

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

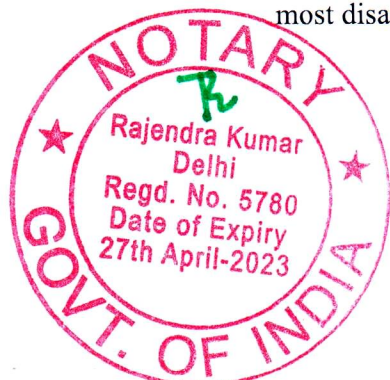
MISCELLANEOUS CAUSE NO. _____ OF 2022

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, **DR. REETIKA KHERA**, of c/o ALP Advocates, Lotis Towers, 5th Floor, Plot 16 Mackinnon Road, P.O. Box 28611 Kampala, info@alp-ea.com do solemnly affirm as hereunder;

1. THAT I am an adult female Indian Citizen of sound mind, an Associate Professor at the Indian Institute of Technology in Delhi, a holder of a PhD from the Delhi School of Economics and I affirm this affidavit in that capacity.
2. THAT I am a development economist, with an MA (Economics) from the Delhi School of Economics, an MPhil in Development Studies from Institute of Development Studies, University of Sussex, United Kingdom.
3. THAT I conducted my post-doctoral research with Prof. Angus Deaton, who was awarded the Nobel Prize in Economic Sciences in 2015 for his analysis of consumption, poverty and welfare, at Princeton University on child nutrition in India.
4. THAT I have been a “Stanford Humanities Center International Visitor” at Stanford University (2017) and Indian Council of Cultural Relations Visiting Professor at King’s College London (2016), in 2021, I won the Malcolm Adiseshiah Award for Distinguished Contributions to Development Studies.
5. THAT for the past 20 years, I have been studying India’s welfare systems across the country. My work has been based on extensive field studies in most states. The programmes I have studied include cash transfer programmes such as maternity entitlements and social security pensions for older persons, in-kind food subsidy programmes, and workfare programmes such as the National Rural Employment Guarantee Act (NREGA) that provides employment at the minimum wage for adults in rural areas.
6. THAT around 2010, when Aadhaar, India’s digital ID system, was being discussed for introduction, I began to study this system, as it was meant to be integrated with all of India’s welfare programmes.
7. THAT in the past 10 years, I have documented the devastating effects of Aadhaar on India’s most disadvantaged people.



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8. THAT I have published one edited book on NREGA and one book on Aadhaar, published a number of academic peer reviewed articles on these aspects, and written for popular media outlets in India and internationally. A list of publications with citations is available on [Google scholar](#) and my homepage here: <https://hss.iitd.ac.in/faculty/reetika-khera>.
9. THAT in the Aadhaar case in the Supreme Court of India, my research was drawn on the Justice of the Supreme Court of India, and I have been occasionally invited as an expert by the Parliament of India's Standing Committees to present and share opinions on Aadhaar and the National Food Security Act.
10. THAT based on a decade of intensive research and experience on India's national digital ID system, and reading reports and publications on Uganda's national digital ID system, I conclude that India's and Uganda's digital ID system have important similarities in their design and implementation, and that both countries have seen similar harmful effects of these national digital ID systems, especially for marginalized individuals who rely on government social protection programs.
11. THAT I believe that my experience and expertise on the exclusionary and discriminatory effects of India's national digital ID system is highly relevant for the issues under consideration in the current litigation in Uganda and provides useful information for the Court.
12. THAT from my research experience and in my expert opinion, the key takeaway should be that relying on a national digital ID systems with biometric components with a central database as the single source of identification and making that system the sole and mandatory gateway to accessing social rights and other government and private services, as the governments of both India and Uganda have done, **is a recipe for exclusion and related human rights harm as the evidence from both countries shows**. Rather than being efficient and inclusive systems, these systems exclude and harm on a large scale and have led to further inequalities. While the most straightforward way forward would be to admit the monumental failure of deploying untested and fragile technology at country-wide scale, a most urgent and immediate step in Uganda as in India should be to immediately allow for alternative means of identification when identification is required to access fundamental human rights, whether that is the right to social security, to health or any crucial human right.

