

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(CIVIL DIVISION)

MISCELLANEOUS CAUSE NO. 0086 OF 2022

1. INITIATIVE FOR SOCIAL AND ECONOMIC RIGHTS (ISER) LTD APPLICANTS
 2. THE UNWANTED WITNESS (U) LIMITED
 3. HEALTH EQUITY AND POLICY INITIATIVE LIMITED
- VERSUS
1. THE ATTORNEY GENERAL
 2. NATIONAL IDENTIFICATION & REGISTRATION AUTHORITY (NIRA) RESPONDENTS

Before: Hon. Justice Boniface Wamala

APPLICANTS' WRITTEN SUBMISSIONS

Your Lordship,

A. INTRODUCTION.

1. The Applicants instituted this application by Notice of Motion under **Article 50 (2)** of the Constitution of the Republic of Uganda, 1995, **Section 1 (2), 3, 4 (1) (b), 9 (1) & (4), 13 & 17** of the Human Rights (Enforcement Act) 2019, and **Order 52 Rules (1) & (2)** of the Civil Procedure Rules SI 71–1.
2. The application is supported by **32 Affidavits** of Kiira Brian Alex; Dorothy Mukasa; Odur Anthony; Dr. Thomas Fisher (*An Expert*); Dr. Reetika Khera (*An Expert*); Diana Gichengo (*An Expert*); Aryemo Anna; Chepurai Lomor; Lopeta Paul Kichoda; Chepochepkai Paulina; Pedun Maria Teresa; Otajar John; Imaling Rose; Akello Irene; Acom Sarah; Madudu Mary; Asege Marabu; Akum Sofia; Acen Anna; Usutho Fulabia; Nyiruciba Lucia; Oyikonyiga Yulian; Bitehe Jane; Aume Ketula; Nafula Jesca; Ajambo Buluma; Anyango Malisella; Nansubuga

Zeulence; Nakagiri Nakato; Aguttu Mangadalena; Nafula Henderika; & Okello Yovan.

3. The 1st Respondent filed **3 Affidavits** in Reply by Mr. Stephen Kasaija, Mr. Paul Mbaka, Mr. Shem Mwesigwa, and the 2nd Respondent filed **6 Affidavits** in Reply by Ms. Rosemary Kitembo, Mr. Jaume Dubois, Mr. Atukunda Job, Mr. Makwasi Suleiman Wanzala, Mr. Mike Moses Odhiambo, and Mr. William Loburon. The Applicants filed **1 Affidavit** in Rejoinder by Kiira Brian Alex to all the 9 Affidavits in Reply of the Respondents.

B. BACKGROUND.

4. The Applicants are Non-Government Organizations whose objectives are to, among others, promote the respect and upholding of human rights. The Applicants bring this application for human rights enforcement in public interest, challenging the exclusionary effects of the manner of implementing the requirements of **Sections 65 (1) (j) & 66** of the Registration of Persons Act, 2015 (hereinafter ROPA), in the use of the National ID System, in restricting the enjoyment of the rights of older persons to access Social Assistance Grants for Empowerment (SAGE) benefits, and restricting access to public health services in contravention of the right to health. The Application seeks the remedies enumerated in their Notice of Motion, and expanded upon in these submissions and as further set out in Issue 4 herein.

C. ISSUES FOR DETERMINATION.

- (1) *Whether the application is properly before this Honourable Court?*
- (2) *Whether use of the National ID System, including the National ID Card, National ID Number (hereinafter NIN), and National Identification Register as the primary data source and a mandatory means of identification, under **Section 65 (1) (j) & 66** of the ROPA, to access SAGE benefits is exclusionary, discriminatory, and violates the right to social security of older persons contrary to **Articles 8A, 20, 21, 22, & 45** of the*

Constitution, and Objectives 7 & 14 of the National Objectives and Directive Principles of State Policy (hereinafter: “National Objectives”)?

- (3) *Whether use of the National ID System, including the National ID Card, the NIN, and the National Identification Register as the primary data source and a mandatory means of identification, under Section 65 & 66 of the ROPA, to access public health services is exclusionary, discriminatory, and violates the right to health contrary to Articles 8A, 20, 21, 22, 33 (1), 35 & 45 of the Constitution, and Objectives 14 & 20 of the National Objectives?*
- (4) *What are the available remedies?*

D. SUBMISSIONS ON THE ISSUES.

ISSUE NO. 1 - PROPRIETY OF THE APPLICATION BEFORE COURT.

