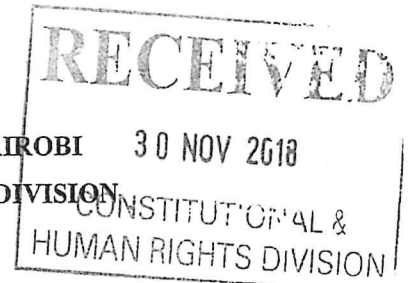


REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CONSTITUTIONAL AND HUMAN RIGHTS DIVISION
PETITION NO HP28 OF 2018



BETWEEN

NETWORK FOR ADOLESCENTS AND YOUTH OF AFRICA.....1st PETITIONER
JACKLINE MARY KARANJA.....2nd PETITIONER

AND

THE ATTORNEY GENERAL.....1st RESPONDENT
THE CABINET SECRETARY, MINISTRY OF HEALTH.....2nd RESPONDENT
THE DIRECTOR OF MEDICAL SERVICES, MINISTRY OF HEALTH.....3rd RESPONDENT
THE KENYA MEDICAL PRACTITIONERS AND DENTISTS BOARD.....4th RESPONDENT
KENYA FILM CLASSIFICATION BOARD.....5th RESPONDENT

CERTIFICATE OF URGENCY

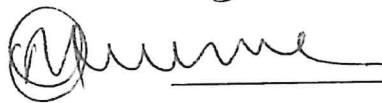
We, **MARTIN ONYANGO** and **SOFIA RAJAB-LETEIPAN**, Advocates of the High Court of Kenya having conduct of this matter on behalf of the Petitioners, do hereby certify that the Application filed urgently requires hearing at the earliest opportunity because:

1. The Kenya Medical Practitioners and Dentists Board (KMPDB) has with effect from 14th November 2018 banned Marie Stopes Kenya from offering any form of abortion services in all its 23 facilities that serve most underserved populations and remote communities within the Republic of Kenya, following a decision in the matter of *Ann Kioko -vs- Marie Stopes Kenya*. This is contrary to Article 26 (4) and Article 43(2) of the Constitution of Kenya, 2010.
2. The Director of Medical Services (DMS) in the Ministry of Health with effect from 20th November 2018, without any complaint from anybody or notice to Marie Stopes Kenya or any hearings, has further banned Marie Stopes Kenya from providing any post abortion care including in emergency situations contrary to Article 26 (4) and Article 43 (2) of the Constitution of Kenya, 2010 and Section 7 of the Health Act.

3. As a result of the ban, women and girls who present themselves in Marie Stopes Clinics in need of urgent medical emergency care in the form of safe abortion and post abortion care cannot access lawful, vital lifesaving services while this Petition is pending for hearing.
4. The ban is a deterrent for any woman or girl in Kenya from accessing safe abortion and post abortion services owing to the misinformation it communicates and the resultant chilling effect on health service providers who provide safe and legal abortion and post abortion care services.
5. The Petitioners seek to suspend the Ruling by the 3rd Respondent and in particular Order 1 of the Ruling and decision of the 4th Respondent against Marie Stopes Kenya, pending the hearing and determination of the Petition.
6. Both the Application and Petition will be rendered nugatory if this Application is not certified urgent and duly brought before the duty judge.

Dated at Nairobi this 30th day of November

2018



MARTIN ONYANGO & SOFIA RAJAB-LETEIPAN
ADVOCATES FOR THE PETITIONERS

DRAWN & FILED BY:

Martin Onyango
% Centre for Reproductive
Ground Floor
Morningside Office Park
Ngong Road
P.O. Box 52834-00100
Nairobi.
Tel: +254202518361/63 Tel:
MOnyango@reprorights.org
P.105/7757/09
LSK/2018/01817

And:

Sofia Rajab-Leteipan
Leteipan & Associates Advocates
Wu Yi Plaza,
Galana Road, Off Argwings Kodhek
P.O. Box 52834-00100
Nairobi.
Tel: +254 202 710 492
sofia@leteipanandassociates.com
P.105/7830/09
LSK/2018/00675

TO BE SERVED UPON:

The Attorney General's Chambers,
Sheria House,
P.O Box 40112-00100

NAIROBI.

The Cabinet Secretary
Ministry of Health

NAIROBI.

The Director of Medical Services
Ministry of Health

NAIROBI.

Kenya Medical Practitioners and Dentists Board
Woodlands Road off Lenana Road
Nairobi
P.O Box 44839-00100

NAIROBI

Kenya Film Classification Board
15th Floor, Uchumi House,
P. O. Box 44226-00100

NAIROBI



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CONSTITUTIONAL AND HUMAN RIGHTS DIVISION
PETITION NO 428 OF 2018

BETWEEN

NETWORK FOR ADOLESCENTS AND YOUTH OF AFRICA.....1st PETITIONER
JACKLINE MARY KARANJA.....2nd PETITIONER

AND

THE ATTORNEY GENERAL.....1st RESPONDENT
THE CABINET SECRETARY, MINISTRY OF HEALTH.....2nd RESPONDENT
THE DIRECTOR OF MEDICAL SERVICES, MINISTRY OF HEALTH.....3rd RESPONDENT
THE KENYA MEDICAL PRACTITIONERS AND DENTISTS BOARD.....4th RESPONDENT
KENYA FILM CLASSIFICATION BOARD.....5th RESPONDENT

NOTICE OF MOTION

(Under Articles 22,23,26,43,47 and 258, of the Constitution of Kenya, Rule 19 of the Protection of Rights and Fundamental Freedoms Practice and Procedure Rules, 2013, section 20(6) of the Medical Practitioners & dentists Act cap 253, sections 6 & 7 of the Health Act 2017 and section 5 of the Access to Information Act 2016).

TAKE NOTICE that this Honourable Court shall be moved on the.....day of 2018 at 9:00 o'clock in the forenoon or soon thereafter as the applicant may be heard on an application

FOR ORDERS THAT:

- a. This application be certified urgent and heard *ex parte* in the first instance.

- b. Pending the hearing and determination of this application *interpartes*, a conservatory order does issue staying the Ruling by the Kenya Medical Practitioners and Dentists Board (KMPDB), in particular Order 1 of the Ruling, dated the 10th November 2018 in the matter of *Ann Kioko -vs- Marie Stopes Kenya*.