The drivers of exclusion and discrimination in India and Uganda

13. THAT **similarly to the system in Uganda**, the stated purpose of Aadhaar was to provide each Indian resident a unique proof of identity, in the form of the Aadhaar number, the uniqueness of which is guaranteed by biometric authentication and de-duplication, combined with demographic details. These personal data are stored in a centralized database controlled by the Unique Identification Authority of India (UIDAI).
14. THAT when the Aadhaar project was being proposed, the proponents of Aadhaar at the Unique Identification Authority of India (UIDAI) repeatedly asserted that it would be voluntary, but that if the government wanted to make it mandatory, it was free to do so. This was merely to assuage fears related to civil liberties and to the right to privacy.



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15. THAT in fact, people—especially those who rely on the welfare provisions provided by the Indian government—were given the impression that their benefits and entitlements would be contingent on the possession of Aadhaar in order to “encourage” them to enrol “voluntarily” for fear of losing their benefits.
16. THAT despite rulings from the Supreme Court of India limiting the mandatory use of Aadhaar in welfare programs, from 2013 onwards, Aadhaar has been made mandatory for access to many services (including registration of marriages and deaths). What started as a voluntary ID has gradually become mandatory, and in many cases Aadhaar became the only accepted ID for gaining access to certain services. **That the mandatory nature of the system in India is another feature it has in common with the system in Uganda, where its mandatory nature is prescribed by law in the Registration of Persons Act, Section 66 in particular.**
17. THAT based on my own research, the fact that Aadhaar has become *de facto* and *de jure* mandatory for access to welfare programs, **like in Uganda**, has been a crucial factor in the exclusion and discrimination of marginalized groups in India. Without the possibility to use alternative means of identifying the beneficiaries of social welfare programmes, exclusion from Aadhaar has led to exclusion from many social rights. The impact thereof has been discriminatory because those that rely on welfare in India are often living in poverty, from marginalized communities (such as the Scheduled Castes and Scheduled Tribes), ethnic and religious minorities, those living in remote, rural areas, and those with disabilities and suffering from illnesses.
18. THAT in my expert opinion, exclusion related to the Aadhaar has been caused by a number of different factors related to the design and implementation of the system. Aadhaar is a badly designed ID project, that is also implemented poorly. For more information, please see Reetika Khera, *Aadhaar Failures: A Tragedy of Errors*, Vol. 54, Issue No. 14, 06 Apr, 2019, <https://www.epw.in/engage/article/aadhaar-failures-food-services-welfare>.
19. While those aiming to access welfare programs in India faced many barriers to access before access was tied to Aadhaar, Aadhaar added a few new barriers **that appear remarkably similar to the barriers faced by individuals in Uganda, especially those from marginalized groups**. First, some are unable to get an Aadhaar number because they might be bed-ridden due to disability or illness, or their biometrics do not work, and other such factors. Second, the Aadhaar number needs to be ‘seeded’, or ‘linked’, with each welfare scheme for which it is compulsory, which leads to exclusion because people are unable to pay the legal and illegal charges for such linking or because the demographic data in their Aadhaar records does not match those in the other databases because of errors and other issues. Third, many individuals face issues authenticating their identity at the time of drawing their benefits because of biometric failures, and other technological failures such as poor connectivity in rural areas.

The impact of exclusion and discrimination in Aadhaar

20. THAT a few years after the introduction of Aadhaar in India, evidence of exclusion started emerging in the area of welfare programs. Affected groups included people who had failed to get an Aadhaar number, those who had been unable to link or seed it with relevant government department, and those who failed to authenticate their identity at service points.