5. The Applicants submit that the application is, both substantially and procedurally, properly before the court. This is a public interest application for enforcement of human rights under **Article 50** of the 1995 Constitution of the Republic of Uganda (hereinafter the Constitution). In *Kimpi v Attorney General & Anor (Miscellaneous Cause 23 of 2017) [2018] UGHCCD 92* it was held that public interest matters can be instituted in enforcement of fundamental human rights.
6. The Applicants seek to enforce *the right to social security and the right to health*, along auxiliary rights and freedoms *to equality and non-discrimination, nationality and freedom from statelessness, and privacy*, guaranteed under Articles 8A, 20, 21, 22, 27, 33(1), 35 & 45 of the Constitution, and **Objectives 14 & 20** of the National Objectives.
7. The Applicants submit that **Section 3(2)(c)** of the **Human Rights Enforcement Act, 2019** allows a person acting in public interest to institute proceedings under the Act. Black’s Law Dictionary defines ‘public interest’ to mean “the general welfare of the public that warrants recognition and protection.” In *Muwanga Kivumbi v The*

Attorney General, Constitutional Appeal No 06 of 2011, the Supreme Court held public interest to mean “... *court action seeking remedies aimed at a broader public good, as opposed to the specific interests of the individual litigant(s).*”

8. The instant application affects a significant number of people (*up to 33% of persons with no National ID Card/NIN, thousands of older persons excluded from SAGE, vulnerable women unable to access health services*), raises matters of broad public concern (*poverty alleviation, functioning of Uganda’s social protection and public healthcare systems*), impacts disadvantaged and marginalised groups (*older persons, women, persons living in poverty, persons with disabilities, ethnic minority groups and stateless persons*), and is a legal matter which requires addressing *pro bono publico* (*human rights obligations under national and international law*). The application therefore meets the criteria of a public interest matter set out by Justice Ssekana Musa in *Aboneka Michael & Anor v Attorney General (Miscellaneous Cause 386 of 2018) [2019] UGHCCD 188*.
9. Moreover, similar cases in other jurisdictions have found that the administration of a digital ID system, and its impact on marginalised groups, is an appropriate matter for public interest litigation. See *Republic v Joe Mucheru, Cabinet Secretary Ministry of Information Communication and Technology & 2 others [2021] KEHC 122 (KLR)*.

ISSUE NO. 2: ACCESS TO SAGE BENEFITS, EXCLUSIONS AND VIOLATION OF THE RIGHT TO SOCIAL SECURITY OF OLDER PERSONS:

10. The Applicants submit that the Government’s adoption of the “National ID System” (which *hereinafter* refers to the National ID Card, NIN, and the National Identification Register), as the primary data source and *mandatory* means of identification for Social Assistance Grants for Empowerment (SAGE) beneficiaries is exclusionary and discriminatory against eligible older persons. This violates the rights of eligible older persons to social security protection.

11. The right to social security protection is recognized in numerous international instruments to which Uganda is a State Party. The Respondents are bound to uphold Uganda's obligations under **Article 22 & 25** of the **Universal Declaration of Human Rights of 1948 (UDHR)**; **Article 9 & 11** of the **International Covenant on Economic, Social and Cultural Rights (ICESCR)**; **Article 28** of the **Convention on the Rights of Persons with Disabilities (CRPD)**; **Article 14 (2)(c)** of the **Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)**, **Article 26** of the **Convention on the Rights of the Child (CRC)**; and of numerous provisions of the **African Charter on Human and People's Rights (ACHPR)**, including **Articles 4, 5, 6, 15, 16, & 18(1-4)**.
12. SAGE is a social protection program implemented by the Ministry of Gender, Labour and Social Development (MGLSD).¹ The primary objective of SAGE is to improve the wellbeing of older persons and their families.² SAGE is implemented under the legal framework set out in the National Policy for Older Persons (2009),³ which provides for Guiding Principles of a **human rights based approach, equity and social choice, transparency and accountability**, among others, and is based on values of Equity, Respect, Commitment, Accountability and Equality, including that "all older persons will be accorded same opportunity and rights as other individuals."
13. SAGE forms a core part of Government efforts to meet its obligations to respect, protect and fulfil the right to social security for older persons. The Respondents under **Objective 7** of the National Objectives have an obligation to make reasonable provision for the welfare and maintenance of the aged, which ought to be non-exclusionary and non-discriminatory. This is the object and purpose of the **National Council for Older Persons Act, 2013**, and is further buttressed by **Objectives 11 (i) and 14** of the National Objectives, which

¹ See: **Annexure OA - 7** to Odur Anthony's Affidavit Vol. 2 Page 252, at page 253.

² See: **Annexure A-7** to Kiira Brian Alex's Affidavit, Vol. 1 Page 243 at pages 253 and 256.