- c. Pending the hearing and determination of the Petition, a conservatory order does issue staying the Ruling by the KMPDB in particular Order 1 of the Ruling, dated the 10th November 2018 in the matter of *Ann Kioko -vs- Marie Stopes Kenya*.
- d. Pending hearing and determination of this application *interpartes* a conservatory order does issue staying the decision by the Director of Medical Services (DMS) banning the provision of any post abortion care services by Marie Stopes Kenya and contained in his letter dated the 20th November 2018.
- e. Pending hearing and determination of the Petition a conservatory order does issue staying the decision by the DMS banning the provision of any post abortion care services by Marie Stopes Kenya and contained in his letter dated the 20th November 2018.
- f. The KMPDB be compelled to provide all the records related to the matter of *Ann Kioko -vs- Marie Stopes Kenya* including, but not limited to:
 - 1. Full proceedings of the Preliminary Inquiry Committee of the Medical Practitioners and Dentists Board hearing held on Wednesday 7th November 2018.
 - 2. Certified copy of the decisions of the Preliminary Inquiry Committee of the Medical Practitioners and Dentists Board ratified by the full Board on the subject matter.
 - 3. The list of members of the Preliminary Inquiry Committee who sat in considering the complaint by Anne Kioko against Marie Stopes clinics.
 - 4. Minutes of the meeting of the full Medical Practitioners and Dentists Board held on the 10th November, 2018 to consider the complaint by Anne Kioko against Marie Stopes clinics.
 - 5. Copies of the alleged media postings and publications that brought the attention of the Board to the complaint by Anne Kioko against Marie Stopes clinics
 - 6. The alleged advertisements run on radio stations, including Kiss 100 FM, Classic FM by Marie Stopes clinics, which formed the basis of the Board's inquiry.
 - 7. Copies of the entire complaint received by the Board from the Ministry of Health on the 2nd November 2018; the petition by Thomas Ireri and Anne Kioko of CitizenGo Africa.
 - 8. Minutes of the full Board meeting that reviewed the complaint by Anne Kioko against Marie Stopes clinics and referred it to the Preliminary Inquiry Committee.

9. Copies of the evidence provided by **Ms. Anne Kioko** in support of her case before the Preliminary Inquiry Committee.
 10. Copies of the evidence provided by **Dr. Faith Kimani** in support of her testimony before the Preliminary Inquiry Committee.
 11. Copies of the evidence provided by **A.N** in support of her testimony before the Preliminary Inquiry Committee.
 12. Copies of the evidence provided by **Dr. Wahome Ngare** in support of his testimony before the Preliminary Inquiry Committee.
 13. Copies of the evidence provided by **VN** in support of her testimony before the Preliminary Inquiry Committee.
 14. Copies of the evidence provided by **Dr. Hezron McObewa** in support of his testimony before the Preliminary Inquiry Committee.
 15. Copies of the Evidence provided by **Mr. Christopher Wainaina** in support of his testimony before the Preliminary Inquiry Committee.
 16. Copies of the evidence provided by **Emma Irungu** of the Kenya Film Classification Board in support of her testimony before the Preliminary Inquiry Committee.
 17. Copies of the evidence provided by **Eunice Mwanza** of the Kenya Film Classification Board in support of her testimony before the Preliminary Inquiry Committee.
 18. All correspondence to Kenya Film Classification Board, Marie Stopes Kenya Clinics, the complainants, the respondents and all witnesses in relation to the subject matter where not specifically listed above.
- g. The Kenya Film Classification Board (KFCB) be compelled to provide all the records of the broadcast content in the Marie Stope Kenya's public awareness campaigns on comprehensive reproductive health services, including but not limited to:
1. Certified copy of the decision of the Kenya Film Classification Board on the public awareness campaigns on comprehensive reproductive health services.
 2. Full proceedings of the Kenya Film Classification Board meeting that considered the public awareness campaigns on comprehensive reproductive health services and arrived at the decision announced by the Board on 11th September 2018.
 3. Copies of the radio advertisements by Marie Stopes Kenya which formed the basis of the Kenya Film Classification Board's decision.
 4. Copies of any complaint received by the Kenya Film Classification Board regarding the radio 'advertisements' by Marie Stopes Kenya.

5. A copy of any letters by the Kenya Film Classification Board to Marie Stopes Kenya and all the radio stations concerned, detailing the complaint and requesting for a response to the allegations before the Kenya Film Classification Board.
 6. All correspondence between Kenya Film Classification Board and Marie Stopes Kenya, the complainants and all witnesses in relation to the public awareness campaigns on comprehensive reproductive health services where not specifically listed above.
- h. That each party bears their costs of this application.

WHICH APPLICATION is based on the following grounds:

1. On the 11th of September 2018 the Chief Executive Officer (CEO) of the Kenya Film and Classification Board (KFCB) issued a press statement in which he stated;

"...The Board has also banned an advert by Marie Stopes airing on radio with a message that clearly promotes abortion contrary to Article 26(4) of the Constitution of Kenya. The advert that targets teenage girls by giving them alternatives to unwanted or unplanned pregnancies is hereby RESTRICTED by the Board...the Board demands that the said advert be pulled down immediately and should not be aired until it has been submitted to the board to determine age suitability. The Board also demands that Marie Stopes issue a public apology for airing such content without submission for examination and classification in line with the law."

2. The press statement in which the KFCB banned the radio advert was widely covered by media houses and online platforms which published and continue to publicize the position stated by the CEO of KFCB.
3. Through a letter dated 7th September 2018 received by Marie Stopes Kenya on 2nd October 2018, the KFCB alleged that Marie Stopes Kenya was in contravention of the *Programming Code for Free-to-Air Radio and Television Services* in Kenya and purportedly banned the advertisements related to the public awareness campaign on comprehensive reproductive health services, undertaken by Marie Stopes Kenya in conjunction with the Radio Africa Group.
4. This ban was pronounced despite the fact that the KFCB has no regulatory mandate over radio

programming and/or broadcasting.

5. Through a letter dated 5th November 2018, from KMPDB to Marie Stopes Kenya, the CEO-KMPDB indicated that their attention had been drawn to various advertisements by Marie Stopes Kenya that continue to be broadcast through Radio Africa's radio stations, that advocate for abortion. Additionally, that these advertisements were ongoing despite the KFCB placing a ban on all abortion advertisements.
6. The letter by KMPDB alleged that the advertisements were in contravention of the provisions of Article 26 of the Constitution of Kenya, 2010 and the Medical Practitioners and Dentists (Advertising) Rules, 2016.
7. On Saturday 10th November 2018, the KMPDB issued a ruling against Marie Stopes Kenya in the matter of *Ann Kioko -vs- Marie Stopes Kenya* containing amongst others, an Order directing Marie Stopes Kenya to immediately cease and desist offering any form of abortion services in all its facilities within the Republic of Kenya. This, despite the KMPDB having no regulatory mandate over non-governmental organizations and health facilities. These orders were made public on 14th November 2018 and were widely published by KFCB on its online media platforms.
8. The decision of the KMPDB banning Marie Stopes Kenya from providing any form of abortion services lacks any nexus with the allegations contained in the complaint in *Ann Kioko -vs- Marie Stopes Kenya* regarding the contravention of the Medical Practitioners and Dentists Board (Advertising) Rules brought before it.
9. On 20th November 2018, the Director of Medical Services, Ministry of Health (DMS,) in a letter to the Country Director, Marie Stopes Kenya further banned Marie Stopes Kenya from providing any form of post abortion care in all in its facilities within the Republic of Kenya.
10. By the Ministry of Health's own regulations contained in the National Post abortion Care Reference Manual (2013) and the directive issued by the DMS in June 2013, post abortion care is an integral part of maternity service and should be treated as such. It is often part of emergency services to which all patients are entitled to under Article 26-(4) and Article 43 (2) of the Constitution.