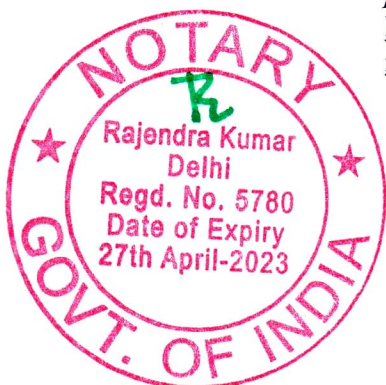
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21. THAT in my own field-based surveys, evidence of the impact of exclusion ranged from: discontinuation of social security pensions given to older persons, single and widowed women and to persons with disabilities; deletion of job cards which allow rural adults to get work under the Mahatma Gandhi National Rural Employment Guarantee Act 2005; and denial of subsidies to which people are entitled under the National Food Security Act 2013 and maternity entitlements for pregnant and lactating women. These exclusions are documented in the following three papers:

- a. Jean Drèze, Reetika Khera, Anmol Somanchi, Maternity Entitlements: Women's Rights Derailed, Vol. 52, Issue No. 50, 16 Dec, 2017, <https://www.epw.in/journal/2021/47/special-articles/maternity-entitlements.html>.
- b. Reetika Khera, Impact of Aadhaar on Welfare Programmes, Vol. 52, Issue No. 50, 16 Dec, 2017, <https://www.epw.in/journal/2017/50/special-articles/impact-aadhaar-welfare-programmes.html>.
- c. Jean Drèze, Nazar Khalid, Reetika Khera, Anmol Somanchi, *Aadhaar and Food Security in Jharkhand: Pain without Gain?*, Vol. 52, Issue No. 50, 16 Dec, 2017, <https://www.epw.in/journal/2017/50/special-articles/aadhaar-and-food-security-jharkhand.html>.

22. THAT besides this, evidence of exclusion emerged in research conducted by others and in news reports from other government programmes as well. There have been reports of people not being admitted to hospital because they did not bring their Aadhaar number/card in a format desired by the hospital.

- a. In **pensions**, see Anumeha Yadav, *Rajasthan's living dead: Thousands of pensioners without Aadhaar or bank accounts struck off lists*, SCROLL.IN, August 6, 2016, <http://scroll.in/article/813132/rajasthans-living-dead-thousands-of-pensioners-without-aadhaar-or-bank-accounts-struck-off-lists>.
- b. In **health**, see (1) Anumeha Yadav & Menaka Rao, *Despite glitches, government plans to introduce Aadhaar authentication at health centers*, SCROLL.IN, October 12, 2016, <http://scroll.in/pulse/818515/after-ration-shops-government-plans-to-start-aadhaar-authentication-at-health-centers>; (2) Anumeha Yadav & Menaka Rao, *The government wants pregnant women to enroll in Aadhaar to get their social scheme benefits*, SCROLL.IN, March 8, 2017, <https://scroll.in/pulse/831175/the-government-wants-pregnant-women-to-enroll-in-aadhaar-to-get-their-social-scheme-benefits>.
- c. For **school meals and other social rights**, see Mridula Chari, Anumeha Yadav, & Shreya Roy Chowdhury, *Not just mid-day meals: Aadhaar made mandatory for 11 more schemes, violating Supreme Court ruling*, SCROLL.IN, March 5, 2017, <https://scroll.in/article/830946/not-just-mid-day-meals-aadhaar-made-mandatory-for-11-more-schemes-violating-supreme-court-ruling>.
- d. For **food rights**, see (1) Anumeha Yadav, *At Jharkhand hearing, Adivasis describe how Aadhaar is a barrier to accessing food, pensions*, SCROLL.IN, December 14, 2018, <https://scroll.in/article/905587/at-jharkhand-public-hearing-adivasis-say-they-struggle-to-access-rations-pensions>; (2) Anumeha Yadav, *Aadhaar disruption: In Jharkhand's poorest regions, hundreds of people are being denied foodgrain*, SCROLL.IN, December 9, 2017, <https://scroll.in/article/860857/aadhaar-disruption-in-jharkhands-poorest-regions-hundreds-of-people-are-being-denied-foodgrains>; (3) Anumeha Yadav,



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Gujarat matches the fingerprints of the poor before giving them food. Does the system work?, SCROLL.IN, December 16, 2016, <http://scroll.in/article/821651/gujarat-matches-the-fingerprints-of-the-poor-before-giving-them-food-does-the-system-work>.

