



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'ETICH	18TH INTERESTED PARTY
KENYA NATIONAL COMMISSION ON HUMAN RIGHTS	19TH INTERESTED PARTY
CHAIRPERSON AND SECRETARY, VICTIMS PROTECTION BOARD	20TH INTERESTED PARTY
LAW SOCIETY OF KENYA	21ST INTERESTED PARTY
DAVID MWANGI NJERI.....	22ND INTERESTED PARTY
CLARIS OGANGAH – ONYANGO.....	27 TH RESPONDENT/INTERSTED PARTY

RULING ON COMPLIANCE

Introduction

[1] This is a ruling on compliance proceedings following the Judgment and directions of Court made on 4/12/2025 suspending declarations of constitutional invalidity of the Presidential Proclamation and the related Gazette Notice No. 12002 of 25/8/2025, which was the subject of the Petitions herein, to allow for necessary amendment to bring them into conformity with the Constitution as established by the Court in the Judgment.

[2] In upholding the availability of structural interdicts as a remedy in constitutional litigation, the Supreme Court in *Mitu-Bell Welfare Society v Kenya Airports Authority & 2 others; Initiative for Strategic Litigation in Africa (Amicus Curiae) [2021] KESC 34 (KLR)* demarcated their scope and use as follows:

“[I]nterim reliefs, structural interdicts, supervisory orders or any other orders that may be issued by the courts, have to be specific, appropriate, clear, effective, and directed at the parties to the suit or any other State Agency vested with a constitutional or statutory mandate to enforce the order. Most importantly, the court in issuing such orders, must be realistic, and avoid the temptation of judicial overreach, especially in matters policy. The orders should not be couched in general terms, nor should they be addressed to third parties who have no constitutional or statutory mandate to enforce them. Where necessary, a court of law may indicate that the orders it is issuing, are interim in nature, and that the final judgment shall await the crystallization of certain actions.”

[3] In this case being mindful of the importance of the subject matter and the public interest in the development of a framework for the compensation and reparation of all forms of violations of human rights in the Country, and considering its duty to be more facilitative than a hindrance to such a process, the Court while finding contravention of the Constitution in the actions of the presidential proclamation and gazettelement of a team of experts for purposes of such development a framework but in an attempt to save the process suspended the declarations of invalidity and consequential remedies of certiorari and mandamus.

The ratio in the case

[4] The basis of the orders of the Court in the Judgment of 4/12/2025 was given in paragraph 125 of the Judgment as follows:

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.”*

The orders of the Court

[5] The specific reliefs granted by the Judgment of the Court delivered on 4/12/2025 as set out in **paragraph 128** thereof are as follows:

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.”

Disputed compliance

[6] In purported compliance with the structural directions of the Court, the Respondent issued a Gazette Notice dated 2/1/2026. The new Gazette Notice provides in full as follows:

“GAZETTE NOTICE No. 259

AMENDMENTS TO THE TERMS OF REFERENCE OF THE PANEL OF EXPERTS ON COMPENSATION OF VICTIMS OF DEMONSTRATIONS AND PUBLIC PROTESTS

WHEREAS By dint of a Presidential Proclamation issued on 6th August, 2025, the Head of State and Government acting in furtherance of the State's constitutional mandate to promote national healing and social cohesion, established a framework for the reparation and compensation of victims of demonstrations, Public protests, and riots;

WHEREAS To facilitate the implementation of this novel framework, the President appointed a Panel of Experts as notified vide Kenya Gazette Notice No. 12002 of 2025;

WHEREAS The High Court of Kenya at Kerugoya, by its Judgment delivered on the 4th day of December, 2025 in Constitutional Petitions Nos. E10, E11 and E14 of 2025 (Consolidated), affirmed the unique constitutional mandate of the President in the protection of human rights and in facilitating the pursuit of reparations as contemplated under the Proclamation;

WHEREAS The said Judgment further issued orders directing the revision of the Terms of Reference of the Selection Panel, in recognition of the constitutional and statutory mandate of the Kenya National Commission on Human Rights;

WHEREAS It is necessary to give effect to the said Judgment so as to ensure that measures for the reparation and compensation of victims of demonstrations, Public protests and riots are implemented in a manner consistent with the Constitution and other laws;

NOW THEREFORE, in compliance with the said Judgment of the High Court of Kenya, IT IS HEREBY NOTIFIED, for the general information of the public, that Gazette Notice No. 12002 of 25th August, 2025 is amended as follows-

I. Paragraph II (a) of Gazette Notice is deleted and substituted with the following -

(a) to advise the President on the lawful and constitutional implementation of the reparations framework for victims of public protests and riots, based upon a report prepared by the Kenya National Commission on Human Rights.