11. The underlying Petition questions the validity of the letter by the DMS directing Marie Stopes Kenya to refer all patients in need of post abortion care services to the nearest facilities providing such services, without delays in order to ensure effective patient management, contrary to Article 26 (4) and Article 43 (2) of the Constitution of Kenya, 2010.
12. The underlying Petition also questions the mandate of the KMPDB over non-governmental organizations and health facilities, as well as the validity of the Board's Ruling in the matter of *Ann Kioko -vs-Marie Stopes Kenya* and the Order therein directing Marie Stopes Kenya to immediately cease and desist offering any form of abortion services in all its facilities within the Republic of Kenya, contrary to Article 26 (4), Article 43 (1) (a) and (2) of the Constitution of Kenya, 2010.
13. Furthermore, the underlying Petition also questions the legal competence of the KFCB to issue the ban on adverts, contrary to Articles 33, 34 and 35 of the Constitution of Kenya, 2010.
14. Both the Application and Petition will be rendered nugatory if this Application is not certified urgent and duly brought before the duty judge as the women and girls who present themselves in Marie Stopes clinics and are in need for urgent medical emergency care in the form of post abortion care cannot access vital lifesaving services while this Petition is pending hearing.
15. The ruling in the matter of *Ann Kioko -vs- Marie Stopes Kenya* is an ongoing violation of the rights of women and girls in need of abortion services within the law, and emergency medical treatment in the form of safe abortion and post abortion care. This includes women and girls who present themselves with medical indications including but not limited to molar pregnancy, ectopic pregnancy or incomplete abortion, at any Marie Stopes Kenya's Clinics.
16. That there is a real danger that as a result of the denial of emergency medical treatment, any inordinate delay may exacerbate the medical emergency, leading to serious morbidity and in some cases, lead to a patient's death.
17. That the denial of emergency medical treatment is also in contravention of the right to freedom from cruel, inhuman or degrading treatment to which no limitation is permitted under the constitution.
18. Further conservatory orders preserving the proceedings are necessary to avoid great injustice

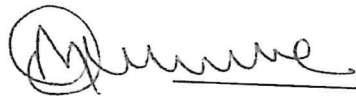
that would arise if the rights sought to be vindicated in the Petition are *incompensably* injured.

19. The applicants have requested for information from the KFCB and KMPDB which request they have ignored to date.

AND WHICH application is supported by the affidavits of Professor Guyo Waqo Jaldesa, Victor Rasugu and Jackline Mary Karanja and by such other grounds, reasons and arguments as may be advanced at the hearing of the application.

Dated at Nairobi this 30th day of November

2018



MARTIN ONYANGO & SOFIA RAJAB-LETEIPAN
ADVOCATES FOR THE PETITIONERS

DRAWN & FILED BY:

Martin Onyango
% Centre for Reproductive
Ground Floor
Morningside Office Park
Ngong Road
P.O. Box 52834-00100
Nairobi.
Tel: +254202518361/63 Tel:
MOnyango@reprorights.org
P.105/7757/09
LSK/2018/01817

And:

Sofia Rajab-Leteipan
Leteipan & Associates Advocates
Wu Yi Plaza,
Galana Road, Off Argwings Kodhek
P.O. Box 52834-00100
Nairobi.
Tel: +254 202 710 492
sofia@leteipanandassociates.com
P.105/7830/09
LSK/2018/00675

TO BE SERVED UPON: -

The Attorney General's Chambers,
Sheria House,
P.O Box 40112-00100

NAIROBI.

The Cabinet Secretary
Ministry of Health

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The Director of Medical Services
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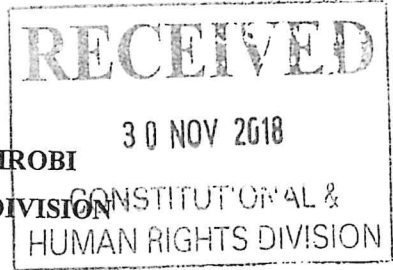
NAIROBI.

Kenya Medical Practitioners and Dentists Board
Woodlands Road off Lenana Road
Nairobi
P.O Box 44839-00100

NAIROBI

Kenya Film Classification Board
15th Floor, Uchumi House,
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NAIROBI



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CONSTITUTIONAL AND HUMAN RIGHTS DIVISION
PETITION NO 428 OF 2018

30 NOV 2018

CONSTITUTIONAL &
HUMAN RIGHTS DIVISION

BETWEEN

NETWORK FOR ADOLESCENTS AND YOUTH OF AFRICA.....1st PETITIONER
JACKLINE MARY KARANJA.....2nd PETITIONER

AND

THE ATTORNEY GENERAL.....1st RESPONDENT
THE CABINET SECRETARY, MINISTRY OF HEALTH.....2nd RESPONDENT
THE DIRECTOR OF MEDICAL SERVICES, MINISTRY OF HEALTH.....3rd RESPONDENT
THE KENYA MEDICAL PRACTITIONERS AND DENTISTS BOARD.....4th RESPONDENT
KENYA FILM CLASSIFICATION BOARD.....5th RESPONDENT

PETITION

TO THE HIGH COURT OF KENYA:

The Petition of **NETWORK FOR ADOLESCENTS AND YOUTH OF AFRICA** and **JACKLINE MARY KARANJA** is as follows:

A. Parties

1. The 1st Petitioner, **NETWORK FOR ADOLESCENTS AND YOUTH OF AFRICA** is an organization advocating for access to sexual and reproductive health and rights information and service provision for youth in Kenya. It is affected in its work with the youth in as far as it endeavours to provide accurate information on sexual and reproductive health services.
2. **JACKLINE MARY KARANJA**, the 2nd Petitioner is a Kenyan female adult of reproductive age and a human rights defender working with Kamukunji Community Based Organizations' Network (KCBO-NET) in creating awareness on human rights, conducting community-based human rights monitoring and documenting trends of rights violations, lobbying and

advocating to protect women's rights, and the promotion of children and adolescents' rights in Kamukunji sub county and Kiambu county.

3. The Petitioners address of service is C/O Martin Onyango, Advocate, Center for Reproductive Rights, Morningside Office Park, Ngong Road, Ground Floor, Wing A, P.O BOX 48136-00100.
4. The Petitioners bring this Petition to allege both violations of and threat of violation to fundamental rights and freedoms in their own interest and in the public interest in accordance with Article 22(1) and 22(2)(b)&(c) and Article 258(1) and 258 (2)(b)&(c) of the Constitution.
5. The 1st Respondent is the Attorney General of Kenya and is enjoined to this petition pursuant to the provisions of Article 156 of the Constitution as the principal legal adviser to the Government.
6. The 2nd Respondent is the Cabinet Secretary charged by the National Government of the Republic of Kenya with the responsibility of overseeing the Ministry of Health, which is responsible for the development of policies aimed at the provision of high quality and affordable health care for the Kenyan people. It is also charged with the development of a well-trained and motivated workforce of health professionals with the ability to adequately respond to any public health-related issues and emergencies. The Ministry has an additional focus on preventive health care and the responsibility to encourage private sector investment in health care.
7. The 3rd Respondent is the Director of Medical Services (DMS) at the Ministry of Health and the registrar of the Kenya Medical Practitioners and Dentists Board KMPDB which is the statutory body that regulates the practice of medicine, dentistry and is enjoined to this Petition pursuant to his role as the coordinator of all technical functions of the Ministry of Health and as the principal adviser to the Cabinet Secretary of Health.
8. The 4th Respondent is the Medical Practitioners and Dentists Board also commonly referred to as KMPDB. It is a statutory authority, established under the Medical Practitioners and Dentists Act, Cap 253, and charged with regulating the practice of medicine and dentistry in Kenya.

