

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(CIVIL DIVISION)
MISCELLANEOUS CAUSE NO. _____ 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**

AFFIDAVIT IN SUPPORT

I, **DIANA GICHENGO** of c/o ALP Advocates, Lotis Towers, 5th Floor, Plot 16 Mackinnon Road, P.O. Box 28611 Kampala, do solemnly swear as hereunder;

1. THAT I am a female adult of sound mind, an Advocate of the High Court of Kenya who has practiced in human rights, in matters of equality and non-discrimination for over twelve years, and depone this affidavit in that capacity.
2. THAT I have worked closely with stateless communities in Kenya and the wider region, namely the Somali, Nubian, Makonde, Shona and Pemba. I appeared in court on behalf of people without IDs who were arrested on account of lack of legal identity, and I have extensive knowledge and understating of the exclusionary effects of a digital ID system on the enjoyment of inherent human rights.
3. THAT in the course of my work, I contributed to the drafting of the National Protocol of the African Union to ensure that everyone has the right to nationality, responding to the new realities of people in Africa and our long regional history of intra African migration. I was also involved in the drafting of litigation before the Kenyan high court relating to citizenship and legal identity, including a challenge to Kenya's central digital ID system, the National Integrated Identity Management System (NIIMS)
4. THAT in 2018, I worked with the Office of the Prime Minister in Uganda, the Ministry of Justice, and the Ministry of East African Affairs (convened by the International refugee rights initiative IRRI) advising them on the importance of inclusion and ensuring the right to a nationality.
5. THAT I worked with the Maragoli population in Uganda in their quest to be included in the constitutional schedule and assisted them in their claims to secure education. I have linked

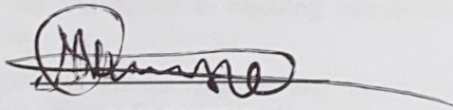
- them with the Makonde community here in Kenya for comparative learning since both communities have suffered effects of exclusion as a marginalized group.
6. THAT I am a trainer on statelessness and the right to a nationality at the African Union Livingstone syllabus on humanitarian affairs where I have trained various government representatives from African states on the right to a nationality and the need to eliminate all forms of discrimination.
 7. THAT from my extensive experience working in matters related to legal identity, right to nationality and stateless communities, I believe that I can offer expertise on why it is important to carry everyone on board in a national identity system before instituting a digital ID system as a mandatory requirement to access basic goods and services.
 8. THAT in the enjoyment of inherent human rights, my research and experience has shown that it is vital to ensure that countries only fully migrate once every person is on board, and there are sufficient safeguards to guarantee that every person is included, with no exceptions.
 9. THAT I believe that my research and experience from Kenya is relevant to the Ugandan context on the exclusionary effects of the digital national identification system due to the universal nature of human rights enjoyment and protection.
 10. THAT the right to non-discrimination and equality, at an international level, and in Uganda, includes protections against indirect discrimination, including discrimination brought about by exclusion.
 11. THAT there are similarities between the exclusionary effects of identity registration in Kenya and Uganda, as I am aware that both countries use a Commonwealth registration system according to *Citizenship Law in Africa A Comparative Study*, Bronwen Manby, 2016 report. (A copy of the report is available at <https://www.opensocietyfoundations.org/uploads/f124bc3c-70e5-4680-a534-8a2f7e3e194c/citizenship-law-in-africa-a-comparative-study-20160101.pdf> last accessed 22nd April 2022
 12. THAT I am aware from my research and studies that the process of issuance of a digital national ID generally requires a person to undergo vetting processes which are characterized by delays in issuance of an ID, thereby affecting their enjoyment of the inherent human rights.
 13. THAT I am aware that while the matter before court is centered around the impact of exclusion from access to health services and social security protection (SAGE Program) for women and older persons respectively, the effects of the use of the national digital ID System as a sole data source extend to limiting the enjoyment of other human rights.
 14. THAT tying access to health services and access to social protection benefits to a national digital ID results in indirect discrimination for people left behind by the system.
 15. THAT the human rights obligations of a State to respect, uphold and promote the inherent human rights requires require correcting existing discriminatory registration laws and practices and addressing the widespread lack of birth registration in the country, before making a national ID card a prerequisite to accessing public services.