³ See: **Annexure A-6** to Kiira Brian Alex's Affidavit, Vol 1 Page 211 at pages 224 - 226, and 227 - 229.

provide for ensuring equal opportunities in development and fundamental rights, including social security. The MGLSD in '*The State of Older Persons in Uganda-Situational Analysis Report (Sept. 2020)*⁴ recognized that access to social security is a universal right and included it as one of the two pillars in the National Social Protection Policy 2015.

14. The Government is bound under **Article 20** of the Constitution to observe, respect, protect, promote, and fulfil the rights and freedoms of individuals and groups through enacting laws, policies, and measures to ensure the realization and protection of rights. *Muhindo & 3 Ors v Attorney General (Miscellaneous Cause 127 of 2016) [2019] UGHCCD 3 (25 January 2019)*.
15. The Government therefore has an obligation to take steps to the maximum of its available resources to progressively realize the right to social security. Providing minimum essential levels of the right to social security is considered a *core obligation*, and the State also has an *immediate* obligation to ensure equal treatment and non-discrimination. **Amicus Brief of Prof. Alston**.
16. According to the Committee on Economic Social and Cultural Rights (CESCR), **General Comment No. 19 (GC No. 19), paras. 4 & 40** and **General Comment No. 9 (GC No. 9), para. 9**, the right to social security includes an obligation to provide non-contributory social assistance and protection schemes, as well as the individual right not to be subject to arbitrary and unreasonable restrictions of existing social security coverage. An essential element of the right to social security is accessibility, including non-discrimination, physical accessibility, economic accessibility and information accessibility. *CESCR, GC No. 19, paras. 65 & 42*.
17. Violations of the right to social security, and the essential element of accessibility, can include both *acts of commission* (e.g., adoption of deliberately retrogressive measures incompatible with core

⁴ See Annexure A-12 to Kiira Brian Alex's Affidavit, Page 513, at Page 606 Para 1.

obligations, active support for measures adopted by third parties which are inconsistent with the right to social security, etc.) and *acts of omission* (e.g., failure to reform or repeal legislation which is manifestly inconsistent with the right to social security, failure to promptly remove obstacles which the State party is under a duty to remove in order to permit the immediate fulfilment of a right guaranteed by the Covenant, etc.). *CESCR, GC No. 19, paras. 62–65.*

18. Whereas the Government has developed and adopted policies to realize the right of older persons to social security protection through programs like SAGE, the integration of SAGE with the National ID System, and use of the National ID System as the primary data source and mandatory means of identification under **Section 65 (1) (j) and 66** of the ROPA, has had the below effects of denying access to the lifesaving program, leading to violation of the right of older persons to social security protection and auxiliary rights:

- (1) Thousands of older persons have been excluded from SAGE. In his *'Statement to the Media on the Joint Remedial Registration of Older Persons with NIRA' (2022)*, the Minister of State for Elderly Affairs admitted that over 54,559 older persons have been excluded from receiving the SAGE benefit as a result of the fact that they were not successfully registered for the National ID or because their ID has the wrong details.⁵ Despite this, the Minister reiterated in the same Statement the Ministry's policy decision to "use the national ID register as the source data for enrolment to the SAGE programme."⁶
- (2) Many older persons have had difficulty registering due to frailty or sickness, challenges accessing registration points, difficulty producing adequate documentation or biometrics, or financial and technical barriers. The Report of the National Population

⁵ Ibid, **Annexure OA-7** Page 254 Para. 4 & 5; **Annexure A-10** Page 439.

⁶ See: **Annexure OA-7** to Odur Anthony's Affidavit, Vol. 2, Page 252, at page 245 Para 3. See also **Annexure A-8** to Kiira Brian Alex's Affidavit, 'Senior Citizens Grant (SCG) Operational Manual (July 2016), Page 300, at Page 325, Para 1. See also **Annexure A-10** to Kiira Brian Alex's Affidavit Page 433, at Page 438 Para 2.

Council on *'The State of Uganda Population Report 2019'*⁷ confirmed that some older persons who were too frail or sick to register for the National ID are now being left out of social protection programmes.