9. The 5th Respondent is the Kenya Film Classification Board which is a statutory corporation, established under Section 11 of the Films and Stage Plays Act, Cap 222 mandated to regulate the creation, broadcasting, possession, distribution and exhibition of audio-visual content in the country.
10. The Petitioners bring this Petition on their own behalf and in the public interests and seek orders which aim to protect the right to life and right to health, and in particular the right not to be denied emergency medical treatment, of women and girls in Kenya who present themselves to Marie Stopes Kenya clinics with medical emergencies requiring resolution by the provision of safe abortion services or post abortion care. In addition, they seek declarations that the actions of the Respondents violate the rights to non-discrimination, access to information and not to be treated in a cruel, inhuman or degrading manner.

B. Facts of the Petition

11. Around 22nd August 2018, Marie Stopes Kenya embarked on a nine-week public awareness campaign on comprehensive reproductive health services undertaken in conjunction with the Radio Africa Group to among other things, highlight the statistics and dangers of unsafe abortion, abortion stigma and discrimination of women and girls who have undergone unsafe abortion and directing members of the public in need of pregnancy crisis counselling to call the Marie Stopes Kenya Customer Care Helpline.
12. On the 11th of September 2018 the CEO of the KFCB issued a press statement in which he stated;

“...The Board has also banned an advert by Marie Stopes airing on radio with a message that clearly promotes abortion contrary to Article 26(4) of the Constitution of Kenya the advert that targets teenage girls by giving them alternatives to unwanted or unplanned pregnancies is hereby RESTRICTED by the Board...the Board demands that the said advert be pulled down immediately and should not be aired until it has been submitted to the board to determine age suitability .The Board also demands that Marie Stopes issue a public apology for airing such content without submission for examination and classification in line with the law.”

13. The press statement in which the KFCB banned the Marie Stopes Kenya’s radio adverts was

widely circulated by media houses and online platforms which published and continue to publicize the position stated by the CEO of KFCB. This ban was pronounced despite the fact that the KFCB has no regulatory mandate over radio programming and/or broadcasting.

14. Through a letter dated 7th September 2018 received by Marie Stopes Kenya on 2nd October 2018, the KFCB alleged that Marie Stopes Kenya was in contravention of the *Programming Code for Free-to-Air Radio and Television Services* in Kenya and purportedly banned the advertisements related to the public awareness campaign on comprehensive reproductive health services undertaken by Marie Stopes Kenya in conjunction with the Radio Africa Group. Additionally, the same letter was sent to Radio Africa Group.
15. Upon receipt of the letter from the KFCB, Radio Africa Group responded on 4th October 2018 indicating that by airing Marie Stopes Kenya advertisements it did not violate the Communication Authority of Kenya's *Programming Code for Free-To-Air Radio and Television Service*, and that any complaints regarding radio content should follow the complaints mechanism as outlined in the Communication Authority of Kenya's Procedure for Handling Complaints related to Broadcast.
16. Through a letter dated 5th November 2018 to Marie Stopes Kenya, the CEO of the KMPDB indicated that their attention had been drawn to various advertisements by Marie Stopes Kenya that continue to be broadcast through Radio Africa's radio stations, that advocate for abortion. Additionally, that these advertisements were ongoing despite the KFCB placing a ban on all abortion advertisements.
17. The letter by the 2nd Respondent alleged that the advertisements were in contravention of the provisions of Article 26 of the Constitution of Kenya, 2010 and the Medical Practitioners and Dentists (Advertising) Rules, 2016.
18. Through a letter dated 5th November 2018, the CEO of the KMPDB invited the Country Director of Marie Stopes Kenya to appear before the KMPDB's Preliminary Inquiry Committee on Wednesday 7th November 2018 and directed that the following reports be submitted to it before close of business Tuesday 6th November 2018:
 - a. A comprehensive report addressing the allegations of illegal conduct by your

institutions in the field of reproductive health and illegal promotion of abortion amongst the youth;

- b. A report of all the procedures carried out in all Marie Stopes Kenya facilities within the last three (3) months.

19. A hearing thereafter took place before the Preliminary Inquiry Committee on 7th November 2018.

20. On Saturday 10th November 2018, the recommendations by the Preliminary Inquiry Committee were ratified by the full board of the KMPDB, which then issued a ruling against Marie Stopes in the matter of *Ann Kioko -vs- Marie Stopes Kenya* containing amongst others, an Order 1 therein directing Marie Stopes Kenya to immediately cease and desist offering any form of abortion services in all its facilities within the Republic of Kenya. This, despite the KMPDB having no regulatory mandate over non-governmental organizations and health facilities.

21. Furthermore, the decision of the KMPDB banning Marie Stopes Kenya from providing any form of abortion services lacks any nexus with the allegations contained in the alleged complaint in *Ann Kioko -vs- Marie Stopes Kenya* regarding the contravention of the Medical Practitioners and Dentists Board (Advertising) Rules brought before it.

22. On 20th November 2018, the DMS, in a letter to the Country Director, Marie Stopes Kenya further banned Marie Stopes Kenya from providing any form of post abortion care in all in its facilities within the Republic of Kenya.

23. By the Ministry of Health's own regulations contained in the National Post abortion Care Reference Manual (2013) and the directive issued by the DMS in June 2013, post abortion care is an integral part of maternity service and should be treated as such. It is often a part of emergency services to which all patients are entitled, under Article 26 (4) and Article 43 (2) of the Constitution.

24. The immediate cause of concern in this Petition is the constitutionality of the ruling in the matter of *Ann Kioko -vs- Marie Stopes Kenya* by the 4th Respondent, and the effect of the letter by the 3rd Respondent to Marie Stopes Kenya dated 20th November 2018, and their adverse effect of curtailing the provision of emergency medical treatment in the form of safe

abortion and post abortion care to women and girls in Kenya, in violation of the Article 26 (4), Article 43(1)(a) and Article 43 (2) of the Constitution.

25. Since 1985, Marie Stopes Kenya through its 23 clinics, has been a provider of much needed reproductive health services in many communities in Kenya and in some communities, remains the only provider of life-saving reproductive health services. This ban will adversely affect women and girls in Kenya who rely on Marie Stopes Kenya to access reproductive health services which would otherwise be unavailable to them.
26. Additionally, the Petition is premised on the arbitrary nature of the proceedings and the ruling in the matter of *Ann Kioko -vs- Marie Stopes Kenya* by the 3rd and 4th Respondents in violation of Article 47 of the Constitution as well as the rule of law, transparency, accountability and good governance.
27. Finally, the petition is concerned that the actions of the Respondents in addition to violating the rights to life and health of women and girls in Kenya, also violate the rights to non-discrimination, access to information and not to be treated in a cruel, inhuman or degrading manner as protected under the Constitution and other international treaties that Kenya is a party to.