16. THAT in a report that I co-authored, several case studies and testimonies collected between 2018 and 2019 highlight the suffering brought about by lack of legal identity and situation of statelessness of the Shona community in Kenya, which experiences I verily believe apply to Uganda in demonstrating the exclusionary effects of a digital national ID System. **(A copy of the Report “African Missionaries in Identity Limbo: the Shona of Kenya”, is available at <https://www.khrc.or.ke/publications/221-african-missionaries-in-identity-limbo-the-shona-of-kenya/file.html> last accessed 22nd April 2022.**
17. THAT in stateless communities, particularly vulnerable groups such as pregnant women and the elderly, suffer compounded vulnerabilities and exclusions. The aforementioned report I co-authored shows that pregnant women in the Shona community are not usually admitted in hospitals for delivery. When complications arise and they are fortunate enough to be admitted, they might end up being detained for lack of payment of maternity fees.
18. THAT the elderly Shona do not have access to the public project ‘Pesa Kwa Wazee’ which offers entitlement to the National Hospital Insurance Fund for free for the elderly and a monthly stipend, nor are they eligible for membership to the National Social Security Fund.
19. THAT these communities, which are so regularly denied healthcare also struggle with access to disease prevention mechanisms. The Makonde advocacy struggle was initiated by the community due to the blatant discrimination in accessing mosquito nets in Kwale county, a malaria zone. This contributed to negating nationwide government efforts to reduce the spread of Malaria.
20. THAT Communities and persons without legal identity struggle to access the job market world over, the exclusionary effects of access perpetuated by lack of a national ID or lack of effective access to obtain a national ID are contrary to the State’s human rights obligations.-
21. THAT Kenya’s digital ID system, the National Integrated Identity Management System (NIIMS) has faced successful legal challenges as a mandatory digital ID system tied to the provision of goods and services. The issues highlighted in those cases also apply to the implementation of the Digital ID in Uganda.
22. THAT I am aware that persons with biometric (fingerprint) issues are completely excluded from registration in a digital biometric system which affects the enjoyment of their inherent human rights. In Kenya, interventions had to be undertaken in registration of such persons which still had prolonged delays associated with the process.
23. THAT I am aware, that under a digital biometric system, individuals can still be permanently locked out, should their biometric information change or fade over time.
24. THAT I am aware that a national digital ID entails a centralized biometric ID system, which increases the risk of profiling. The integration of databases carries a high risk for privacy violations. The centralized system allows the government to conduct mass surveillance by searching aggregated data on individuals’ records across linked databases hence enabling profiling individuals and groups.
25. THAT correcting deep-rooted legacies of exclusion takes a long time. This is true for stateless communities and other groups struggling with access to documentation in Kenya and Uganda alike.

26. THAT I am aware that tying access to services on a registration and identification system has diverse and devastating harmful effects that are steeped in historical inaccuracies and based on a discriminatory colonial precedent.
27. THAT where the digital national ID system is tainted with gross systemic errors, is flawed and fallible, it would be a violation of the inherent rights whose enjoyment is impeded or limited by a mandatory requirement for a digital national ID to access and enjoy the fundamental rights and services.
28. THAT I swear this affidavit in support of an application to enforce the right to access health services by vulnerable persons and the right to social protection of older persons in Uganda.
29. THAT whatever is stated hereinabove is true and correct to the best of my knowledge and belief save for paragraphs whose source of information is disclosed herein.

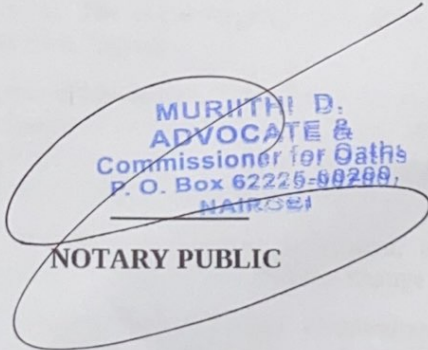
SWORN at NAIROBI (District) this 3RD day of MAY 2022.

By the said **DIANA GICHENGO**.



DEPONENT

BEFORE ME



MURIITHI D.
ADVOCATE &
Commissioner for Oaths
P. O. Box 62226-00200,
NAIROBI

NOTARY PUBLIC



Drawn and Filed by:

M/s ALP Advocates,
Lotis Towers, 5th Floor,
Plot 16 Mackinnon Road, Nakasero,
P.O Box 28611
Kampala, Uganda.
Email: Info@alp-ea.com