Facilitate access to justice and reparation; provide advisory opinions on redress policies; monitor and assess compliance with reparation obligations.**

28. The OHCHR's Handbook on NHRIs (2010) also underscores that **NHRIs should advocate for comprehensive reparation frameworks in national law, ensure victim participation in reparation design and delivery and integrate reparation monitoring into their reporting to UN mechanisms.**

29. At the Regional level, the African Commission on Human and Peoples' Rights in Resolution 281 (2014), recognized **NHRIs as key actors in monitoring the implementation of its decisions, including ensuring victims receive reparations.**

30. The Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa also identify **NHRIs as non-judicial mechanisms for remedy and access to justice.”**

[28] In conclusion, reiterating that every human rights violation, infringement and or threat attracts a remedy, “the 3rd and 27th Respondents humbly submit that the reparations process/framework requires a multisectoral approach to ensure that justice is not only declared but delivered through fair, transparent and rights-based reparations that restore victim’s dignity.”

[29] The 20th IP, **VICTIMS PROTECTION BOARD**, did not enter appearance or take part in the proceedings before the Court.

The case for the Law Society of Kenya

[30] The Law Society 21st IP (5th IP in Pet. E014/2025) is set out in the Replying Affidavit of 6/10/2025 by the Secretary and Chief executive Officer (CEO) Florence Muturi who detailed the Society's support on the Panel of Experts based on present in the ***Thirdway Alliance Kenya & another v Kinyua & 2 others; Kimani & 15 others (Interested Parties)*** [2020] KEHC 7887 (KLR) case but pledging to remain alert and to address any infractions of the law as may arise in the operations of the Panel as follows:

“24. That accordingly, based on the above precedent, the President's powers under Article 132 do not contradict the constitutional functions of Commissions under Article 252; they exist in a complementary and constitutionally harmonized framework.

25. That on the issue of whether the establishment, composition, and functions of the Panel of Experts amount to an unlawful exercise of legislative or policy-making power by the Executive, in violation of the doctrine of separation of powers and Articles 94 and 95 of the Constitution, the position of the Law Society of Kenya is as follows:

*26. That from precedent, the appointment of the Panel of Experts **IN AND OF ITSELF** does not amount to an unlawful exercise of legislative or policymaking power by the Executive and therefore article 94 and 95 of the constitution have not been violated.*

*27. That the above position of the Law Society of Kenya is, yet again, informed by the position by the court in the BBI Taskforce case, where Mativo J. pronounced himself on a similar issue **between paragraphs 93 and 94** by way of summary, held that the President's power to appoint a Taskforce is closely related to his broad policy-formulating function; hence it is an executive power and a mechanism to obtain information and advice to achieve constitutionally mandated objectives.*

28. That from the jurisprudence in the BBI taskforce case, it is established that the President can establish a mechanism to advise him on how best to fulfil this constitutional obligation. There is also no evidence that the appointments vide the gazette notice were unlawful or that the appointees failed to meet the integrity standards of Chapter Six of the Constitution.

29. That on the issue of whether the President was constitutionally obligated under Article 118 to facilitate public participation prior to the establishment and gazetting of the Panel of Experts, and whether failure to do so rendered the process unconstitutional, the position of the Law Society of Kenya is as follows:

30. That a similar issue had previously arisen and been determined by

Lenaola J. (as he then was) in Kenya Legal and Ethical Network on HIV& AIDS (KELIN)&3 others v Cabinet Secretary Ministry of Health & 4 others.

31. That in the above previous decision, while grappling with this question of whether the Constitution imposes an obligation upon the President to facilitate public participation before issuing a directive in circumstances similar to the instant case the court has already said that:

“It is further not lost to me that public participation in the legislative process is crucial in a democratic society generally and the question I set out to answer elsewhere above is whether the Constitution imposes an obligation on the President to facilitate public participation before issuing a directive like the one before me. I can only answer that question in the negative. I should add that if such an obligation were to exist every time the President was to exercise his executive authority, especially in the most urgent of situations as they will arise from time to time, it would be difficult for him to utilize his executive powers. In

stating so, I am conscious of the fact that an executive directive is a serious order and the President ought to issue one in the most deserving of situations and upon taking into consideration the full effect of the directive on the well being of the people of Kenya. It is for that reason that the President has an adviser - the Attorney General, who is mandated under article 156(4) (a) to be the Principal Legal Adviser to the Government and to ensure that the Executive, including the President, always act within constitutional parameters. Be that as it may, if a directive violates any Constitutional provision, it ought to be challenged in court as there is no doubt that the President is bound by the provisions of the Constitution and his actions must be within the four corners of the Constitution ... "

32. That Further, Mativo J. in the BBI Task force Case also held that –
 “I do not think that it was the intention of the Constitution that any time the President performs his function under the said Articles he IS required to subject his decision to public participation. Such an interpretation would amount to unnecessarily constraining his constitutional functions. Simply put, executive decisions such as the one under consideration do not have to be subjected to public participation. But once the decision is reduced into a policy or a legislation, then the policy or legislation, regulation or decision must be subjected to public participation ... ”

33. That accordingly, informed by the foregoing judicial precedents, the position of the Law Society of Kenya is that the principle of public participation is not relevant at this stage.

34. That the Law Society of Kenya hastens to add that, in the performance of its mandate, if it gets there, the Panel has a duty to ensure optimum public information and reasonable public participation (particularly the affected public).

35. That to the issue of whether the funding, operationalization, and financial commitments related to the Panel of Experts violated the principles of public finance under Articles 201 and 206 of the Constitution, including failure to comply with lawful appropriation procedures, the position of the Law Society of Kenya is as follows:

36. That According to precedent, at this stage of the process, the funding, operationalization, and financial commitments related to the Panel of Experts do not, as yet, violate the principles of public finance under Articles 201 and 206 of the Constitution including failure to comply with lawful appropriation procedures.

37. That when the actual appropriation of funds starts, scrutiny of the shall reveal whether or not the same are violative of the safeguards in public finance management and same may be dealt with on the evidence that shall emerge then.

38. That the Law Society of Kenya has found guidance from Mativo J. in the **BBI task force Case** where the judge made a determination on this issue and held as follows,

"...133 The narrow question for determination is whether if the function falls within the scope of the President's constitutional functions, can any monies used towards the function in question be said to be a transgression of the provisions of article 201 of the Constitution and the Public Finance Management Act. If the function falls within the president's mandate as I have found, the costs incurred properly fall within the permissible budget and if any abuse is found to exist on the

actual amounts used, then, the Auditor General is legally mandated to audit the accounts in conformity with article 226 (3) of the Constitution.

134. This court is being invited to perform the functions of the Auditor General and find that there has been an improper use of government funds yet the function in question falls within the President's constitutional mandate. I decline the said invitation. As to the question of the actual amounts used, this court is inclined to respect the constitutional mandate of the Auditor-General for three reasons, (a) it is a constitutional imperative that the constitutional independence of the independence of the Auditor-General must be respected. The court will be trespassing into his constitutional mandate if it makes a finding either way which can prejudice his work before he performs an audit as required under the Constitution. (b) should the court fall into such a trap, then it will have not only prejudiced the audit, but also it will have fallen into an awkward position should the audit become the subject of a court challenge in the future ... "

39. That since the Law Society of Kenya, guided by existing precedents has taken the position that the establishment of the panel of experts vide the relevant gazette notice falls within the scope of the President's constitutional functions it follows, therefore, that any monies used towards the function in question, cannot by the fact of establishment alone, be said to be a transgression of the provisions of article 201 of the Constitution and the Public Finance Management Act, as already settled by our courts.