C. Legal Foundation and Constitutional Background

28. The Preamble to the Constitution of Kenya, 2010 bespeaks the aspiration of Kenyans for a government based on the essential values of human rights, equality, freedom, democracy, social justice and the rule of law.
29. Under Article 2, the Constitution is the supreme law of the land and it binds all persons and all State organs at all levels of government. In addition, no person may claim or exercise State authority except as authorised under the Constitution.
30. Article 2(5) of the Constitution also expressly imports the general rules of international law and makes them part of the law of Kenya.
31. Article 3 of the Constitution behoves the Respondents like all Kenyans and State organs to respect, uphold and defend the Constitution.

32. The national values and principles of governance in Article 10 and Article 232 bind all State organs, State officers, public officers and all persons whenever any of them applies or interprets the Constitution or enacts, applies or interprets any law. The national values and principles of good governance pertinent to this petition include "*human dignity, equity, social justice, inclusiveness, equality, human rights, non-discrimination and protection of the marginalised*".
33. Article 20(3)(a) and (b) require the Court not only to *develop the law* to the extent that it does not give effect to a right or fundamental freedom, but also to adopt the interpretation that *most favours* the enforcement of rights and fundamental freedoms.
34. Under Article 21(1) it is a fundamental duty of the State and every State organ to observe, respect, protect, promote and fulfil the rights and fundamental freedoms in the Bill of Rights.
35. Article 24 (1) outlines the grounds for justifiable limitation of rights and provides that a right or fundamental freedom in the Bill of Rights shall not be limited except by law, and then only to the extent that the limitation is reasonable and justifiable in an open and democratic society based on values including human dignity, and equality.
36. Equally, Article 26 (1) guarantees every person the right to life.
37. Furthermore, Article 26 (4) provides that abortion is not permitted unless, in the opinion of a trained health professional, there is need for emergency treatment, or the life or health of the mother is in danger, or if permitted by any other written law.
38. Article 27 guarantees the freedom from discrimination on the basis of age and sex.
39. Article 29 provides for the right to freedom and security of the person which includes the right not to be treated in a cruel, inhuman or degrading manner.
40. Article 33 protects the right to freedom of expression including the right to seek, receive or impart information or ideas.
41. Article 34 protects the freedom of the media which guarantees the independence of electronic,

- print and all types of media.
42. Furthermore, Article 35 protects the right of every citizen to access information held by the State or by any other person for the exercise or protection of any right of fundamental freedom.
 43. Under Article 43 (1)(a), every person has the right to the highest attainable standard of health, including the right to health care services and reproductive health care.
 44. Additionally, Article 43 (2) provides that a person shall not be denied emergency medical treatment.
 45. Article 47 (1) guarantees the right to fair administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.

D. Other Legal Foundations of the Petition

46. Sections 6, 7, 8 and 10 of the Health Act No.21 of 2017.
47. Sections 4 and 5 of the Fair Administrative Action Act No. 4 of 2015.
48. Sections 4 and 20 of the Medical Practitioners and Dentists Act Cap 253 of the Laws of Kenya.
49. Section 11 and 15 of The Films and Stage Plays Act Cap 222 of the Laws of Kenya.
50. The Kenya Information and Communications Act, the Kenya Information and Communications Regulations, the Communications Authority of Kenya's Programming Code for Free-to-Air Radio and Television Services in Kenya and the Communication Authority of Kenya's Procedure for Handling Complaints Related to Broadcast.
51. Articles 3 (2), 4, 5, 8, 9 (1), 16 (1) & (2) and 18 (3) of The African Charter on Human and Peoples' Rights.
52. Articles 2 (1), 4 (1), 14 (1) (a), (b), (g) & (2) (a) of The Protocol to The African Charter on Human and Peoples' Rights on The Rights of Women in Africa (Maputo Protocol).

53. Articles 2 (2), and 12 (1) of The International Covenant on Economic, Social and Cultural Rights (ICESCR).
54. Articles 2 (1), 6 (1), 7, 19 (2) and 24 (1) of The International Covenant on Civil and Political Rights (ICCPR).
55. Articles 1, 2 (b), 3, 10 (h), 12 (1) and 16 (e) of The Convention on The Elimination of All Forms of Discrimination Against Women (CEDAW).
56. Article 2(1) & (2), 3(1), 13 & 24 (1) of The Convention on The Rights of The Child (CRC).
57. Article 16 of The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).

E. Particulars of Unconstitutionality

Violation of the protection of the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.

58. Article 47 of the Constitution provides that every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair. Similarly, Section 4 of the Fair Administrative Act, 2015 provides for the right to administrative action in the same terms.
59. Section 4(3) of the *Fair Administrative Action Act, 2015* provides as follows with regard to procedural fairness.

“(3) Where an administrative action is likely to adversely affect the rights or fundamental freedoms of any person, the administrator shall give the person affected by the decision—(a) prior and adequate notice of the nature and reasons for the proposed administrative action; (b) an opportunity to be heard and to make representations in that regard; (c) notice of a right to a review or internal appeal against an administrative decision, where applicable; ... (e) notice of the right to legal representation, where applicable; (f) notice of the right to cross-examine or where applicable; or (g) information, materials and evidence to be relied upon in

making the decision or taking the administrative action.

60. Similarly, Section 5 of the Fair Administrative Action Act, 2015 underscores that in advance of any administrative action or decision affecting a group of persons or the general public, a public notice of the proposed actions must be issued, and the public should be invited to share its views on the proposal, by the administrator.
61. The process leading to the decision by the KFCB and KMPDB did not meet the requirements of the aforementioned provisions on fair administrative action.
62. KFCB failed to issue prior and adequate notice of the process that led to its adverse decision against Marie Stopes Kenya. The decision was reached without allowing Marie Stopes Kenya and the public an opportunity to make presentations, while the issue was under consideration.
63. The decision that the KFCB made was unreasonable, as there was no consideration of the adverse effect it would have on a large section of the population. An action or decision can only be deemed reasonable if it is undertaken or reached following a process that is cognizant of all relevant factor and logical, so that even if a reasonable person would disagree with the action taken or decision reached, the person would still deem the process leading thereto as coherent and sensible.
64. It defies logic in that in a country such as Kenya, where unsafe abortion is the third leading cause of maternal mortality, with adolescent girls significantly affected, the KFCB concluded that programming highlighting the magnitude of deaths due to unsafe abortion and providing information on preventing unsafe pregnancy and abortion are inappropriate content during the watershed period (5am -10pm).
65. The KFCB, having taken an adverse decision against Marie Stopes Kenya publicized the said decision without having issued Marie Stopes with any notice of the same. KFCB served the decision on Marie Stopes Kenya almost one month after publication thereof, on 2nd October 2018.
66. The KMPDB failed to issue prior and adequate notice to Marie Stopes Kenya, of the hearing they intended to hold. In addition, KMPDB did not issue prior and adequate notice of the

nature and reasons for the proposed hearing, only requesting that Marie Stopes should appear before KMPDB in less than 24 hours. In addition, the late notice did not contain any information that would allow Marie Stopes Kenya to adequately respond to the summon.