- (3) The National ID System run by the 2nd Respondent has inherent errors, systemic access barriers and weaknesses.⁸ Capacity and funding challenges have impeded the system from being fully functional, and the 2nd Respondent still requires over eight years to complete the registration process for all Ugandans.⁹ Significant delays and backlog impair use of the same as a reliable sole data source.¹⁰ Furthermore, failure to obtain accurate information, including data about dates of birth—which is crucial for establishing eligibility—has led to critical errors and gaps in the Register.
- (4) In addition, the Respondents have not established the committee to adjudicate over matters relating to registration as required in **Section 83 (1) (a)** of the ROPA. This further amplifies the errors, systemic access barriers and weaknesses of the digital National ID System, denying access to potential remedies.
- (5) The use of the National ID System as the mandatory means of proving one's identity to access SAGE benefits, despite the significant problems with the system, has led to significant harms suffered by many individuals. The extent of these effects are demonstrated in the affected persons affidavits of *Chepurai Lomor, Lopeta Paul Kichoda, Chepochepkai Paulina, Pedun Maria Teresa, Otajar John, Imaling Roase, Akello Irene, Asege Marabu, Akumu Sofia, Acen Anna, Usutho Fullabia, Nyiruciba*

⁷ See: Annexure OA-6 to Odur Anthony's Affidavit, Vol 2, Page 79, at Page 146 Para 3.16.

⁸ Ibid, Annexure OA-7 Page 254 Para. 4 & 5; Annexure A-10 Page 439. See also Annexure OA-4 to Odur Anthony's Affidavit (Vol 2), Page 22, at Page 35 Para. 4.

⁹ See Annexure A-5 to Kiira Brian Alex's Affidavit Page 208, at Page 209.

¹⁰ See: Annexure A-3 to Kiira Brian Alex's Affidavit 'Report of the Auditor General on the Audit of Financial Statements of the NIRA for the year ended 30th June 2019', Page 141, at Page 156 & 157. See also Annexure A-4 to Kiira Brian Alex's Affidavit 'A Value for Money Audit Report on the Identification and Registration of Persons by NIRA – A Report by the Auditor General' page 172, at Page 192, 193 & 199.

- Lucia, Oyikpnyinga Yulian, Birete Jane, Aume Ketula, Nafula Jesca, Ajambo Buluma, Anyango Melisela, Nansubuga Zuelance, Nakagiri Nakato, Aguttu Mangadalena, Nafula Henderika, and Okello Yovan* (Index of Affidavits, Vol 2). The affidavits of **Kiira Brian Alex** (Vol 1) and **Dorothy Mukasa & Odur Anthony** (Vol 2) outline in-depth research into the scale and implications of this exclusion and discrimination. The expert affidavits of **Dr. Thomas Fisher, Diana Gichengo** and **Dr. Reetika Khera** (Vol 2) provide comparative studies of harms resulting from exclusion from digital ID systems in other national contexts.
19. The foregoing demonstrates that whereas older persons eligible for SAGE are entitled to equal protection under the law, enjoyment of the inherent right to social protection like other older persons, and the right to life under **Articles 8A, 20, 21, 22 & 45**, and **Objectives 7 & 14** of the National Objectives, the use of the National ID System as the only means of proving one's identity to access SAGE benefits is leading many eligible older persons to be excluded from the program. This amounts to a violation of the right to social security, and auxiliary rights to life, equal treatment and non-discrimination, privacy, and nationality, as is further contextualized in research conducted by the 1st & 2nd Applicants (**Annexure AA**);¹¹ **Amicus Brief of Prof. Alston; Amicus Brief of Access Now, Article 19 & CIPESA**; and as discussed in Paragraphs 34-43 below.
20. The Applicants therefore submit that the Respondents have neglected their obligation to ensure access to social protection, a mandate conferred upon the Respondents by the Constitution and international treaties. Despite extensive evidence of the ongoing violations outlined in the preceding paragraphs, the Respondents continue to choose the most stringent, unrealistic, and problematic mode of identification and have failed to allow the use of the numerous alternative options for identification. This has had the effect of

¹¹ See **Annexure AA** to Kiira Brian Alex's Affidavit, Page 10, at Pages 44 - 57.