II. Paragraph II of Gazette Notice No. 12002 is further amended by inserting the following new sub-paragraph immediately after subparagraph (j) -

"(g) to perform its functions in strict compliance with the Constitution and all applicable laws and procedures, in collaboration with relevant public bodies and institutions where necessary.

III. The term of the Panel is hereby extended for a further period of one hundred and eighty (180) days from the date of publication of this notice, or for such other period as may be specified in the Kenya Gazette.

Dated the 2nd January, 2026.

FELIX K. KOSKEI.

Chief of Staff and Head of the Public Service.

Affidavits and Submissions by the parties

- [7] There was constestation as to whether the Gazette Notice complied with the orders of the Court. The petitioners and 19th Interested Party and 27th Respondent urged the Court that the Gazette Notice had not complied with orders of the Court. See Affidavits of Levi Munyeri of 2/1/2026; Eunice Nganga of 26/1/2026.
- [8] The 4th Respondent member of the Panel of Experts urged that in due compliance with the finding of the Court, and following the extension of the Panels mandate for a further 180 days, had resigned from the Panel of Experts. See Affidavit of Irungu Houghton of 19/1/2026. [The 2nd respondent had resigned before the conclusion of the main hearing of the Petition.]]
- [9] The Respondents and the 1, 3, 5 - 18 Interested Parties, supported the Panel of Experts case that they had complied with the order of the Court. The secretary of the Presidential Panel Ms. Jerusah Mwaathime Michael by affidavit sworn on 8/1/2026 annexed a copy of the issue of Kenya Gazette dated 2nd January 2026 and deponed that ***“in compliance of the aforesaid judgment, the said orders have duly been complied with as per Gazette Notice dated 2nd January 2026 as published in Kenya Gazette Vol. CXXVIII-3 of 5th January 2026.”***
- [10] The Panel of Experts case was encapsulated in the contention that the Panel’s role had been revised to one of advisory in implementation of a framework to be developed by the KNCHR as set out in paragraphs 12-20 of Affidavit of the Jerusah Mwaathime Michael of 26/1/2026 in response to the Affidavit by the 19Interested Party and See also affidavit of Jerusha Mwaathime Michael of 2/2/2026 in response to the affidavit of the 1st and 3rd petitioners.
- [11] For the 19th Interested Party, Dr. Bernard Mogesa by an affidavit of 23/1/2026 urged that there had been no compliance with hte Judgment of the Court and although the 19th IP had “previously engaged in the reparations discourse and developed draft reparations framework that have not been finalized on account of resource constraints, the 19th IP herein has neither finalized nor submitted to the Respondents herein or any institution, agency or authority a Reparations Framework or a Report” and that “the Amended Gazette is thus lacking in good faith and is not based on factually accurate information.”
- [12] The 20th and 21th Interested Parties did not participate.
- [13] The 22nd Interested Party supported the Panel of Experts urging that they had complied with the orders of the Court and pleading for more time to comply should the Court find the action taken in compliance to be inadequate.

Issue for determination

[14] The only issue before the Court is whether there has been compliance by the Respondents and interested Parties with the Directions of the Court as to the actions necessary to salvage the process and to avoid the issuance, in such default, of the relief sought the Petitioners.

DETERMINATION

What did the Court hold about the Presidential Proclamation?

The president had no authority

[15] The main finding and declaration of the Court in the consolidated Petitions was in the relief at paragraph 128 (1) of the Judgment where the court issued:

*“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.”*

[16] The Court found that the President could exercise his authority under Article 254 (2) to call for a **Report** in the nature of a framework for compensation and reparations and considered that the KNCHR would be the agency to develop the framework for compensation for consideration by the President and Parliament towards the creation of a mechanism for redress of violations of human rights by reparations as follows:

“”

[17] In compliance with the Judgment there should therefore be, at the least, an amendment to divest the Panel of any instructions **to design and develop the framework** in question, which the Court held to be the province of the revocation of the KNCHR, and to give direction requiring the KNCHR in terms of Article 254 (2) of the Constitution to Report on the matter of the framework for reparations, which would call for the design and development of such framework.

[18] The implementing Gazette Notice should then have been correspondingly amended.

Amendment to the presidential Proclamation

Where is the amendment to the Presidential Proclamation to call for the report from the KNCHR in terms of Article 254 (2) of the Constitution?