40. That once again, the Law Society hastens to add that as and when appropriations of funds and expenditure begin to flow, the Society shall, as mandated by Section 4 of its enabling legislation, scrutinize the same vigilantly for compliance with the requirements of public finance law and take appropriate remedial interventions on a case to case basis.

41. That on the issue of whether the roles of the panel of experts violates article 31 of the constitution of Kenya, relating to the Right to privacy and data protection, the position of the Law Society of Kenya is as follows:

42. That the society has taken note of the circumscribed prescription in the Gazette Notice relating to access to data in terms of "acting in accordance with the law".

43. That on the face of it, that circumscribed prescription, in the estimation of the Law Society of Kenya, signals an endeavour to incorporate Article 31 and other privacy protections.

44. That if, on a case by case basis, the Panel fails to comply with the law, the LSK retains the liberty to take up the cudgels on behalf of the general public or any affected individual and enforce compliance with the relevant constitutional and statutory standards. For now, the Gazette Notice, in and of itself, does not appear to be a violation of the privacy provisions of the law.

45. That on the issue of whether the existence of the panel of experts results in usurpation of the Victims protection Board, the law society of Kenya adopts and reiterates its position on the first issue above.

46. That the foregoing position of the Law Society of Kenya, based on the established precedents is expressed in this affidavit, is without prejudice to the authority of this court to depart from the said precedents within the legal parameters of distinguishing of precedents.

47. That based on the facts of this case, and the stage of establishment and functioning of the Panel by the time this matter was filed in court and conservatory orders were issued, the Law Society of Kenya does not think that material exists for distinguishing these precedents.”

[31] The Law Society filed submissions corresponding to the contentions raised in the Replying Affidavit.

The case for a Victim, The 22nd Interested Party

[32] The 22nd Interested Party is an individual who was a gunshot victim of the protest/demonstrations was added on application for joinder to court, and he supports the work of the Panel as the only meaningful avenue to compensation the injuries that he and other suffered. In conclusion, his Submissions dated 14/10/2025 urged as follows:

“CONCLUSION

The Constitution must be interpreted and applied in a manner that facilitates justice for victims rather than creating insurmountable barriers to justice. Article 259 (1) provides that the Constitution shall be interpreted in a manner that promotes its purposes, values and principles, advances the rule of law and human rights, permits the development of the law, and contributes to good governance. These interpretive principles all point toward allowing the Panel to function and ensuring that victims have access to effective and timely compensation.

The question before this Honourable Court is not merely a technical question about institutional mandates and separation of powers. It is fundamentally a question about whether victims of state violence will have access to justice, or whether they will be condemned to years or decades of fruitless litigation while they suffer from injuries without compensation.

We acknowledge that the Petitioner raises legitimate constitutional concerns. But these concerns must be balanced against and harmonized with the equally important constitutional imperative to protect and promote human rights and human dignity.

We, therefore, most respectfully and humbly urge this Honourable Court to dismiss the Application for conservatory orders and the Petition in its entirety and allow the Panel of Experts to continue with its mandate”.

Oral Submissions at hearing

[33] The parties’ written submissions tailored to their respective cases and Counsel highlighted these at an oral hearing before the Court, and Judgment was reserved.

Issues for determination

[34] The broad issues that arise for determination in the Consolidated Petitions are two-fold:

1. *Whether the Presidential Proclamation and the Gazette Notice 12002 of 25/8/2025 effecting it are ultra vires, violating the constitution by duplication or usurpation of the mandates and functions of Constitutional and statutory bodies; and*
2. *Whether in the implementation of the Presidential Proclamation by Gazette Notice 12002 of 25/8/2025 the Panel of Experts violates the constitutional and statutory provisions on separation of powers, competitive recruitment of public officers, principles of public financial management and rights to privacy protected under the Data Protection Act.*

[35] The second issue arises from, and is dependent on the finding on, the first. The Court will, consequently, deal with the first issue as a preliminary point and only delve into the latter if it confirms that the Presidential Proclamation meets the constitutional muster challenge in the Consolidated Petitions.

Analysis and Determination

[36] ***Does the Presidential Proclamation and the Gazette Notice effecting it violate the constitution by duplication or usurpation of the mandates and functions of Constitutional and statutory bodies.***

Duty to provide effective remedy

[37] It is clear that the **Victim Protection Act** cap. 79A is a statutory fulfilment of the provision on right to fair hearing under Article 50 (9) of the Constitution that **“(9) Parliament shall enact legislation providing for the protection, rights and welfare of victims of offences”** and it is so stated in the long title as follows:

“AN ACT of Parliament to give effect to Article 50 (9) of the Constitution; to provide for protection of victims of crime and abuse of power, and to provide them with better information and support services to provide for reparation and compensation to victims; to provide special protection for vulnerable victims, and for connected purposes”

[38] The word **victim** is defined in the Act in terms that *“‘victim’ means any natural person who suffers injury, loss or damage as a consequence of an offence;”* and **offence** is defined as *“‘offence’ means an act or omission that caused harm to a victim and that constitutes an offence under any written law.”*

[39] In addition, the objects of the Act clearly delimit the relationship of the Act with the Court process as follows:

“3. Objects and purposes

The objects and purposes of this Act are to—

(a) recognize and give effect to the rights of victims of crime;

(b) protect the dignity of victims through—

(i) provision of better information, support services, reparations and compensation from the offender, in accordance with this Act;

(ii) establishment of programs to assist vulnerable victims;

(iii) supporting reconciliation in appropriate cases by means of a restorative justice response;

(iv) establishment of programmes to prevent victimization at all levels of government;

(v) preventing re-victimization in the justice process; and

(c) promote co-operation between all government departments and other organizations and agencies involved in working with victims of crime.”

[40] The reparations and compensation contemplated under the Act are **“reparations and compensation from the offender”**, clearly in the context of a criminal trial. On the other hand, the object of the scheme of reparations under the Basic Principles and Guidelines on the right to a remedy is to cater for victim of violation of human rights even in situations where the perpetrators are not identified, prosecuted or convicted. The Court therefore, finds that the planned reparations are outside the purview of the Victim Protection Act, and the preparation of such a framework cannot be held to be an overlap or usurpation of the mandate of the **Victim Protection Trust Fund** established under the Act, (which was said not to be operational). It is noteworthy that while the Act provides as one of its objects **“reparations and compensation from the offender”**, payments from the **Victim Protection Trust Fund** are primarily payments for *“(a) the expenses arising out of assistance to victims of crime.”*

[41] The scheme for reparations under the Victim Protection Act is clearly not the reparations remedy contemplated under the Basic Principles on the Right to a remedy. There must be an identified perpetrator, prosecuted and convicted to become the offender from who the reparations and compensation may be ordered.

[42] The Kenya Constitution at Article 50 (1) expressly stipulates that –

“Fair hearing.