- e. For **children**, see Anumeha Yadav, *Parents struggle to sign up infants, toddlers for Aadhaar as Centre eyes 100% enrolment by March*, SCROLL.IN, August 29, 2016, <http://scroll.in/article/814891/parents-struggle-to-sign-up-infants-toddlers-for-aadhaar-as-centre-eyes-100-enrolment-by-march>.
- f. On **deactivation of Aadhaar numbers without notice**, see Anumeha Yadav, *Aadhaar is a legal right, but the government can suspend a citizen's number without prior notice*, SCROLL.IN, March 23, 2017, <https://scroll.in/article/831939/aadhaar-is-a-legal-right-but-the-government-can-suspend-a-citizens-number-without-prior-notice>.

23. There is also emerging evidence of fraud enabled by Aadhaar in cash benefits and payments. See Jean Drèze & Vipul Paikra, *How loopholes in Aadhaar-enabled payments are putting poor people at risk of being swindled*, INDIAN EXPRESS, October 6, 2021, <https://indianexpress.com/article/opinion/columns/aadhaar-enabled-payment-system-7552163/>.

24. In India, people's right to food, healthcare, work, pensions, education have been denied due to Aadhaar related issues. The most common modus operandi is to declare anyone who has not linked Aadhaar to these systems a "ghost" and delete their name from the relevant database, denying them their right. People are not served any show cause notice or any warning before this happens.

- a. In Telangana state, and in just one programme the names of 1.9 million people were deleted. See Sohini Chowdhury, *'You Cannot Cancel Before Verification': Supreme Court On Telangana Govt Cancelling 19 Lakh Ration Cards; Directs Field Verification*, LIVELAW.IN, April 27, 2022, <https://www.liveland.in/top-stories/supreme-court-ration-cards-cancellation-telangana-govt-conduct-field-verification-197664>.
- b. In the jobs guarantee programme, in 2016, the government deleted 9.4 million job cards which denied people their right to work under the National Rural Employment Guarantee Act. See Reetika Khera, *Impact of Aadhaar on Welfare Programmes*, Vol. 52, Issue No. 50, 16 Dec, 2017, <https://www.epw.in/journal/2017/50/special-articles/impact-aadhaar-welfare-programmes.html>.
- c. In the state of Rajasthan, 700,000 pensioners names were deleted, of which 297000 were supposed to be dead. Many were in fact alive but had failed to link Aadhaar. See Anumeha Yadav, *Rajasthan's living dead: Thousands of pensioners without Aadhaar or bank accounts struck off lists*, SCROLL.IN, August 6, 2016, <http://scroll.in/article/813132/rajasthans-living-dead-thousands-of-pensioners-without-aadhaar-or-bank-accounts-struck-off-lists>.

25. THAT function creep is an integral feature of Aadhaar and similar multi-purpose digital ID systems. Once Aadhaar is allowed in any form, it expands beyond the initial scope. Move-fast-and-break-things and too-big-to-fail are the core operating principles of the Aadhaar project, which leads to exclusion. For example, between 2020–22, the Indian government continues to push linking of Aadhaar with voter cards and also for health IDs. These carry



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the danger of disenfranchisement and unscrupulous use of sensitive health data by India's highly privatized health sector.