[19] The Proclamation by the President of Kenya dated 6/8/2025 on the appointment of the Panel of Experts was 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**

[20] The presidential commission by Proclamation dated 6/8/2025 establishing “a coordinating framework for **compensation of victims of protests and riots**, which shall be vested under the Executive Office of the President” and appointing the Panel of Experts headed by the President’s “Senior Advisor, Constitutional Affairs and Human Rights, as the Principal Co-ordinator of this State Intervention and Compensation framework” was the central subject of Petitions, and the Court’s Judgment of 4/12/2025 found the arrangement as a usurpation of the mandate of the KNCHR and said:

“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.”

[21] The Court guided as to how the design of the framework may be done without creating an unconstitutional agency, as follows:

“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.”

Need to amend the Proclamation

[22] If **only** the **Gazette Notice** empanelling the Panel of Experts and not the **Proclamation** as well is amended, as set out at paragraph 76 of the Judgment, there is no instruction to the KNCHR in terms of Constitution to require the formulation of the framework for compensation and there is no change in the nature, mandate and objective of the Panel of Experts. It would remain in contravention with the finding and judgment/order of the Court set out above.

[23] There was, therefore, need be a Proclamation on the invocation of the reporting under Article 254 (2) of the Constitution. There is a related need to delimit the scope of the Panel, if it must be appointed or its appointment extended as proposed in the Amended Gazette No. 259 of 2/1/2026, to clarify that the advisory panel has no authority to take over and/or

perform the functions assigned to the KNCHR, and other constitutional agencies, under the Constitution.

The terms of reference of the Gazette Notice No. 12002 of 25/2025

[24] The Gazette Notice No. 12002 of 25/2025 by which 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 was in the following terms:

“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.”

[25] Apart from amending Paragraph III by extending the life of the Panel of Experts by a period of 6months or such other period as may granted, the amendments by the Gazette Notice NO. 259 dated 2/1/2026 substantially only affect one clause of Gazette Notice No. 12002, namely, **Paragraph II on the Terms of Reference of the Panel of Experts** by

amending subparagraph (a) which is deleted and substituted and by inserting the following new sub-paragraph (g) immediately after subparagraph (f).

[26] The substantial portion of the Gazette Notice of 25/8/2025 remain intact, including terms of reference in **Paragraph II (b) - (f)** specifically found offensive of the constitutional mandate and independence of the Kenya National Commission on Human Rights 19th Interested Party by the Judgment of the Court. The sub-paragraphs are as follows:

“(b) engage with relevant stakeholders, including families of victims, Stare 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.

The Judgment of the Court specifically ruled that function of designing and proposing a reparations framework lay with the 19th Interested Party KNCHR as the were targeted to the design and formulation of the framework for reparations. See particularly terms of reference (d), (e) and (f).

[27] For compliance, there was need to amend the terms of reference to remove the directions that took over the functions of the KNCHR with regard to developing a framework for reparations for human rights abuses.

Steps in compliance of the Judgment

[28] In the view of the Court the following were necessary steps in the compliance of the Order of the Court:

1. *President Proclamation amended to revoke the Present Proclamation which establishes the panel of Experts as an advisory team for the development of a framework for reparations/compensation.*
2. *Gazette Notice by the Head of Public Service to the amended by revocation of the Gazette of the Panel of Experts.*

3. *President exercises authority under Article 254 (2) of the Constitution to call for a report by way of development of a framework for reparation/compensation.*
4. *If the Panel of Experts is retained, it should clearly be a post development process after the development of the framework Report by the KNCHR.*

[29] If it is accepted that the KNCHR may or could have empanelled a team to advise on the development of the Framework, would it be convenient to appoint the same experts in the reception team at the Office of the President? To avoid the conflict of interest, where the proposer is also the receiver and acceptor of the proposals, the appointment of any acceptance committee should await the Report by the KNCHR.

[30] Expenses of the advisory Team while awaiting for the development and delivery of the reparations proposals by the KNCHR would not appear to be prudent financial management consistent with Article 201 (d) of the Constitution that *“public money shall be used in a prudent and responsible way”*.

Conclusion

[31] Broadly, the Court would agree with the 1st Petitioner (see para 21 of Affidavit of Munyeri) that *“In compliance with the Court’s orders, the executive should have issued a Gazette Notice mandating the KNCHR to take over the function of reparations of victims of human rights abuses and advise the President within a specified period of time.”* The court add that in giving effect to its judgment, the Presidential Proclamation should have been amended to remove the function and mandate of the design and development of the reparations framework from the Panel and lay it where it belongs with the KNCHR. If the Panel continued to exist at all it would be for administrative processing of Framework developed by KNCHR and probably any necessary facilitation for the consideration by Parliament and enactment of the framework.