50. (1) Every person has the right to have any dispute that can be resolved by the application of law decided in a fair and public hearing **before a court or, if appropriate, another independent and impartial tribunal or body.**”

- [43] Articles 23 and 165 (3) (d) grants the High Court power to grant remedy for violation of rights, which may include **compensation**. All is well in the judicial sector of the Human Rights violations compensation.
- [44] At the centre of the dispute in the Consolidated Petitions appear to be a confusion as to the respective spheres of compensation under the national judicial systems and the international human rights law obligations to effective remedy for human rights violations where judicial process is not possible or is unsuitable. The Petitioners before the Court appeared to target principally the former and the Panel of Experts promotes the latter. The KNCHR supported the need for preparation of a reparations mechanism but was unsure of the domicile of such venture, in view of conflicting positions taken by its officers before and after the appointment of the chairperson as Vice-Chair of the Panel.
- [45] It is easy to distinguish the respective spheres of the two mechanisms in that the constitutional suits for compensations under the Bill of Rights, or even the compensation under the provisions of the Victim Protection Act, do not include the specific reliefs of **restitution, satisfaction and guarantees for non-repetition**, even if these might be in the course development of jurisprudence be adopted as part of the appropriate remedy contemplated under Article 23 (3) of the Constitution.

*The object of the **Basic Principles** on the right to a remedy*

- [46] It is the constitutional duty to provide a remedy outside the **judicial** process in accordance with the international human rights law obligations that these proceedings are concerned with. The KNCHR gave the strongest support for such mechanism in its submission that –

*“The right to an effective remedy including compensation is a fundamental principle enshrined in the **Universal Declaration of Human Rights in Article 8 and in Article 2 (3) of the International Covenant on Civil and Political Rights (ICCPR) both of which Kenya has ratified and both of which have become part of national laws as provided in Articles 2 (6) of the Kenyan Constitution** that provides that ‘Any treaty or convention ratified by Kenya shall form part of the law of Kenya under this constitution.’”*

- [47] On possibilities of remedies outside the judicial process for redress for violation of rights, the **UN Basic Principles and Guidelines on the Right to Remedy** give effect to Article 8 of the **United Nations Declaration on Human Rights (UNDHR) 1948** and Article 2 (3) of the **International Covenant on Civil and Political Rights (ICCPR) 1966**, which provides that:

“Article 8 UNDHR

*Everyone has the right to an effective remedy by **the competent national tribunals for acts violating the fundamental rights** granted him by the constitution or by law.”*

“Article 2 of ICCPR**3. Each State Party to the present Covenant undertakes:**

- b. To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;**
- c. To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;**
- d. To ensure that the competent authorities shall enforce such remedies when granted.”**

Designing the Reparations framework

- [48] The Court was not fully served with submissions as to the nature of the **UN Basic Principles on the right to remedy** as binding on State parties or having ripened into a norm of customary international law, as evidenced by widespread usage, to become ***“part of the law of Kenya in the language and meaning of article 2(6) of the Constitution”*** as discussed in the *Mitubell* decision of the Supreme Court [*Mitu-Bell Welfare Society v Kenya Airports Authority & 2 others; Initiative for Strategic Litigation in Africa (Amicus Curiae)*] [2021] KESC 34 (KLR)].
- [49] The obligations of Kenya under the Resolution 60/147 of 2005 requiring giving effect to the right to effective remedy under the ***Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*** require the establishment of such a framework for reparations in cases where the judicial process may not suffice for want of identifiable perpetrators and evidence to support finding of liability against any person.
- [50] In view of the guidance by the Supreme Court in the *Mitubell* case as to the waning significance of the differentiation as to ***“whether a state is monist or dualist, [which] is increasingly becoming sterile, given the fact that, a large number of modern-day treaties, conventions, and protocols are Non-Self Executing, which means that, they cannot be directly applicable in the legal systems of states parties, without further legislative and administrative action”***, the Court would agree that the State is under a duty to take further administrative and legislative action to give effect to the **Basic Principles on the right to remedy**.
- [51] However, being as it is based on the provisions on the right to a remedy for victims of violations of international human rights law found in numerous international instruments, in particular article 8 of the **Universal Declaration of Human Rights**, article 2 of the **International Covenant on Civil and Political Rights**, and in regional conventions, in particular article 7 of the **African Charter on Human and Peoples’ Rights**, the position elaborated in the **Basic Principles** would call for implementation as the part of the law of Kenya under Article 2 (6) of the Constitution, the Principles themselves constituting ***“soft law in the language of international jurisprudence”*** in the words of *Mitubell*.
- [52] The scope of obligations under the **UN Basic Principles on the Right to a Remedy** is set out in Article 2 thereof as follows:

“II. Scope of the obligation

3. The obligation to respect, ensure respect for and implement international human rights law and international humanitarian law as provided for under the respective bodies of law, includes, inter alia, the duty to:

- a. Take appropriate legislative and administrative and other appropriate measures to prevent violations;***
- b. Investigate violations effectively, promptly, thoroughly and impartially and, where appropriate, take action against those allegedly responsible in accordance with domestic and international law;***
- c. Provide those who claim to be victims of a human rights or humanitarian law violation with equal and effective access to justice, as described below, irrespective of who may ultimately be the bearer of responsibility for the violation; and***
- d. Provide effective remedies to victims, including reparation, as described below.”***

- [53] Obviously, the remedies under the UN Basic Principles on the right to a remedy, including ***(i) reparation, (ii) compensation, (iii) satisfaction, and (iv) guarantees for non-repetition***, are broader than the remedies under Article 23 of the Constitution of Kenya and without prejudice to them. Indeed, the basic Principles define a victim widely in terms that ***“a person shall be considered a victim regardless of whether the***

perpetrator of the violation is identified, apprehended, prosecuted, or convicted". The Government is perfectly entitled to pursue the delivery of remedies under the UN Basic principles in complementary programme to the remedies available to the victims under the regular court procedures of the domestic law.

[54] The good intentions of the proposed scheme for addressing the violations of the rights of the victims of protests/demonstrations and other persons who lost their lives or property or were injured during the demonstrations is unquestionable. It is the implementation which requires to be worked out in a framework that is authorized under the constitutional and statutory stipulations so that a valid result is obtained for reparations in the many deserving cases. What is the situation in this case?

Presidential Proclamation and Gazette Notice

[55] At the outset, the Court must assert its judicial authority and acknowledges its duty to strike out any act which is done inconsistently with the Constitution as a general consequence of the Rule of Law and supremacy of the Constitution. The Court's judicial authority is entrenched under Article 1 (3) of the Constitution delegating the Sovereign judicial authority to "(c) the Judiciary and independent tribunals."

[56] The consequence of unconstitutional act is provided under Article 2(2) of the Constitution in terms that "(2) No person may **claim or exercise State authority** except as authorised under this Constitution" and reiterated in the express provision that "(4) Any law, including customary law, that is inconsistent with this Constitution is void to the extent of the inconsistency, and **any act or omission in contravention of this Constitution is invalid.**"

[57] The matter is sealed by the vesting in the High Court under Article 165 (3) (ii) of the Constitution the "jurisdiction to hear any question respecting the interpretation of this Constitution including the determination of — (i)... **(ii) the question whether anything said to be done under the authority of this Constitution or of any law is inconsistent with, or in contravention of, this Constitution.**"

[58] In the Consolidated Petitions, there is a question of legality of the President's action in the Proclamation setting up the Panel of Experts on Compensation for violation of Human Rights. I respectfully agree with ***Okoti & another v Public Service Commission & 73 others; Law Society of Kenya & another (Interested Parties) [2021] KEHC 464 (KLR)*** the High Court (AC Mrima, J.) cited by the 2nd petitioner on the doctrine of legality following *Medicines Trust and others v Minister of Health and others* [at para 18] [20051 ZACC 3; 2006 (3) SA 247 (CC) at paras 49, 75 and 77:

*"The exercise of public power must therefore comply with the Constitution, which is the supreme law, and the doctrine of legality, which is part of that law. **The doctrine of legality, which is an incident of the rule of law, is one of the constitutional controls through which the exercise of public power is regulated by the Constitution. It entails that both the Legislature and the Executive 'are constrained by the principle that they may exercise no power and perform no function beyond that conferred upon them by law'**. In this sense the Constitution entrenches the principle of legality and provides the foundation for the control of public power."*

[59] The consolidated petitions call for incisive consideration of the authority to constitute the Panel of Experts, the nature and scope of its terms of reference against the existing constitutional and legal systems for the protection and enforcement of rights in the Bill of Rights, and the respective mandates given to the relevant State organs.

