

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CONSTITUTIONAL AND HUMAN RIGHTS DIVISION
PETITION NO. OF 2014

**IN THE MATTER OF THE ENFORCEMENT OF THE BILL OF RIGHTS UNDER
ARTICLE 22(1) OF THE CONSTITUTION OF KENYA (2010)**

AND

**IN THE MATTER OF ALLEGED CONTRAVENTION OF FUNDAMENTAL RIGHTS
AND OF ARTICLES 19, 20, 21, 22, 25, 27, 28, 29, 31, 33, 35, 43, 45 AND 46 OF THE
CONSTITUTION OF KENYA (2010)**

BETWEEN

L.A.W.....1ST PETITIONER
KENYA LEGAL & ETHICAL ISSUES
NETWORK ON HIV & AIDS (KELIN).....2ND PETITIONER
AFRICAN GENDER & MEDIA
INITIATIVE TRUST (GEM).....3RD PETITIONER

VERSUS

MARURA MATERNITY NURSING HOME.....1ST RESPONDENT
COUNTY EXECUTIVE COMMITTEE
MEMBER INCHARGE OF HEALTH SERVICES
(NAIROBI COUNTY).....2ND RESPONDENT
CABINET SECRETARY MINISTRY OF HEALTH.....3RD RESPONDENT

AND

SECRETARIAT OF THE JOINT UNITED NATIONS
PROGRAMME ON HIV/AIDS
(UNAIDS SECRETARIAT).....PROPOSED AMICUS CURIAE/APPLICANT



AFFIDAVIT

I, **Dr MARIANGELA BATISTA GALVAO SIMAO**, the Director of the Rights, Gender, Prevention and Community Mobilization Department of the Secretariat of the Joint United Nations Programme on HIV/AIDS (the “UNAIDS Secretariat”) of 20 Avenue Appia, Geneva, Switzerland, do hereby make oath and state as follows:

1. **THAT** I am a Director of the Applicant organization herein, fully conversant with the facts of this case, duly authorized and hence competent to swear this affidavit on behalf of the Applicant organization.

2. **THAT** all the facts that I depose to herein relate to matters of factual information which I have personally acquired by reason of my position in the Applicant organization, prior employment and professional training, and I verily believe the same to be true to the best of my knowledge.

3. **THAT** I joined the Applicant organization in the year 2010 and I have worked in my current position for a period of over four years. Prior to joining the UNAIDS Secretariat, I served as Director of the National Sexually Transmitted Diseases and AIDS Programme in Brazil from 2005 to 2010. Prior to this position, I worked in the Brazilian public health system since 1980, conducting policy and research implementation in the public sector at various levels. I hold the following degrees and certificates: Medical Doctor, specializing in Pediatrics; Diploma in Public Health, and Master of Science.

4. **THAT** the Joint United Nations Programme on HIV/AIDS (“UNAIDS”) was established in 1994 pursuant to United Nations Economic and Social Council (ECOSOC) Resolution 1994/24. I seek leave to annex herewith a certified copy of ECOSOC Resolution 1994/24. UNAIDS seeks to achieve the following objectives:

- (a) provide global leadership in response to the HIV/AIDS epidemic;
- (b) achieve and promote global consensus on policy and programmatic approaches;



- (c) strengthen the capacity of the United Nations System to monitor trends and ensure that appropriate and effective policies and strategies are implemented at the country level;
- (d) strengthen the capacity of national Governments to develop comprehensive national strategies and implement effective HIV/AIDS activities at the country level;
- (e) promote broad-based political and social mobilization to prevent and respond to HIV/AIDS within countries, ensuring that national response involves a wide range of sectors and institutions; and
- (f) advocate greater political commitment in responding to the epidemic at the global and country levels, including the mobilization and allocation of adequate resources for HIV/AIDS-related activities.