- restricting access to services, thereby excluding a number of genuine beneficiaries from accessing SAGE benefits to which they are entitled.
21. Comparable cases in other jurisdictions have established that in the face of such significant limitations on rights, and especially for measures that are considered to be deliberately retrogressive, governments have a high burden of establishing that such limitations are justified, with high bars set for assessing the legality and proportionality of limitations. In one of the most recent cases, *Julian Robinson v The Attorney General of Jamaica* [2019] JMFC Full 04 (para. 252, 247 (B) [52]), the Supreme Court of Jamaica struck down the mandatory digital National ID scheme. The Jamaican national ID, which residents would have been required to produce when accessing services from public bodies, was held to be disproportionate to its purported aims and a violation of human rights. See also **Amicus Brief of Prof. Alston** for further discussion on assessing the proportionality of limitations on rights.
 22. Even in earlier cases, Courts have taken special note of the problem of exclusion. In *Justice Puttaswamy (Retd.) and Another. v Union of India and Others* (2017) 10 SCC 1, AIR 2017 SC 4161, the Supreme Court of India discussed the exclusionary effects of the Indian digital national ID system, stating that “*social security schemes and programmes ... were introduced to protect the dignity of the marginalized. Exclusion from these schemes defeats the rationale for the schemes ... Exclusion is violative of human dignity.*” The Supreme Court has also specified that failures and exclusions from Aadhaar should not lead to exclusion from benefits or services, and that alternative means of identification must be available to avoid frustrating the critical delivery of social welfare, see affidavit of **Dr. Reetika Khera** (Vol 2).
 23. Thus given the significant evidence submitted by the Applicants as to the detrimental impacts of the National ID System, the Applicants submit that the mandatory requirement of the National ID Card and NIN for access to social protection, and use of the National Identification Register as the single source truth, defeats the specified purpose of

SAGE, namely to further the rights and wellbeing of older persons. This amounts to an unjustified violation of the rights of older persons to social security. Through their actions in introducing the National ID System which has created an exclusionary barrier to accessing SAGE benefits, and through their omission to allow alternative means of identification and their failures to fix problems and weaknesses in the National ID System, the Respondents have violated the right to social security.

ISSUE NO. 3 - ACCESS TO PUBLIC HEALTH SERVICES, EXCLUSIONS AND VIOLATION OF THE RIGHT TO HEALTH AND RELATED RIGHTS.

24. The Applicants submit that the use of the National ID System as the *primary* and *mandatory* identification data source to access public health services, as set out under **Sections 65 & 66** of the ROPA, is exclusionary and violates the right to health and related human rights and freedoms.
25. The Government of Uganda, under **Objective 14** of the National Objectives, has an obligation to fulfil individuals' right to health under the Constitution, under the right to life and the entitlement to social, economic and cultural rights. **Objective 20** of the National Objectives also imposes an obligation on the State to ensure that it takes practical measures to ensure the provision of medical services to the population. **Objective 3** of the **Third National Development Plan (NDPIII) 2020/21-2024/25**¹² is also intended to improve population health, safety and management by increased access to universal health care and health services.
26. In *CEHURD & Others v Executive Director, Mulago Referral Hospital & Another [2017] UGSC 10*, Honourable Justices of the Supreme Court of Uganda relied on the case of *Purohit and Moore v The Gambia, Communication No. 241/2001*; in which the African Commission reiterated States' obligation under **Article 16** of the African Charter to

¹² See: **Annexure OA-8** to Odur Anthony's Affidavit (Vol 2) Page 256, 435 para (xii), 440.

take concrete and targeted steps, to ensure that the right to health is fully realized in all its aspects without discrimination of any kind. The right to health is also related to the right to life which is guaranteed under **Articles 20, 22, and 45** of the Constitution.

27. The right of everyone to the highest attainable standard of health is enshrined in international instruments including **Article 25, UDHR, Article 2(1) & 12, ICESCR, and Article 16, ACHPR, as well as in Article 12 of CEDAW.** States have a core obligation to provide minimum essential levels of the right, including the equitable distribution of all health facilities, goods, and services. *CEESCR, General Comment No. 14 (GC No.14), para. 43(a)(b).* See also *Paschim Banga Khet Samity & Others v State of West Bengal & Another (1996) AIR SC 2426; (1996) 4 SCC 37.* Much like the right to social security, accessibility is an essential component of the right to health, which includes non-discrimination, physical accessibility, economic accessibility and information accessibility. *GC No. 14, para. 12(b).*
28. As stated in Paragraph 17 in relation to social security, violations of the right to health can occur through acts of omission and acts of commission. The CESCR has explicitly stated that denying or limiting equal access for all persons to preventative, curative, and palliative health services may constitute a violation of the right to health. Failure to promptly remove obstacles to equal access can also be considered a violation.
29. Restricting access to public health services by imposing a mandatory requirement to prove one's identity through a National ID, without allowing for alternative forms of identification, therefore violates the right to health.
30. *The Applicants reiterate the inherent errors, systemic access barriers and weaknesses of the National ID System submitted under Issue 2, para. 18,* including the evidence of significant exclusions from the National ID System, and admissions of the same in various

Government documents.¹³ Despite these significant and known exclusions, the Minister of Internal Affairs in a *'Statement to Parliament on Decentralization of NIRA Services (March 2020)'*¹⁴ underscored the National ID having become a key document to access critical services including public healthcare.