[60] The Court respectfully notes the decision of the High Court in ***Azimio La Umoja One Kenya Coalition Party v President of Kenya & 9 others; Kenya National Commission on Human Rights (Interested Party)*** [2024] KEHC 8251 (KLR) (L. N. Mugambi, J.) when dealing with constitutional and statutory mandate of the KNCHR that:

"134. Part of the powers and functions of the Commission under section 12(1)(a) is to "investigate alleged violations of the provisions of the Act upon receipt of complaint or on its own motion." Further, under 12(f) it is the responsibility of the

Commission to recommend effective measures for prevention of torture and cruel, inhuman and degrading treatment and punishment.”

135. Evidently therefore, by creating a Commission of Inquiry to “inquire into torture, inhumane and degrading treatment of members and other persons linked to the Good News’ the 1st respondent had unilaterally seized the interested party’s explicit mandate and allocated it to a Commission of Inquiry he created. That action was thus unconstitutional.

136. To the contention by the second respondent that the 1st respondent actions did not amount to usurpation in view of article 130(1)(b) which vests the President with the executive authority and article 131(1)(e) that requires him to ensure protection and observance of human rights and fundamental freedoms, I find the contention untenable. The President should respect the specific mandate given to the Independent Offices and Commissions under the Constitution. He cannot create extra constitutional bodies to undertake that specific functions belonging to agencies created by the Constitution. He cannot use general powers to override specific powers. The Latin maxim, ‘*generalia specialibus non derogant*,’ meaning ‘specific or detailed provisions of a legal instrument should prevail over more general provisions’ displaces the contention by the 2nd Respondent. My view is therefore is that the although the President is under an obligation embody the observance of human rights in the performance of his responsibilities, that does give him the latitude to appropriate specific responsibility assigned other constitutional bodies.

137. The 2nd respondent further argued that the performance of these duties by the Commission of Inquiry does not hinder but does compliment the work of the Constitution Commissions and Independent Offices. I disagree. Taking away the specific duties of a Constitutional or Statutory body and assigning them to a body created by the President is undermining the independent Constitutional bodies and Offices. It is an abrogation of the Constitution. Plucking the various constitutional mandates and unilaterally concentrating them on a Commission of Inquiry is unconstitutional, null and void.”

[61] The Court respectfully agrees that the President has no authority “to appropriate specific responsibility assigned to other constitutional bodies” in exercise of his authority and functions under the Constitution under Article 131 and 132 of the Constitution. The President has authority under Article 131 (2) (e) “to ensure the protection of human rights and fundamental freedoms and the rule of law”, and function under Article 132 (5) the function to ensure “that the international obligations of the Republic are fulfilled through the actions the actions of the relevant Cabinet Secretaries.” It is just and right that the president as the holder of the constitutional trust to ensure *the protection of human rights and fundamental freedoms and that the international obligations of the Republic are fulfilled* should coordinate the functioning of the responsibilities over human rights.

[62] How does the President exercise of this authority and discharge the function in 131 (2) (e) and 132 (5) of the Constitution? Is it logical that, in the exercise of the authority and performance of the function relating to the human rights, the President may seek the advice of expert bodies and persons both public and private, while the principal State organ with human rights mandate exists?

[63] The answer to these questions call for a proper construction of the Constitution. The Supreme Court has guided that the proper construction is one that achieves a holistic and purposive interpretation of the Constitution. See **the Supreme Court in Communications Commission of Kenya & 5 others v Royal Media Services Ltd & 5 others [2014] KESC 53 (KLR), para 137-8:**

“[137] This, in our perception, is an interpretive conundrum, that is best resolved by the application of principle. This Court has in the past set out guidelines for such matters of interpretation. Of particular relevance in this regard, is our observation

that the Constitution should be interpreted in a holistic manner, within its context, and in its spirit. In the Matter of the Kenya National Human Rights Commission, Sup. Ct. Advisory Opinion Reference No. 1 of 2012; [2014] eKLR, this Court [paragraph 26] had thus remarked:

“...But what is meant by a holistic interpretation of the Constitution? It must mean interpreting the Constitution in context. It is the contextual analysis of a constitutional provision, reading it alongside and against other provisions, so as to maintain a rational explication of what the Constitution must be taken to mean in light of its history, of the issues in dispute, and of the prevailing circumstances. Such scheme of interpretation does not mean an unbridled extrapolation of discrete constitutional provisions into each other, so as to arrive at a desired result” [emphasis supplied].

[138] In Speaker of the Senate & Another v. Attorney-General & 4 Others, Sup. Ct. Advisory Opinion No. 2 of 2013; [2013] eKLR, [paragraph 156], this Court further explicated the relevant principle: The Supreme Court of Kenya, in the exercise of the powers vested in it by the Constitution, has a solemn duty and a clear obligation to provide firm and recognizable reference-points that the lower Courts and other institutions can rely on, when they are called upon to interpret the Constitution. Each matter that comes before the Court must be seized upon as an opportunity to provide high-yielding interpretative guidance on the Constitution; and this must be done in a manner that advances its purposes, gives effect to its intents, and illuminates its contents. The Court must also remain conscious of the fact that constitution-making requires compromise, which can occasionally lead to contradictions; and that the political and social demands of compromise that mark constitutional moments, fertilize vagueness in phraseology and draftsmanship. It is to the Courts that the country turns, in order to resolve these contradictions; clarify draftsmanship gaps; and settle constitutional disputes. In other words, constitution making does not end with its promulgation; it continues with its interpretation. It is the duty of the Court to illuminate legal penumbras that Constitutions borne out of long drawn compromises, such as ours, tend to create. The Constitutional text and letter may not properly [capture] express the minds of the framers, and the minds and hands of the framers may also fail to properly mind the aspirations of the people. It is in this context that the spirit of the Constitution has to be invoked by the Court as the searchlight for the illumination and elimination of these legal penumbras” [emphasis supplied].”

[64] On the present inquiry before the Court, the President’s authority and function to do a particular thing must be interpreted in the context of other provisions of the Constitution on the matter to make the exercise of the authority and the performance of the function compatible with the in the tapestry of the provisions on subject matter under consideration. The authority and function cannot be exercised in the air, or in a vacuum of the power in, of and by itself.