67. KMPDB did not avail any opportunity for members of the public who may be affected by an adverse decision against Marie Stopes Kenya to appear before its Preliminary Inquiry Committee and make representations. The weighty role that public participation, by persons whose rights will be adversely affected (such as women seeking safe legal abortions services and health workers providing the same and other stakeholders), would have played in influencing the decision of KMPDB was excluded.
68. There was no evidence as to what the Preliminary Inquiry Committee took into account or considered in making the order that Marie Stopes Kenya must cease and desist from offering all abortion services, given that it considered evidence of advertising, whilst making this finding on service delivery. Furthermore, there is no finding, by KMPDB, of illegality in delivery of abortion and post abortion services on the part of any medical practitioner under the employ of Marie Stopes Kenya.
69. To the extent that the Preliminary Inquiry Committee considered factual evidence on advertisement, its conclusion that the advertisements in question are misleading is erroneous. This conclusion is based on an unsound interpretation of the said adverts. The adverts as quoted in the KMPDB ruling read as follows: “an unplanned pregnancy can lead to a wide range of emotions... we are here to talk to you”. “Hata ile time P2 imefail don’t stress, we gatchu”. It is inconceivable that these statements could be interpreted as an offer or encouragement to abortion.
70. In addition, while the subject of the complaint disclosed to Marie Stopes Kenya emanated from the public awareness raising campaign on Radio Africa’s Classic FM and Capital FM, the findings of the Board on the erroneous and misleading nature of the advertisements is based on information found on social media platforms.
71. The above paragraphs demonstrate, with sufficient specificity, that the administrative actions in question, for the reasons of being unreasonable, procedurally unfair and for not having been backed by written reasons provided to those whose rights are likely to be adversely affected

thereby, fail to meet the Constitutional and statutory provisions on the right to fair administrative action.

72. The actions of the DMS in expanding the decision of the KMPDB to include a banning Marie Stopes Kenya clinic from offering post abortion care services is unprocedural, unlawful and a violation of the right to fair administrative action. The DMS acted outside the auspices of the KMPDB, and without undertaking an independent inquiry that would inform his decision.

Violation of the Right to health

73. The right to health including reproductive health care services is enshrined in Article 43(1) (a) of the Constitution, the Health Act of 2017 and recognized by regional and international treaties such as the Maputo Protocol, the international Covenant on Civil and Political Rights and the Convention on the Elimination of all forms of Discrimination Against Women to which Kenya is a State Party and thus obliged, under Article 2(6) of the Constitution, to observe as part of its domestic law.
74. The Health Act provides at Section 4 that it is a fundamental duty of the State to observe, respect, protect, promote and fulfil the right to the highest attainable standard of health including reproductive health care and emergency medical treatment by *inter alia* by (a) developing policies, laws and other measures necessary to protect, promote, improve and maintain the health and well-being of every person. The Act at Section 6 further guarantees every person a right to reproductive health care which includes (a) the right of men and women of reproductive age to be informed about, and to have access to reproductive health services including to safe, effective, affordable and acceptable family planning services and abortion.
75. Section 6 of the Health Act further guarantees every person the right to emergency medical treatment and any medical institution that fails to provide emergency medical treatment while having ability to do so commits an offence and is liable upon conviction to a fine not exceeding three million shillings.
76. The actions of the DMS in banning Marie Stopes Kenya from providing post abortion services recognised as an integral part of maternal health services and in most cases delivered as

emergency care is, an atrocious violation of Article 43(1) (a) and 43(2) of the Constitution and Section 6 of the Health Act, 2017.

77. The KMPDB's ban on provision of all abortion services by Marie Stopes Kenya clinics will hamper women and girl's access to these services and directly infringe upon their rights to the highest attainable standard of health and reproductive health.
78. KFCB's and KMPDB's decisions will likely lead to confusion amongst health care providers as to when abortion is permissible under the law. This is further compounded by the misleading information by KFCB that there is a total abortion ban, with no exceptions in Kenya, without due regard to the permissible grounds for access to abortion under the Constitution. Implying that abortion is never legally available amounts to misrepresenting the law regarding women's access to abortion. The result is that health care providers will be scared off from offering abortion services, even when it is permissible to do so, leaving the women and girls in need and experiencing these circumstances unable to access safe and legal abortion services and post abortion care.
79. Availability of health services implies availability of adequate numbers of functioning health care facilities, services, goods and programs to provide the population with the fullest possible range of sexual and reproductive health care. Banning Marie Stopes Kenya from offering abortion and post abortion care services in all its 23 clinics across the country in the absence of any challenge as to the quality or legality of the services they offer, coupled with the absence of training on safe abortion care in public hospitals unjustifiably limits the options available for women and girls who qualify for legal abortion services in Kenya.

Violation of the right to life

80. The right to life is enshrined in Article 26 of the Constitution. Article 26(4) specifically provides for a woman's right to safe abortion when her life or health is at risk, or as part of emergency medical treatment. The right to life is also guaranteed under Article 4 of the Banjul Charter; Article 4 (1) of the Maputo Protocol; Article 3 of the Universal Declaration on Human Rights (UDHR) Article 6(1) of the ICCPR and Article 6 of the CRC.

81. The actions by the DMS, the KMPDB and the KFCB portray a lack of recognition that the Constitution provides for legal abortion under Article 26 (4) in certain circumstances. They portray a lack of consideration of the fact that lack of provision of safe legal abortions results in maternal mortality, a regionally and internationally recognized violation of the rights to life, which must be stemmed.

Violation of the Right to Freedom and Security of the Person which includes the right not to be treated or punished in a cruel, inhuman and degrading treatment

82. Freedom from cruel, inhuman and ill treatment is guaranteed under Article 25(a) and 29(d) & (f) of the Constitution, which state:

25 (a) "[d]espite any other provision in this Constitution, the ... freedom from torture and cruel, inhuman or degrading treatment or punishment" shall not be limited.

29. Every person has the right to freedom and security of the person, which includes the right not to be— i. (d) subjected to torture in any manner, whether physical or psychological; ii. (f) treated or punished in a cruel, inhuman or degrading manner.

83. Under international law, States have a negative obligation to refrain from violating women's rights to be free from cruel, inhuman and degrading treatment and to take positive measures to prevent such violations. Abortion restrictions have been recognized as a violation of the right to be free from cruel, inhuman and degrading treatment under international law.

84. Prohibition of cruel inhuman and degrading treatment requires state parties to ensure that women are not treated in an inhumane, cruel or degrading manner when they seek to benefit from reproductive health services such as contraception/family planning services or safe abortion care, where provided for by national law.

85. Women and girls suffer physical harm, and sometimes death, when medical care is delayed, or they are treated inadequately and unsafely. The denial of constitutionally and legally available health services such as safe abortion and post abortion care can cause lasting physical and emotional suffering and amounts to abuse and mistreatment of women and girls seeking reproductive health services.