31. Because of these exclusions and weaknesses in the National ID System, its use as the primary data source and a mandatory means of identification leaves persons unable to access public healthcare. This sabotages their right to health and the right to life under the Constitution. This mandatory requirement especially degrades the dignity of marginalized persons and groups that are in dire need of accessing the public health services.
32. The research conducted by 1st & 2nd Applicants (**Annexure AA**),¹⁵ and 2nd Applicant's research (**Annexure AB-2**)¹⁶ demonstrate exclusions suffered by persons who were required to present a National ID to access health services. In addition, the affidavits of **Ms. Aryemo Anna, Ms. Acom Sarah and Ms. Madudu Mary**, which are affidavits **Bookmark Nos. 5, 13 and 14** in Vol 2 of the Index of Affidavits in support of the application, demonstrate exclusions and other harms suffered by directly affected vulnerable persons who could not access health services due to the requirement of the National ID.
33. The Applicants therefore submit that the Respondents have violated the right to health through their affirmative acts in the introduction of the digital National ID System which has created an exclusionary barrier to accessing healthcare, and through their failure to put in place meaningful alternatives to allow people without National ID to access healthcare, and their failures to address the ongoing operational and technological challenges in the National ID System.

¹³ See: **Annexure OA-7** to Odur Anthony's Affidavit (Vol 2) Page 252, at Page 254 Para. 4 & 5, see also **Annexure A-10** to Kiira Brian Alex's Affidavit, Page 433, at Page 439. See also **Annexure OA -4** to Odur Anthony's Affidavit (Vol 2), Page 22, at Page 35 Para. 4.

¹⁴ See **Annexure A-2** to Kiira Brian Alex's Affidavit Page 109, at Page 111 Para. 2.

¹⁵ **Annexure AA** to Kiira Brian Alex's Affidavit, Page 10, at Pages 48 - 58.

¹⁶ **Annexure Ab-2** to Dorothy Mukasa's Affidavit (Vol 2), Page 5, at Pages 33 & 34.

- *RIGHT TO EQUALITY AND FREEDOM FROM DISCRIMINATION, TO NATIONALITY AND TO PRIVACY, AS THEY INTERSECT WITH THE RIGHT TO SOCIAL SECURITY AND THE RIGHT TO HEALTH:*

34. The Applicants adopt the submissions in the amicus briefs admitted by Court in *Miscellaneous Application No. 0550 of 2022 – Prof. Philip Alston v Initiative for Social and Economic Rights (ISER) & Others*, and *Miscellaneous Application No. 0650 of 2022 – Collaboration on International ICT Policy for East and Southern Africa (CIPESA) & 2 Others*. The Applicants reiterate the submissions in the amicus briefs on freedom from non-discrimination and equality, the right to privacy, freedom of expression, and the relationship between the foresaid rights and the impact on social, economic and cultural rights.
35. The Applicants submit that the mandatory use of the National ID has implications on several other rights, which in turn intersects with the rights to social security and health. First, the exclusionary effects of the requirement to use the National ID to access public health and social protection violate the right to equal treatment and non-discrimination. Not only does this impact accessibility of the rights to health and social security, it may constitute a discrete violation. Secondly, registration requirements and the design of the National ID System infringe on the right to nationality. Thirdly, the design of the National ID System, particularly its collection of biometrics and metadata, may lead to violations of the right to privacy. The rights to equality and non-discrimination, nationality, and privacy are central to the enjoyment of other human rights. Thus, infringements of these rights—alongside the rights to health and social security—can lead to compounded effects, especially for marginalized groups.
36. Article 21 of the Constitution guarantees equal protection under the law and forbids discrimination against any person or class of persons. The Court of Appeal in *Carolyn Turyatema & 4 Ors v Attorney General & Anor* (Constitutional Petition 15 of 2006) [2011] UGCA 6 (08 August 2011) noted that discrimination points to conduct or treatment that nullifies or impairs recognition, enjoyment or exercise

of rights and freedoms by all persons on an equal footing. Equal treatment should be extended to people essentially in the same situation or circumstances. *Seldon (Appellant) v Clarkson Wright and Jakes (A Partnership) (Respondent)* [2012] UKSC 16 at p. 2.