[65] The authority of the President and function under the Articles 131 and 132 of the Constitution must come with capability to act as necessary in the exercise or discharge of such executive functions, but such capacity may be curtailed by the machinations of the Constitution itself where its provisions, in the larger fabric of functions and mandates principally allocates the work sought to be done to another constitution body or process. That must be the way to read the Constitution in a holistic and harmonious manner without any clause or provision doing violence to another but each supporting the other in the fabric of the whole, so as ***to maintain a rational explication of the meaning of the Constitution.***

[66] The President’s authority and function, respectively, (1) to ensure the protection of human rights and fundamental freedoms and the rule of law and (2) to ensure compliance with international human rights

requirements through the actions of Cabinet Secretaries must be construed to permit action on his part towards such compliance. Of what nature and to what extent? That is the question!

Executive policy formulation

[67] Nobody can begrudge the Executive's right to establish a panel of experts to consider and advise on the development of policy in an area of its competence in accordance with the constitutional functions. The development of Policy is an executive arena and the Court respectfully notes the decision of the Court in ***Thirdway Alliance Kenya & another v Kinyua & 2 others; Kimani & 15 others (Interested Parties)*** [2020] KEHC 7887 (KLR) where Mativo, J. as he then was crisply put it:

*“The function of the executive is therefore to **coordinate** the formulation of policies which may lead to the making of laws, and to oversee the implementation of laws and policies by government departments. In this way the executive is meant to promote effective and efficient governance.”*

[68] From the Judgment, the terms of reference of the Taskforce were, among others, to evaluate the national challenges, build bridges to a new Kenyan nation, and having done so, make practical recommendations and reform proposals that build lasting unity. In the passage cited by the Respondent/Interested Parties the Court said:

*“The constitutional scheme gave the President a special power to appoint the Taskforce. The appointment constituted an executive action and not an administrative action. **The authority in articles 131 and 132 of the Constitution was conferred to provide room for the President to fulfil executive functions and ought not be constrained any more than through the principle of legality and rationality. The exercise of the powers ought not infringe any provision of the Bill of Rights and as was implicit in the Constitution. The President had to act in good faith and ought not misconstrue the powers. Those were significant constraints upon the exercise of the President's power.** There was nothing to show that the President misconstrued his powers or acted in bad faith.”*

[69] In the passage that followed the learned Judge said, significantly that:

“The exercise of public power had to comply with the Constitution, which was the supreme law, and the doctrine of legality, which was part of that law. The doctrine of legality, being an incident of the rule of law, was one of the constitutional controls through which the exercise of public power was regulated by the Constitution. It entailed that both the Legislature and the Executive were constrained by the principle that they would exercise no power and perform no function beyond that conferred upon them by law. In that sense, the Constitution entrenched the principle of legality and provided the foundation for the control of public power. The exercise of such power had to be rationally related to the purpose for which the power was given.”

[70] Clearly, the test of legality includes checking the matter subject of the Taskforce against any constitutional provisions that provide otherwise, so that the exercise of the President's authority or function, as with any power given to any other state officer, public officer or organ, is as always **subject to the Constitution**. It must be pointed out that the final policy formulation function remains with the Executive. The Petitions here appear agree to that extent; it is question as to who develops and proposes the framework for consideration into the making of the policy for reparations. In my view, the test in each case must be the **function** sought to be executed or performed, and whether it falls on the constitutional mandate of the President.

[71] For instance, see the ***Benjamin v Attorney General & 6 others; Maraga & 23 others (Interested Parties)*** [2025] KEHC 4645 (KLR) taking over functions of Police Service Commission and ***Azimio La Umoja One Kenya Coalition Party v President of Kenya & 9 others; Kenya National Commission on Human Rights (Interested Party)*** [2024] KEHC 8251 (KLR) taking over police investigation, where the Court (L.N. Mugambi, J.) found the President to have exceeded his authority.

[72] It would defeat the object of the Constitution of Kenya 2010 in establishing a National Human Rights Institution (NHRI) in Kenya and entrenching it in the Constitution as an independent Commission, the KNCHR, in view of Kenya history of violation of human rights and executive interference with all structures of governance, to have the matter of reparations for violations of by the government in compliance with the International Human Rights law and treaties superintended by the same Executive. Unless it is merely a ‘public-relations exercise’ aimed at hood-winking the public and the international human rights community that something was being done to redress the recent widespread and conspicuous violations of human rights during the Protest and Demonstrations against the Finance Bills of 2024. Its **bona fides** will also be put to question by the limitation as to the period of redress.

[73] The nature of the President's authority and function in human rights under the Constitution is clearly limited to coordination to ensure that human rights are protected and the international obligations, including those involving human rights are fulfilled. It does not entail the making of programmes to complying with, or otherwise implementing, the international; human rights law. In this coordination role the President must call upon the responsible state organs to discharge their duties that arise from their functions, but he cannot take over those duties and functions for execution by his office. This is what the Proclamation expressly stated that –

- I. *“Establish a coordinating framework for **compensation of victims of protests and riots**, which shall be vested under the Executive Office of the President;*
- II. *The Executive Office of the President shall discharge this mandate in collaboration with the **Office of the Attorney General, Ministry of Interior & National Administration, The National Treasury and all the other relevant State agencies;***
- III. *Designate **Prof. Makua Mutua**, Senior Advisor, Constitutional Affairs and Human Rights, as the **Principal Co-ordinator of this State Intervention and Compensation framework;** and*
- IV. *The tenure of this special co-ordination framework shall be 120 days from the date hereof.*

[74] In the court's view, the President could only appoint an advisory body in a matter the function of which is allocated to the President. For example, the President could properly establish a panel of experts to advise on the suitable persons to **nominate** as Cabinet Secretaries under Article 152; the Attorney-General, in accordance with Article 156; the Secretary to the Cabinet in accordance with Article 154; Principal Secretaries in accordance with Article 155; high commissioners, ambassadors and diplomatic and consular representatives; and any other State or public officer whom this Constitution requires or empowers the President to appoint, which is his constitutional function under Article 132. But as regards human rights matters, the President's authority is limited to ensuring protection and his function related to ensuring fulfilment of international obligations, including on human rights. In ensuring the protection and fulfilment of international human rights obligations, the President's power is limited to coordinating and getting the responsible state organs to perform their functions.

[75] In the human rights sphere, the function to ensure compliance with international law requirements is stated at Article 59 (1) (g) of the Constitution as “(g) to act as the principal organ of the State in ensuring compliance with obligations under treaties and conventions relating to human rights”. The President could, therefore, not constitutionally take over this responsibility and give it to a body in his executive under his Human Rights adviser, as the proclamation sought to do. It is unconstitutional, null and void.

[76] If **bona fide**, the President’s intention to have established a framework for compensation of the victims of protests/demonstrations, the object may be achieved by a suitable amendment to the proclamation to accord with the law on the president’s extent of authority and functions.

[77] Although KNCHR has deponed that it has continuously demanded accountability from the State as the primary duty bearer in cases of violations, it has not been shown what the commissions as the NHRI for Kenya has done towards meeting the constitutional obligation under Article 59 (1) (g) “(g) to act as the

principal organ of the State in ensuring compliance with obligations under treaties and conventions relating to human rights”.