86. The expansion of the ban on service provision to include post abortion care by the DMS prevents Marie Stopes Kenya's trained health professionals from providing lifesaving services and health preserving obstetric care, the result of which is to unduly delay or deny urgent medical care to women and girls in need thereof.
87. Barring Marie Stopes Kenya's trained health professionals from providing any abortion services, results in abortion services being unavailable and therefore inaccessible for women and girls who might be eligible therefor. These actions are in direct contravention of the State's obligation to protect women's rights to be free from cruel, inhuman and degrading treatment, including its positive obligation to ensure access to services and in particular immediate and unconditional treatment of women and girls who present themselves at health facilities seeking emergency medical care.

Violation of the Right to freedom to seek, receive and impart information

88. The KFCB's and KMPDB's findings on Marie Stopes Kenya awareness raising campaign and the directives not to run advertisements have the effect of limiting Marie Stopes Kenya's right to impart information and limiting women's and adolescent girls' right to obtain comprehensive, accurate, and evidence-based health-related information in violation of the right of access to information.
89. Article 33(1) (a) of the Kenyan Constitution provides that "*Every person has the right to freedom of expression, which includes the freedom to seek, receive or impart information or ideas.*". This right is also recognized in Article 19 (2) of the ICCPR and Article 9 of the African Charter on Human and Peoples Rights. Article 13 of the UN Convention on the Rights of the Child provides that "the child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information, while Article 16 (e) of CEDAW provides that women have a right access to the information, education and means to enable them to exercise their rights to decide freely and responsibly on the number and spacing of their children.
90. By banning the Marie Stopes Kenya advertisements and banning Marie Stopes Kenya from providing services, the KFCB, the KMPDB and the DMS interfered with Marie Stopes Kenya's right to impart information which is crucial in the exercise of its mandate.

91. Banning the adverts on account that they target teenage girls with content that is inappropriate for them, when adolescent girls are significantly affected by unsafe abortions in Kenya, violates the right of teenage girls to receive what amounts to critical health information for them.

92. It is trite law that Constitutionally guaranteed rights should not be limited except where the limitation is reasonable, justifiable and the objective of that limitation is intended to serve the society. Article 24 (1) of the Constitution provides, that *a right or fundamental freedom in the Bill of Rights shall not be limited except by law, and only to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account the nature of the right or fundamental freedom; the importance and the purpose of limitation, the nature and the extent of limitation, the need to ensure that the enjoyment of the right and fundamental freedoms by any individual does not prejudice the rights and fundamental freedoms of others; and the relationship between the limitation and its purpose and whether there are less restrictive means to achieve the purpose.*

93. In the present case, there has been no attempt to show that the limitation of Marie Stopes Kenya's and girls' right of access to information was reasonable and justifiable, as required by Article 24 (3).

Violation of the right of access to information held by the state

94. The impact of the actions of the KFCB and KMPDB touching on access to information are further compounded by the fact that the State makes little effort to proactively provide information on safe legal abortion to young people.

95. The Constitution of Kenya provides in Article 35 (1) that "*Every citizen has the right of access to—(a) information held by the State; and (b) information held by another person and required for the exercise or protection of any right or fundamental freedom.* Article 35(3) of the constitution further provides that "*the State shall publish and publicize any important information affecting the nation*". The right to access information is also outlined in Article 14 (2)(a) of the Maputo Protocol, Articles 10(h),14(2)(b) and 16(e) of CEDAW and Article 13(1) of the CRC.

96. Article 260 of the Constitution defines the term 'State' as 'the collectivity of offices, organs

and other entities, comprising the government of the Republic of Kenya.’ The Ministry of Health, being an office created to manage the health sector in the country and consisting of departments through which to implement such management, falls within the definition of State would therefore be duty bound to provide information to citizens. In this duty, the Ministry would be bound by Article 232 of the Constitution which provides the principles and values of public service, one of them being ‘transparency and provision to the public of timely, accurate information.’

97. While previous decisions of the High Court have emphasized the need for an explicit request for information to have been made to the holder of the information before a finding that Article 35 has been violated can be made, the right to information in the instant Petition cannot be construed in the same manner as in the prior cases without the result being an absurdity and without the consequences being, in this very instance, mortalities and morbidities from unsafe abortions.
98. Having acknowledged unsafe abortion as a public health concern, the government’s responsibility cannot be limited to providing information only upon request. Information in this case can only be timely if it is provided to women and girls before exposure to unsafe abortion. This requires the State to be transparent in providing comprehensive, scientific and age appropriate reproductive health information devoid of moral, religious or other bias.
99. The government therefore has an obligation to proactively and widely circulate information on where assessments for eligibility for legal abortion can be undertaken, and which health professional and facilities offer services, for example. This information is readily available to the Ministry and there is no legitimate reason why it should not be made available proactively by the State.
100. The Ministry of Health as a State organ has failed to take the requisite positive measures to provide services and information about the constitutionally-guaranteed right to safe, timely abortion of good quality under specific grounds.
101. In addition, the State has an obligation to provide information that is accurate. Both the KFCB’s ban on Marie Stopes Kenya’s advertisements and KMPDB’s findings on Marie Stopes Kenya’s advertisements, communicate that there was illegality or impropriety in Marie Stopes Kenya’s awareness raising campaign, when the same has not been proven. In addition,

the safety and legality of the abortion services provided by Marie Stopes Kenya have not been impeached. The aforementioned ban and decision communicate inaccuracies, violating the rights of women and girls to information necessary to make informed decisions about their sexual and reproductive health.

102. As has already been elucidated upon in this Petition and as recognized in international law, the right to information and the right to health are intricately interconnected.

Violation of the right to equality and freedom from discrimination

103. Article 27 of the Constitution provides that:

(1) Every person is equal before the law and has the right to equal protection and equal benefit of the law.

(2) Equality includes the full and equal enjoyment of all rights and fundamental freedoms.

(3) Women and men have the right to equal treatment, including the right to equal opportunities in political, economic, cultural and social spheres.

(4) The State shall not discriminate directly or indirectly against any person on any ground, including race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth.

(5) A person shall not discriminate directly or indirectly against another person on any of the grounds specified or contemplated in clause (4)

104. Article 18 of the African Charter on Human and Peoples' Rights calls upon States to combat and ensure the elimination of discrimination against women and to also ensure the protection of the rights of the woman and the child, as does Article 2 of the Maputo Protocol.

105. Discrimination denotes any "*distinction which whether intentional or not but based on grounds relating to personal characteristics of individual or group [which] has an effect which imposes disadvantages not imposed upon others or which withholds or limits access to advantages available to other members of Society*"

106. More specifically, Article 1 of CEDAW Convention provides: "*for the purposes of the present Convention, the term "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital*

status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field."

107. The KFCB made a decision to ban advertising by Marie Stopes Kenya, articulating that the "...the advert that target teenage girls by giving them alternatives to unwanted or unplanned pregnancies is hereby restricted..."

108. In effect, the KFCB singled out a group of persons, girls who are teenagers and determined that they are not to receive information on unwanted pregnancies, an issue that greatly affects this demographic in Kenya.