37. Equality and freedom from non-discrimination are recognized by international instruments including **Article 7, UDHR; Article 28, International Covenant on Civil and Political Rights (ICCPR); and Article 28, ACHPR**. Principles of non-discrimination and equality are also integrated into the legal framework for protection of economic, social and cultural rights, as demonstrated above in reference to social security and health.
38. Obligations to respect, protect and fulfil the right to equality and non-discrimination are immediately applicable, and imply both positive and negative obligations to safeguard against direct and indirect discrimination. The ICESCR proscribes any form of discrimination in access to healthcare or social security. *CESCR, GC No. 14, para. 18; CESCR, GC No. 19, paras. 2 & 4*. Obligations include guaranteeing equal access, for instance by removing discriminatory barriers to access.
39. For groups who enjoy special measures of protection under human rights law, including women, older persons, and persons living in poverty, a higher level of scrutiny may be required in determining whether a violation has occurred. For example, States have a “special obligation” to respect and fulfil marginalized groups’ right to health, *CESCR, GC No. 14, para. 19*; policies resulting in unequal access to health by low-income groups have been found to restrict the right to health and discriminate against people in poverty. *Minister of Health v Treatment Action Campaign (2002) 5 SA 721*. States’ obligations to ensure core minimum essential levels of the right to social security include obligations to ensure access to social security systems “especially for disadvantaged and marginalized individuals”. *CESCR, GC No. 19, para. 59(b) and (e)*.
40. The requirement to show National ID to access public services leads especially to exclusions of vulnerable persons. By restricting access to

SAGE and to public health services through requiring a National ID, the State has not only failed to accord these vulnerable persons special protection, it has also created conditions of unequal access whereby persons who are sick or disabled, living in extreme poverty, or living in rural or isolated areas face higher barriers than others.

41. The affidavits of **Kiira Brian Alex** (Vol 1), **Dorothy Mukasa & Odur Anthony** (Vol 2) demonstrate ways in which exclusions caused by the National ID especially affect marginalized groups, in violation of the right to equal treatment and non-discrimination. The expert affidavits of **Dr. Thomas Fisher**, **Dr. Reetika Khera**, and **Diana Gichengo** (Vol 2) provide further evidence of exclusions arising from the National ID requirement which in turn impair the enjoyment of other human rights.
42. **Article 15, UDHR** holds that everyone has the right to nationality and shall not be arbitrarily deprived of their right to nationality. As discussed in the affidavit of **Kiira Brian Alex** (Vol 1), the National ID System has, both in law and in fact, led to differential treatment which has denied certain marginalized groups of the benefits of nationality. The Respondents have failed to take adequate measures to address discrimination and inequalities within the digital National ID System, including long delays in the citizenship verification process, difficulties faced in proving nationality due to lack of birth registration, and inability to register certain tribal or ethnic groups. The affidavit of **Diana Gichengo** (Vol 2) shows how exclusion of those experiencing statelessness can lead to the exclusion of vulnerable groups such as older persons and women from access to social security and health.
43. **Article 27 of the Uganda Constitution recognizes a right to privacy.** This right is also codified in **Article 12, UDHR** and **Article 17, ICCPR**. The National ID System, through its collection of personal identifying information, including biometrics and metadata, heightens risks of data breaches and unauthorized access, misuse and abuse, and can lead not only to discrimination, but also to mass surveillance and targeted profiling. The Applicants argue that the presence of these risks should heighten the level of scrutiny of the integration of the National ID

System with social security and healthcare, as individuals may be coerced into sacrificing privacy to gain access. In such cases, informed consent is not always a sufficient remedy, and further mitigations may be required. For instance, the High Court in Kenya recently quashed the rollout of national ID cards due to absence of a data impact assessment that would help safeguard the right to privacy. *Republic v Joe Mucheru, Cabinet Secretary Ministry of Information Communication and Technology & 2 others; ex parte Katiba Institute & Yash Pal Ghai [2021] KEHC 122 (KLR) (Judicial Review) (14 October 2021)*.

44. The use of biometrics within the National ID System especially increases risks not only relating to data breaches and misuses, but also relating to discrimination, surveillance, and denials of access—particularly for any persons whose biometric data is difficult to read. The Supreme Court of Mauritius found that mandatory use of biometric data in a national ID system was grounds for invalidating the system entirely. *Madhewoo v The State of Mauritius and Anor, 2015 SCJ 177; Amicus Brief of Access Now, Article 19 & CIPESA; affidavit of Dr. Reetika Khera (Vol 2), paras. 19, 28 & 40.*

ISSUE 4 - WHAT ARE THE AVAILABLE REMEDIES?

45. The Applicants submit that this Honourable Court is clothed with the power to grant all remedies sought in enforcement of the rights violated by the actions of the Respondents. **Section 9(1) & (2) of the Human Rights Enforcement Act, 2019** empowers the Court to grant the most appropriate orders, including cessation of continuing violation of human rights and freedoms.
46. Appropriate relief was defined in *Ntandazeli Fose v Minister of Safety and Security 1997 (3) SA 786 (CC) at Page 18*, to be such relief which in essence is required to protect and enforce Constitutional protections. In granting appropriate reliefs, the Court has discretion to fashion new remedies to secure protection and enforcement of inherent rights and freedoms.