- [78] In these circumstances, it is incumbent and appropriate for the President to call on the 3rd Respondent/19th IP to make proposals for the development of the policy for reparations outside the judicial process in accordance with the State obligations under international human rights law and treaties. So, while the President is in charge of the executive policy, in the area of human rights it is the KNCHR which should, as the principal organ of the State in ensuring compliance with obligations under treaties and conventions relating to human rights, originate and lead the development of the reparations policy to implement the State international obligations by preparation of the framework for adoption by the Executive and enacted by parliament to secure the force of law. The mechanism of Article 254 (2) presents the possibility of the President calling upon the KNCHR to report on the proposal for development of a policy on reparations, which would call for the preparation of such framework as contemplated in this case.
- [79] Although the Panel’s Submissions touted the approach as intended to create a permanent framework of reparations and avoid the past *ad hoc* programmes of dealing with situations of human rights violations, it fell into the same error in its limitation of the scope of its subject being to and on the period set at post-2017 era. The Court must advise that we avoid this *Ad hocery* of reparations proposals and the term limits too.
- [80] KNCHR must expand the hinterland in place and period qualifying for reparations to all unredressed cases of violation of human rights in the Country. A life lost, injury suffered and property lost, are as valuable pre- and post-2017 cut-off point! Let the framework be for all due reparations!

Terms of reference

- [81] Term of reference (c) has a bearing on the nature of the Panel established by the President and it must be considered under the first issue whether the panel was constitutionally valid and within the president’s authority and function. The TOR empowers the Panel to –
- “(c) authenticate data on eligible Victims from authoritative sources including IPOA. KNCHR. the National Police Service. the Ministry of Health, and civil society”.***
- [82] The use of the term ***authenticate*** in the Gazette Notice is problematic in the construction of the President’s intentions, if it is understood that the Panel should in an adjudicatory role establish the correctness or validity of data presented by constitutional bodies of the Police, IPOA and KNCHR and the others named in the term of reference.
- [83] If, however, as it could be the term is understood as calling upon the Panel to obtain for its use data verified ***by*** the constitutional organs, then there could no breach of mandates. The constitutional and statutory interpretation rule for ***reading down*** a wide provision to make it constitutional may come in here to restrict the use of the term of reference to allow only the use of data as authenticated by the competent investigative agencies.
- [84] Had the Court found the Panel of Experts to be properly established a restriction on its terms of reference to restrict this principal mandate to one of ***ascertaining*** the relevant data from the duly constitutionally authorized organs, and not calling for any adjudication as urged by the Panel.

Usurpation of investigation powers

- [85] However, in the present case, the Court does not find that the Proclamation intended that the Proclamation and Gazette Notice required investigations overtaking the ***investigation*** functions of the Police, IPOA and the KNCHR; and the victim Protection Board deals with compensation in the context of a judicial trial while the policy on reparations would deal with violations outside the court process, where the perpetrators may not be found, prosecuted or convicted. The Court has, consequently, not found a usurpation, overlap or duplication of the powers and functions of the Police, IPOA and the Victim Protection Board, to the extent that the organs are in charge of investigations into violations and compensation in the course of criminal trial process, which the Panel is not shown to deal with.

Whether the Gazette Notice violates constitutional principles of separation of powers, equal treatment and non-discrimination, privacy and data protection, public finance management etc.

- [86] Having found that the Presidential Proclamation is constitutionally invalid for taking over the functions of the 3rd respondent KNCHR, the issue whether the Gazette Notice offends these constitutional principles is now of moot significance. The decision of the Court does not depend on a finding on these questions.
- [87] However, the Court may point out that the Panel of Experts being a policy-formulation advisory group for reparations for violations outside judicial process, it would not offend the judicial authority of the Court to adjudicate claims or the legislative authority for such compensation/reparations, which is the province of Parliament under Article 94 and 95 of the Constitution.
- [88] It will not be necessary to prophesy illegality in the terminology of Panel’s Counsel, and if the Court had to decide it would have found that the principle of Constitutional avoidance applied in this case for the allegedly threats of violation of rights to privacy, principles of competition in recruitment and principles of financial management. The matters raised could be dealt with otherwise under statute as and when they arose in the proceedings as undertaken by the Submissions of the Law Society of Kenya.
- [89] See the Supreme Court guidance in ***Communications Commission of Kenya & 5 others v Royal Media Services Ltd & 5 others*** [2014] KESC 53 (KLR) that-

“The principle of avoidance entails that a Court will not determine a constitutional issue, when a matter may properly be decided on another basis. In South Africa, in S v. Mhlungu, 1995 (3) SA 867 (CC) the Constitutional Court Kentridge AJ, articulated the principle of avoidance in his minority Judgment as follows [at paragraph 59]:

“I would lay it down as a general principle that where it is possible to decide any case, civil or criminal, without reaching a constitutional issue, that is the course which should be followed.”

[257] Similarly the U.S. Supreme Court has held that it would not decide a constitutional question which was properly before it, if there was also some other basis upon which the case could have been disposed of (Ashwander v. Tennessee Valley Authority, 297 U.S. 288, 347 (1936)).”

- [90] This court is well familiar with the use of the constitutional avoidance principle as shown in ***Kirima v Solar Panda Company & another*** [2024] KEHC 11499 (KLR) where the Court dealt with an issue allegation of breach of privacy and the possibility of redress under section 56 of the data Protection Act.
- [91] Also *Obiter*, the Court may mention that the power of the Panel in the Gazette Notice to summon witness would have had to be **read down** to requesting attendance of persons and organs with crucial information on the matter under consideration as the only Commissions with powers of the Court to summon witnesses (see Article 252 (3) of the Constitution) are:

“(3) The following commissions and independent offices have the power to issue a summons to a witness to assist for the purposes of its investigations—

(a) the Kenya National Human Rights and Equality Commission;

(b) the Judicial Service Commission;

(c) the National Land Commission; and

(d) the Auditor-General.”

- [92] Moreover, if its true task was to use available data to prepare a framework for compensation, it would not be hampered by on attendance of any person at its proceedings. It need not itself adjudicate to whom compensation is to be paid, as its role would be to propose for adoption and enactment a framework under which violations would be considered and paid.
- [93] The reliefs sought against the 27th Interested party, Chairperson of KNCHR, had no basis in fact as the party had not been sworn in as the Vice Chairperson of the Panel following the conservatory orders of the Court in the consolidated Petitions.

CONCLUSION

What is the nature of the assignment before the Panel?