109. By its decision, KFCB imposed on this group of persons the disadvantage of not receiving information that may be useful to them when they are faced with unwanted and unplanned pregnancies and require assistance. Furthermore, the KFCB provided no rational justification for its decision. To mandate, without justification, that teenage girls only are not entitled to information that is pertinent and relevant to them, amounts to discrimination.

110. In addition, the decision that the KMPDB made to ban the provision of all abortion services by Marie Stopes amounts to discrimination against women. The "distinctive features and factors that differ for women in comparison to men," including the biological factors associated with reproductive health, such as pregnancy must be part and parcel of the considerations taken into account, when making decisions, in order to avert discrimination against women. However, the KMPDB, disregarding the fact that only women, by virtue of their sex, are capable of becoming pregnant and that safe abortion is a medical procedure that only women need, arrives at a decision to ban the provision of all abortion services by a health care provider that serves women in its 23 facilities across the country.

111. The decision by the KMPDB effectively and intentionally obstructs access to a health service that is uniquely required by women and girls who qualify therefor under Article 26(4). It impairs and nullifies the enjoyment of the right to the highest attainable standard of health for women and girls, on the basis of non-discrimination and equality as protected under the Kenyan Constitution and international law.

F. Appropriate Reliefs

112. As a result of which your humble Petitioners pray for:
- a) An order of certiorari calling into court and quashing the decision of the 5th Respondent to ban advertisements related to the public awareness campaign on comprehensive reproductive health services undertaken by Marie Stopes Kenya in conjunction with the Radio Africa Group.
 - b) An order of certiorari calling into court and quashing the Ruling of the 4th Respondent in the matter of *Ann Kioko -vs- Marie Stopes Kenya* and a complete expunction of the entire record of the proceedings.
 - c) An order of certiorari calling into court and quashing the letter by the Director Medical Services of 20th November 2018 Ref: MOH/ADM/1/1 barring Marie Stopes Kenya from offering Post Abortion Care Services.
 - d) A declaration that the decision by the Kenya Film and Classification Board to ban advertisements related to the public awareness campaign on comprehensive reproductive health services undertaken by Marie Stopes Kenya and the ruling by the Kenya Medical Practitioners and Dentists Board in the matter of *Ann Kioko -vs- Marie Stopes Kenya* are unlawful, illegal, arbitrary, unconstitutional and that they are null and void *ab initio*, on account of the absence of any institutional mandate.
 - e) A declaration that the decision by the Kenya Film and Classification Board to ban advertisements related to the public awareness campaign on comprehensive reproductive health services undertaken by Marie Stopes Kenya and the ruling by the Kenya Medical Practitioners and Dentists Board in the matter of *Ann Kioko -vs- Marie Stopes Kenya* are discriminatory in as far as they ban information and services specifically relevant to women and girls.
 - f) A declaration that Ruling of the 4th Respondents in the matter of *Ann Kioko -vs- Marie Stopes Kenya*, violates or threatens the violation of the right to the highest attainable standard of health, including the right to health care services, including reproductive health care under Article 43 (1)(a), and the right not to be denied emergency medical

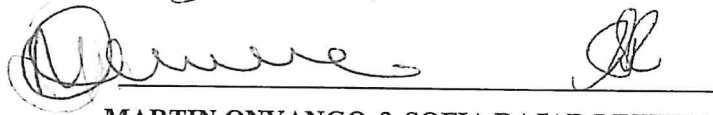
treatment under Article 43 (2).

- g) A declaration that Ruling of the 3rd and 4th Respondents in the matter of *Ann Kioko -vs- Marie Stopes Kenya*, is in violation of the provisions of Article 26 (4) of the constitution of Kenya that permits a trained health professional to offer safe abortion and post abortion care when in their opinion there is need for emergency treatment, or when the life or health of the pregnant woman is in danger.
- h) A declaration that the 5th Respondent's decision to ban advertisements related to the public awareness campaign on comprehensive reproductive health services undertaken by Marie Stopes Kenya in conjunction with the Radio Africa Group amounts to a violation of the right to freedom of expression and the right to information.
- i) An order restraining the Respondents, their representatives and/or agents from in any manner whatsoever harassing, restricting or otherwise interfering with all reproductive health services providers including Marie Stopes Kenya that is providing safe legal abortion and post abortion services in line with the provisions of Article 26 (4).
- j) A declaration that the conduct of the members of the Kenya Medical Practitioners and Dentists Board in the matter of *Ann Kioko -vs- Marie Stopes Kenya*, and the conduct of the Chief Executive Officer of the Kenya Films and Classification Board regarding the advertisements related to the public awareness campaign on comprehensive reproductive health services undertaken by Marie Stopes Kenya in conjunction with the Radio Africa Group and the conduct of the Director of Medical services in banning the provision of Post Abortion Care are contrary to Article 10, and Article 232 of the Constitution. And find the public officials unfit to hold a public office.
- k) An order prohibiting all Respondents in this case from making public utterances on abortion services unless the same is accurate, scientifically and factually sound, and in a manner that does not perpetuate stigma against legal abortion services in Kenya.
- l) An order restraining the Respondents or their representatives and/or agents in any manner whatsoever from restricting all reproductive health advocacy and services providers including Marie Stopes from providing information on safe abortion and

post abortion care as long as the information is accurate and in line with provisions of the Constitution.

- m) An order compelling the Ministry of Health to proactively and fully disclose and make widely available and accessible information on legal abortion services, that is accurate, timely, transparent and devoid of moral, religious or other bias. This information should include but not be limited to; information on facilities offering abortion and post abortion services; registered service providers able to offer legal abortion and post abortion services; and grounds of eligibility for abortion services.
- n) An order for all parties to bear their own costs.
- o) Any other or further orders that the Honourable Court may deem fit to grant.

Dated at Nairobi this 30th day of November 2018



MARTIN ONYANGO & SOFIA RAJAB-LETEIPAN
ADVOCATES FOR THE PETITIONERS

DRAWN & FILED BY:

Martin Onyango
% Centre for Reproductive
Ground Floor
Morningside Office Park
Ngong Road
P.O. Box 52834-00100
Nairobi.
Tel: +254202518361/63 Tel:
MOnyango@reprorights.org
P.105/7757/09
LSK/2018/01817

And:

Sofia Rajab-Leteipan
Leteipan & Associates Advocates
Wu Yi Plaza,
Galana Road, Off Argwings Kodhek
P.O. Box 52834-00100
Nairobi.
Tel: +254 202 710 492
sofia@leteipanandassociates.com
P.105/7830/09
LSK/2018/00675

TO BE SERVED UPON: -

The Attorney General's Chambers,
Sheria House,
P.O Box 40112-00100

NAIROBI.

The Cabinet Secretary
Ministry of Health

NAIROBI.

The Director of Medical Services
Ministry of Health

NAIROBI.

Kenya Medical Practitioners and Dentists Board
Woodlands Road off Lenana Road
Nairobi
P.O Box 44839-00100

NAIROBI

Kenya Film Classification Board
15th Floor, Uchumi House,
P. O. Box 44226-00100

NAIROBI