47. **Article 8, UDHR** guarantees the right to an effective remedy against acts of violation of fundamental rights and freedoms, and **Article 2 (3), ICCPR** enjoins States to ensure effective remedies for human rights violations.
48. In evaluating whether limitations on rights may be deemed justified or proportionate, a key inquiry is the availability of less restrictive alternatives. In comparable cases concerning national ID systems, courts have held that alternative forms of identification should be allowed to avoid denials of access to benefits. *Puttaswamy, paras. 318–19; Robinson, para. 247(B)[84]; Amicus Brief of Prof. Alston on proportionality, limitations on rights; affidavit of Dr. Thomas Fisher (Vol. 2) on alternative forms of ID (paras. 72–79).*
49. The Applicants reiterate the prayers made to this Honourable Court in the application for **declarations, orders, structural interdict**, and any other remedies the Court deems fit:
- (1) *A declaration that the use of the National ID System, including the National ID Card, the NIN, and the National Identification Register as the primary data source and only means of identification under Section 65 (1) (j) & 66 of ROPA to access SAGE benefits is exclusionary and violates the right to social security of older persons contrary to Articles 8A, 20, 21, 22, & 45 of the Constitution, and Objectives 7 & 14 of the National Objectives.*
 - (2) *A declaration that the use of the National ID System, including the National ID Card, the NIN, and the National Identification Register as the primary data source and only means of identification under Section 65 (1) (j) & 66 of ROPA to access public health services is exclusionary and violates the right to health contrary to Articles 8A, 20, 21, 22, 33 (1), 35 & 45 of the Constitution, and Objectives 14 & 20 of the National Objectives.*
 - (3) *A declaration that the use of the National ID System, including the National ID Card, the NIN, and the National Identification Register as the primary data source and only means of*

identification under **Section 65 (1) (j) & 66** of the ROPA to prove nationality is a violation of the right to non-discrimination under **Articles 21 and 45** of the Constitution, and of the internationally recognized right to a nationality.

- (4) An order that the Respondents allow the use of other sources of identification to enable eligible older persons to access SAGE benefits in respect and promotion of their rights to social security in accordance with **Articles 8A, 20, 21, 22, & 45** of the Constitution, and **Objectives 7 & 14** of the National Objectives, to avert the exclusionary effects of the National ID System until such time as when the Government has resolved inherent errors, systemic access barriers and weaknesses of the digital National ID System.
- (5) An order that the Respondents allow the use of other forms of identification to access public healthcare services in the context of its obligation to progressively realize, promote, respect and uphold the right to health in accordance with **Articles 8A, 20, 21, 22, 33 (1), 35 & 45** of the Constitution, and **Objectives 14 & 20** of the National Objectives to avert the exclusionary effects of the digital National ID System.
- (6) An order that the Respondents require informed consent in registration in a centralized digital ID database, which allows for the tracking of metadata and requires biometric authentication, without a negative impact on access to goods and services or public services and entitlements guaranteed under the Constitution.
- (7) An order for a Structural Interdict to the Respondents to (a) establish the committee to adjudicate over matters arising or related to registration under **Section 83 (1) (a)** of the ROPA and (b) rectify the inherent errors, systemic access barriers and weaknesses of the ID system leading to exclusion of eligible older persons from accessing the SAGE benefits, and to the exclusion of women and girls from access to health services.

(i) In *Mitu-Bell Welfare Society v Kenya Airports Authority & 2 others; Initiative for Strategic Litigation in Africa (Amicus Curiae) (Petition 3 of 2018) [2021] KESC 34 (KLR)*, it was observed that “a court has the jurisdiction to be innovative and to issue appropriate reliefs including supervisory orders”. Structural interdicts require the violator to rectify the breach of fundamental rights under court supervision. *Republic v Council of Legal Education & another Ex-Parte Mount Kenya University [2016] eKLR*. Though Section 83 (1) of the ROPA imposed an obligation on the 2nd Respondent to establish an identification and registration committee to adjudicate over matters relating to registration under the ROPA, the 2nd Respondent has continued to execute its mandate without the said committee, leaving no clear mode for handling disputes and challenges concerning the registration of persons. The Applicants pray for a structural interdict to this end.

(8) *Any other relief as the court may deem fit.*

(9) *Costs of the application be provided for.*

We so pray.

Dated at Kampala this 5th day of June 2023



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