- [94] The Court finds that the issues in the consolidated Petitions fall into two: (a) a question of compensation of victims of violations of human rights under judicial process and (b) the design of an administrative framework for implementation of reparations. The former is adequately provided for under the Bill of Rights of the Constitution of Kenya. The second issue presents an obvious gap in the legal system of Kenya, even though the obligation to provide for it is a constitutional requirement under international human rights law and instruments *via* Article 2 (5) and (6) of the and Articles 131 (2) (e) and 132 (5) of the Constitution.
- [95] The Court would accept that the President could, pursuant to the authority under Article 131(2) (e) of the Constitution to ***ensure protection of human rights and fundamental freedoms*** and the function under Article 132 (5) to ***ensure that the international obligations of the Republic are fulfilled through the actions of the relevant Cabinet Secretaries***, properly issue a Proclamation for the development of a framework for reparations to comply obligations under international human rights treaties and standards. In so doing, he would have to comply with the Constitution and law in the specific content of the Proclamation and any directives for its implementation by the Gazette Notice; and that is the central dispute in the consolidated Petitions.
- [96] The question that lingers in the Court’s mind is whether the necessary framework for giving effect to ***Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*** by way of administrative process for reparations in cases where the judicial process may be ill-equipped to redress in view of the lack of evidence on the perpetrators and circumstances of the offence, **should be prepared by a Panel of Experts under the auspices of the executive office of the President of the Republic or the constitutional Commission for Human Rights.**
- [97] For the Petitioners, it was urged that the Proclamation and subsequent Panel of Experts would duplicate and usurp the mandates of constitutional and statutory organs, namely the KNCHR and the Victim Protection Board, while incurring expenditure in a manner contrary to constitutional principles of public finance management and wasteful of resources, and without public participation. The 2nd and 3rd Petitioners were further outraged by the limit on the period for which the framework for compensation was sought to be developed, which was given in the Proclamation as post 2017.
- [98] Counsel for the Panel of Experts gave a passionate defence that the Panel of Experts is an administrative mechanism, distinct from the court-oriented process of fault-determination and compensation; that is time-bound, advisory and non-adjudicative experts’ panel for the recommendation of framework/options of frameworks for dealing with matters of reparations, and that, therefore, there is no duplication with the Victim Protection Board or usurpation of the mandate of the KNCHR which investigates and reports without dealing with **compensation**; and which mechanism is subject to the law so that its operations will accord to the Rule of Law and “hardwired” to the strictures of the Public Finance Management Act and the Data Protection Act.
- [99] Counsel for the Attorney General, the Law Society of Kenya and the Kenya National Commission for Human Rights support the establishment of the Panel as a way of promoting access to justice for the victims and rebut any fears of violation of statutory provisions by the Panel as unjustified at this stage of empanelment of the Panel and they pledge to remain on standby and ready to take necessary action in the event that the Panel’s operations and execution of its mandate threaten to breach any statutory stipulations with regard to data protection, financial management and other relevant provisions.
- [100] Counsel for the 22nd IP, a victim of gunshot wounds suffered during the Protests and demonstrations of June 2024, supported the Panel’s work pointing to the inadequacies of the Victim Protection Board (the 20th IP), which he observed had not even entered appearance, and the Kenya National Commission for Human Rights (19th IP) in redressing the violations of past human rights, while guardedly

acknowledging the concerns of duplication/usurpation of functions of constitutional and statutory bodies and the risk of violation of financial management principles. To him the important thing was to obtain a remedy for his violations.

[101] The Attorney General, the Panel, the KNCHR and the Law Society of Kenya appeared to agree on the need for the creation of a framework for reparations of the victims outside the court process. It is clear that the **Victim Protection Board** which affords compensation for victims of crime/offences is limited to the court criminal process.

[102] The provisions for justice and compensation through the judicial process and reparations outside the Court are complementary. The UN (Resolution NO.60/147 of 16/12/2005), **Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law** recognizes that *“international law contains the obligation to prosecute perpetrators of certain international crimes in accordance with international obligations of States and the requirements of national law or as provided for in the applicable statutes of international judicial organs, and that the duty to prosecute reinforces the international legal obligations to be carried out in accordance with national legal requirements and procedures and supports the concept of complementarity”*.

[103] The need for the establishment of such administrative and legislative framework for the provision of reparations is clear in view of the definition of a victim under the **Basic Principles** that:

*“9. A person shall be considered a victim **regardless of whether the perpetrator of the violation is identified, apprehended, prosecuted, or convicted** and regardless of the familial relationship between the perpetrator and the victim.”*

[104] Consequently, the victims of the violation of human rights during the protests/demonstrations will be eligible to obtain redress even in cases where the perpetrators of the violations are **not identified, apprehended, prosecuted, or convicted**.

[105] There is, therefore, need for the preparation and recommendation of a framework for the implementation of the right to a remedy by way of reparations in terms of international human rights treaties and principles.

Designing reparation programme

[106] As regards the process of design of reparation programmes, the Panel of experts points to internationally **orthodox approach** of an advisory body as the route for **‘developing options for a statute-anchored, appropriation-compliant scheme’**. The petitioners disagree and urge that the KNCHR is the constitutional Commission on all matters human rights and it is a usurpation of its functions to establish the Panel of Experts. The question then becomes whether in Kenya’s constitutional framework there is a gap that calls for adoption of an **orthodox approach** to the development of the reparations scheme.

[107] With respect, there is no *lacunae* in Kenya context to be filled by the Panel of Experts subject of this Petition as regards **the particular issue of design of a suitable framework for the compensation of the victims of violations of rights during the civil protests/demonstrations**. The Constitution has made provisions for the situation that the State finds itself in and it is only an issue of suitably invoking the relevant powers and functions, and having the constitutional organs perform their obligations under respective mandates.

[108] In this quest, the office of the Attorney General and the KNCHR are crucial. The President is required pursuant to Article 131 (2) (e) to exercise the authority to *“(e) ensure the protection of human rights and fundamental freedoms and the rule of law”*. Under Article 132 (5) the President has the function for fulfilment of international obligations as follows:

“(5) The President shall ensure that the international obligations of the Republic are fulfilled through the actions of the relevant Cabinet Secretaries.”

[109] The President may execute this authority and function by directing the Cabinet Secretary in charge of justice affairs (the Hon. Attorney General) to ensure the observance of the international obligations of the State including on the implementation of the ***UN Basic Principles on the Right to Remedy*** in this case.

[110] In addition, Article 254 (2) of the Constitution empowers the President to call for a report from KNCHR which may include a report on the recent Protests and demonstrations and the operationalization of the Basic Principles on the Right to Remedy with regard to the victims, as follows:

“(2) At any time, the President, the National Assembly or the Senate may require a commission or holder of an independent office to submit a report on a particular issue.”

[111] Unlike the Panel of Experts herein, under Article 252 (3) of the Constitution KNCHR has powers of the Court to issue summons (a point taken by the Petitioners in opposing the Panel operations) as follows:

“(3) The following commissions and independent offices have the power to issue a summons to a witness to assist for the purposes of its investigations—

(a) the Kenya National Human Rights and Equality Commission”.

[112] The KNCHR may then itself empanel an expert group to respond to the need for preparation of a framework for compensation of the victims and report to the President for his further action pursuant to Article 131 (2) (e) of the Constitution. Parliament may also be brought in at that stage for the enactment of such framework for compensation.

[113] The Court has no reservations as to competence of the persons named as members of the Compensation Panel and indeed wishes that their expertise may be harnessed in a valid advisory body established under the organ with constitutional mandate to report on any particular issue, including the design of a suitable reparations’ mechanism, for the ***compliance with obligations under treaties and conventions relating to human rights.***

[114] In conjunction with the Hon. Attorney General as the Cabinet Secretary responsible for justice matters, the KNCHR will execute the President’s requests under Articles 131 (2) (e) and 132 (5) and 254 (2) of the Constitution.

[115] The KNCHR will not in this exercise be setting up a **compensation scheme**, ex gratia or fault-based, to be run by itself or anyone else. Its role shall be advisory only to develop the framework and report for further action of the President and the Parliament in enacting the scheme, in accordance with the Constitution.

[116] The Court is not averse to multiagency collaboration in the task and the Constitution itself appoints KNCHR as the **principal** organ in ensuring compliance with human rights conventions. Article 59 (1) (g) provides for one of the functions of the KNCHR as follows:

“(g) to act as the principal organ of the State in ensuring compliance with obligations under treaties and conventions relating to human rights.”