5. **THAT** in line with its mandate, the UNAIDS Secretariat is a global expert on the HIV epidemic and the response to it. The UNAIDS Secretariat benefits from the expertise and resources of its Cosponsors¹, as well as that of a wide range of governments, civil society and private sector advisors, academics, professionals and practitioners with experience and interest in the fields of HIV, public health and human rights from across the globe.

6. **THAT** in the course of its work, the UNAIDS Secretariat has gathered considerable information on effective HIV prevention policies and programmes. Through its work in all regions of the world, UNAIDS has developed policy and programme recommendations that emphasise human rights and public health norms and principles relating to non-discrimination, security, privacy, autonomy and informed consent as critical to the response to HIV, including in the context of efforts to address mother to child transmission of HIV, and other sexual and reproductive health needs of women living with HIV. UNAIDS has convened international experts and supported research and programmes either on its own or in conjunction with other entities, in relation to aspects of the legal, policy and social environment that are most appropriate

¹ These eleven UNAIDS Cosponsors are the Office of the United Nations High Commissioner for Refugees; the United Nations Children's Fund; the World Food Programme; the United Nations Development Programme; the United Nations Population Fund; the United Nations Office on Drugs and Crime; the United Nations Entity for Gender Equality and the Empowerment of Women; the International Labor Organization; the United Nations Educational, Scientific and Cultural Organization; the World Health Organization; and the World Bank.



to respond to the sexual and reproductive health needs of women living with HIV. Though the research has most often been conducted by other organizations, by reason of its global leadership and coordination role on all issues related to HIV, and its specific mandate to monitor trends in the epidemic and country response, UNAIDS has been able to access, assess, synthesize and disseminate such information.

7. **THAT** the UNAIDS Secretariat seeks to participate in this suit by virtue of its mandate, expertise and experience in advancing human rights-based and effective responses to HIV globally, as well as by virtue of its interest in assisting countries to adopt policies and programmes that enable people living with HIV, including women living with HIV, to lead full and dignified lives free of discrimination and coercion in an enabling environment that supports their access to HIV and other sexual and reproductive health services.

8. **THAT** the exclusive purpose of the UNAIDS Secretariat in participating in this suit is to impartially apprise this Court of public health and international human rights standards and guidance regarding access to HIV and sexual and reproductive health services for women living with HIV, including in the context of efforts to eliminate mother to child transmission of HIV.

9. **THAT** if granted leave to intervene, the UNAIDS Secretariat expects that it will develop its submission along the following lines:

- a. international public health and human rights standards are relevant to this suit;
- b. informed consent, as opposed to coercion, in relation to access to health services, including family planning, is fundamental to international human rights standards, as well as crucial to effective HIV programmes;
- c. enabling and protective environments support access to, and uptake of, HIV prevention, treatment and care services, including for pregnant women and children living with HIV.

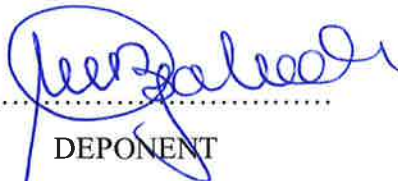
10. **THAT** it is only just and fair that the Applicant be enjoined to these proceedings as its presence before the court is necessary in order to enable the court to effectually and completely adjudicate upon and settle all questions involved in the suit.

11. **THAT** I swear this affidavit in support of the Applicant's application that the Applicant be joined as an Amicus Curiae to these proceedings.

12. **THAT** what is deponed to herein is true to the best of my knowledge, information and belief.

SWORN at Geneva by the said }
Dr MARIANGELA BATISTA GALVAO SIMAO }

This 15th day of May 2015 }


.....
DEPONENT

BEFORE ME }



Fr. 2.50

COMMISSIONER FOR OATHS }

Vu pour la Modification de la signature de }
M. e.D. Batista Galvao Simao }
à l'exécution du Procès-verbal ci-dessus. }

Genève, le 15 MAI 2015




Emmanuel Moar

DRAWN & FILED BY: }

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