[32] In deference to the position by the Panel of experts that ***“the Panel’s role is now confined to advising the president on implementation, not policy design”*** any framework for reparations, there is need to put in the mechanism for the design and development of the framework. There cannot be implementation of what has not been designed, and therefore the President’s calling for the report by way of development of a design on reparations in terms of Article 254 (2) is a prerequisite.

[33] This called for a suitable amendment of the Presidential Proclamation to remove the mandate of design of the framework from the Panel; effect the direction to the KNCHR to develop the reparations framework.

[34] Presently, there has been no amendment to the Presidential Proclamation which retains the Panel of Experts as charged by its terms therein to *“I. Establish a coordinating framework for **compensation of victims of protests and riots**, which shall be vested under the*

Executive Office of the President; 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.”

- [35] The amendment to the Gazette Notice on appointment and terms of reference only amended paragraphs II (a) leaving intact terms of reference (c), (d), (e) and (f) which were all geared towards the acquisition of data and evidence towards the design and development of the reparations framework, now decreed to be a function of the KNCHR. Even with the omnibus provision of paragraph (g) of the terms of reference to provide for strict compliance with constitutional and applicable law, the clauses permitting the exercise of functions and mandate belonging to KNCHR should have been deleted.

Judicial proceedings on status of Presidential advisors

- [36] The Court was informed of the decision of the High Court in ***Katiba Institute & Another v. President of the Republic of Kenya & 4 Others*** of 22 January 2026 where the advisory offices created in office of the President were declared unconstitutional. The court was not served with full argument as to whether the decision affected *ad hoc* Panel of Experts and it does not feel confident to express a view on the matter.
- [37] However, as the matter in the said suit is not before the Court and the Court is not upraised of any developments there may be as regards any challenge for review or appeal from the decision, it does not make any findings, orders or Directions as regards the validity of appointment of advisors/advisory Panel of Experts herein based on Judgment/orders of the Court in other suits over which it has no control.
- [38] In adopting the order in relief by suitable amendment of the Proclamation and the Gazette Notice, the Court acted on its belief that it was in the best interests for all that a suitable national framework for reparations for human rights abuses be developed for the benefit of the particular victims, some who were before the Court and for inhabitants of the Republic at large and in compliance with the international law and practices. The Court believes it is still possible to execute this task within the provisions of the Constitution and the law, and it is therefore minded to extend the time allocated for compliance with the Judgment of the Court by a further thirty (30) days.

ORDERS

[39] Accordingly, for the reasons set out above, the Court finds that the Orders of the Court in the Judgment of 4/12/2025 as regards the amendment of the Presidential Proclamation have not been complied with.

[40] The Court considers that its Judgment delivered on 4/12/2025 was clear and **unambiguous** on the issues of the competency of the Panel of Experts with regard to the matters subject of the Presidential Proclamation and the Gazette Notice. However, for the avoidance of doubt, the Court now clarifies as follows:

1. *Presidential Proclamation in terms of Article 254 (2) of the Constitution should be made to give lawful authority to the KNCHR to investigate and report on the matter in terms of the Article. The Presidential Proclamation should in terms of the Article 254 (2) of the Constitution **require the Kenya National Commission (KNCHR) to submit a report on the particular issue of a framework for compensation and reparations for violations of human rights and to publish and publicise the same within the time to be specified for the exercise.***
2. *The Presidential Proclamation on the Panel of Experts and the Gazette Notice should be amended to clarify that the Panel is an internal administrative processing for implementation and the development of the framework design and not an appeal /supervisory oversight over the work of the KNCHR, which has the sole mandate on the subject.*
3. *The Gazette Notice should be amended to delete the terms of reference (b) – (f) which impinge on the constitutional mandate of the KNCHR.*

[41] The Respondents shall comply with these clarification and effect necessary amendment and or issue fresh Proclamation and Gazette Notice, as necessary.

[42] The Respondents shall effect these changes within thirty (30) days and there shall be no need for further directions before the Court on the matter. In default, the specific reliefs suspended in the Judgment shall take immediate effect.

[43] There shall be liberty to apply.

[44] There shall be no orders as to costs.

Order accordingly.

DATED AND DELIVERED THIS 27TH DAY OF FEBRUARY 2026.

EDWARD M. MURIITHI

JUDGE

APPEARANCES:

Mr. N. Havi with Mr. Ashioya, Mr. Munyeri 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.

Mr. Kithinji instructed by B. Kagunyi & Co advocates for the 4th Respondent.

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.