The KNCHR will be at liberty to call on subject experts and practitioners in exercise of this mandate and the Hon. Attorney General as the Cabinet Secretary responsible for justice matters should facilitate this programme.

Multi-approach remedy

[117] In the interests of the complementarity contemplated by the international human rights treaties and principles, there is need for investigations, prosecutions and civil suits for compensation before the High Court (and as applicable Court of Equal Status) as the human rights Courts for all forms of violation of human rights in the past.

[118] The limit to the post-2017 era is only reasonable when it is considered that the targeted violations related to the **the right to assemble, demonstrate, picket, and petition public authorities as guaranteed under Article 37 of the Constitution. The KNCHR as the human rights body must continually be**

engaged in the investigations and necessary action with regard to all other forms of rights abuse in the past.

- [119] The KNCHR, shall proceed to develop and report on a framework for the redress of other violations and to report on this pursuant to its constitutional duty to the executive and the legislature as required under Article 254 of the Constitution. The publicization required under Article 254 (3) may amass the necessary critical public opinion that may lead to the enactment of such framework.
- [120] The Petitioners had prayed for an order of Mandamus compelling the Respondents to fully comply with the provisions of the Constitution and all relevant laws relating to compensation and reparations for victims of demonstrations and public protests. In view of the finding as to the proclamation herein, and the requirement of budget allocation/reallocations, **a strong advice** to the 3rd respondent KNCHR towards the preparation of the necessary framework even for other violations of human rights would be appropriate relief. A future application might be a more successful outing on the basis of failure after due notice to perform the functions of the NHRI.
- [121] It is accepted that in the proposed scheme of addressing the recent cases of human rights violations, the development of a framework for the reparations in the Article 37 protests and demonstration may also inform the formulation of other frameworks for the violations of other human rights in the Bill of Rights.
- [122] The situation presents a unique opportunity for collaboration of executive Judiciary and Parliament on the question of reparations for past violations of human rights.
- [123] However, there is no need for resulting to **orthodox approach** for the appointment of an advisory body for the development of a framework for reparations as the Constitution has already paved a way through the President’s authority to call for a report from the KNCHR on any particular issue, including, as in this case, options for a suitable design for that purpose.

Appropriate relief

- [124] The Court finds that the President is authorized to ensure the protection of human rights under Article 131 (2) (e) and to ensure fulfilment of international obligations under Article 132 (5) of the Constitution, and for that purpose may consistently with Article 254 (2) of the Constitution call for a report from the KNCHR on any particular issue, including, as in this case, the design of a framework for compensation/reparations in compliance with the relevant Human Rights Treaties and the UN Basic Principles on the right to a remedy.
- [125] **Having identified the President as the person with the authority under Article 131 (2) (e) of the Constitution to ensure the protection of human rights and fundamental freedoms and the rule of law and the function under Article 132 (5) to ensure that the international obligations of the Republic are fulfilled through the actions of the relevant Cabinet Secretaries and the mandate under Article 254 (2) to call for reporting at any time on any particular issue, in this case, of human rights reparations; and the KNCHR as the principal organ of the State under Article 59 (1) (g) for “ensuring compliance with obligations under treaties and conventions relating to human rights”, the Court considers that the development of a suitable framework for adoption by the Executive and Parliament, as necessary, for the reparations in the violations subject of the consolidated Petitions should be put to the KNCHR, with the mechanics as to establishment of an expert group of consultants under the provisions of its mandate in the Constitution and the Statute providing for its operations. The report of the KNCHR to the President shall then inform the necessary executive acts and legislation.**
- [126] Consequently, the appropriate remedy in this Petition is not the striking out or quashing of the Proclamation and the Gazette appointing the Panel but allowing necessary amendment as necessary to be done to bring them in agreement with the constitutional statutory scheme for the calling for a report from the KNCHR and report, publication and publicization thereof pursuant to Article 254 (2) (3) of the Constitution and the grant of other appropriate relief for the specific discharge of the mandates of the relevant State organs in addition to the preparation and recommendation of a framework for reparations.

[127] It appears to be a case of good intentions, bad execution; and it will not be necessary to quash the Proclamation if it is suitably amended to stay within the President's constitutional *lane*, in the words of the Counsel for the Panel of Experts. It will only be necessary to quash the Proclamation and the ensuing Gazette Notice if the amendments are not effected within a reasonable time herein set at thirty (30) days, and the declarations of invalidity and the judicial review orders of Certiorari and Prohibition shall then issue.

ORDERS

[128] Accordingly, for the reasons set out above, the Court finds that the Consolidated Petitions herein are partially merited, and makes the following orders:

1. *A declaration that the President is not constitutionally empowered **to constitute a Panel of Experts to advise on the design a framework for compensation of victims of human rights abuses**, a matter which falls in the competence of the Kenya National Commission Human Rights (KNCHR) as “**the principal organ of the State in ensuring compliance with obligations under treaties and conventions relating to human rights**” under Article 59 (1) (g) of the Constitution.*
2. *The President's Proclamation dated 6/8/2025 and the GAZETTE NOTICE No. 12002 dated 25/8/2025 are constitutionally invalid.*
3. *The Court suspends the declaration of invalidity of the Proclamation and Gazette Notice constituting the Panel of Experts for thirty (30) days to allow the Respondents to secure the amendment of the Proclamation and Gazette Notice subject of this Consolidated Petitions to accord with the finding of this Court.*
4. *In default of amendment within the period of thirty (30) days granted herein, the judicial review orders of Certiorari to quash the Proclamation and the Gazette Notice subject of this consolidated Petition and Prohibition to restrain their implementation shall issue as prayed in the Petitions.*
5. *Without prejudice to any Presidential proclamation calling for a report from the constitutional Commission on the issue herein, the 3rd respondent KNCHR is strongly advised, in the language of the Constitution to ‘**take steps to secure appropriate redress where human rights have been violated**’, by way of preparation of the necessary framework for reparations even for other violations of human rights for legislative enactment. In default, a future application for mandamus might be granted on the basis of failure after due notice to perform the functions of the NHRI.*
6. *In the meantime, the order halting the proceedings of the Panel of Experts remains in force.*
7. *In view of the public interest nature of the matter and the apparent **bona fides** in the pursuit for a framework for reparations for the victims of human rights violations, the Court does not make any orders as to costs.*

[129] For compliance, the matter shall be mentioned before the Court on 20/1/2026. The full reasons for the Judgment shall be uploaded on the Court Tracking System (CTS) shortly.

[130] The Court commends the parties and their Counsel for their industry.
Order accordingly.

DATED AND DELIVERED THIS 4TH DAY OF DECEMBER 2025.

EDWARD M. MURIITHI
JUDGE

APPEARANCES:

Mr. N. Havi with Mr. Ashioya for the 1st Petitioner.

Mr. K. Wathuta with Ms. Micheni, Mr. Wambugu Wanjohi and Mr. James Dennis for the 2nd Petitioner.

Ms. E. Nyaga the 3rd Petitioner in person.

Mr. J. Kiongo for Respondents.

Mr. Bosire for Mr. Omwanza for the 1st, 3rd – 18th Interested Party.

Ms. Oganga with Mr. Maweu and Ms. Okutoyi for the 19th Interested Party (3rd Respondent) & 27th Respondent

Mr. Ojala for Mr. Ochiel, Mr. Saka & Mr. Ongoya for the 21st Interested Party.

Mr. Wachira for the 22nd Interested Party.