Justifications by the Indian government

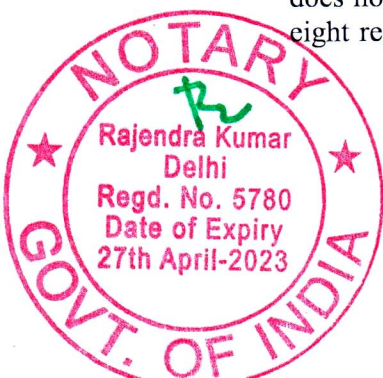
26. THAT as mentioned earlier, social security pensions given to older persons, single and widowed women and to persons with disabilities, maternity entitlements in cash, employment under the National Rural Employment Guarantee Act 2005 and subsidized wheat and rice under the National Food Security Act 2013 are legal (and human) rights that are denied for lack of a (functional) Aadhaar.
27. THAT it was claimed by the Indian government and proponents of the system that linking Aadhaar with welfare programmes is necessary because it will weed out duplicates in the welfare system. However, no evidence of duplication was presented to make this claim. Subsequently, research has shown that the extent of duplication was much lower than suggested by the proponents of Aadhaar. See Reetika Khera, Impact of Aadhaar on Welfare Programmes, Vol. 52, Issue No. 50, 16 Dec, 2017, <https://www.epw.in/journal/2017/50/special-articles/impact-aadhaar-welfare-programmes.html>.
28. THAT while duplicates in the welfare system were fewer than anticipated, a recent report of the Comptroller and Auditor General of India (CAG), a constitutional body, also found that the digital system fails in several key areas needed to provide accurate, unique identification. The process of biometric enrolment and de-duplication has been prone to errors because of challenges with biometric technology. At merely one centre (Bangalore) of the UIDAI where the CAG was able to access data, over a period of five years, there were complaints of more than 500,000 duplicate Aadhaar records. Further, the CAG report found that these came to light because those with duplicate Aadhaar *themselves* complained about this and were forced to pay fees in order to remedy the errors. The UIDAI had no system in place to proactively trace and weed out such duplicates. COMPTROLLER AND AUDITOR GENERAL OF INDIA, *Report of the Comptroller and Auditor General of India on Functioning of Unique Identification Authority of India, Report No. 24 of 2021*, (2021), https://cag.gov.in/webroot/uploads/download_audit_report/2021/24%20of%202021_UID_AI-0624d8136a02d72.65885742.pdf.
29. THAT many other justifications have been given for Aadhaar over the last decade by different actors. The government claimed that Aadhaar would facilitate inclusion of the poor, yet the digital ID system itself has itself become a barrier to inclusion. Rather, evidence from other countries, for example the United Kingdom and Australia, shows that a country can reject a national (digital) ID system and still provide welfare for the poor.
30. THAT the Indian government also claimed financial inclusion as a justification for Aadhaar, yet there is little data to substantiate whether Aadhaar alone has contributed to a rise in financial inclusion, rather than other Government and Reserve Bank of India initiatives.
31. That the various justifications given by the proponents of Aadhaar in India have been listed in the Introduction to Dissent on Aadhaar, Big Data Meets Big Brother (New Delhi: Orient BlackSwan), Edited by Reetika Khera (Ed) (2019). <https://orientblackswan.com/details?id=9789352875429>.

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Lessons from India that are also relevant for Uganda

32. THAT in my expert opinion, if there is one lesson to learn from India's experience of a digital/biometric ID programme it is that **none of the assertions made for its necessity should be taken at face value**. On how the financial savings from Aadhaar were cooked up see Jean Drèze & Reetika Khera, *Aadhaar's \$11-bn question: The numbers being touted by govt have no solid basis*, THE ECONOMIC TIMES, February 8, 2018, <https://economictimes.indiatimes.com/news/economy/policy/aadhaars-11-bn-question-the-numbers-being-touted-by-govt-have-no-solid-basis/articleshow/62830705.cms>.
33. **Before allowing government to proceed with these systems, clear evidence as to the existing problems and detailed assessments of how such systems remedy these issues must be established by the proponents before any experiments are allowed on real human beings, particularly when it comes to access to social rights**. Digital ID systems can only play a very limited role in preventing fraud and improving efficiency in service delivery, and arguments in their favour have not always been supported by robust, specific evidence. Meanwhile, the evidence on exclusion is significant, as demonstrated by my own field work in India.
34. THAT in areas where the Aadhaar system has failed and led to significant exclusion, the **court system became a crucial venue to protect individuals against exclusion and discrimination**.
35. **THAT in decisions by the Supreme Court of India, the Court has emphasised the need to allow for alternative means of identification**, particularly when use of the Aadhaar would affect fundamental rights. See SQ Masood v. State of Telangana And Ors. SLP (C) No. 12926 of 2021; Sohini Chowdhury, 'You Cannot Cancel Before Verification': *Supreme Court On Telangana Govt Cancelling 19 Lakh Ration Cards; Directs Field Verification*, LIVELAW.IN, April 27, 2022, <https://www.livelaw.in/top-stories/supreme-court-ration-cards-cancellation-telangana-govt-conduct-field-verification-197664> (last visited Apr 29, 2022).
36. To the extent that grievance redress mechanisms do exist in India, these are predominantly online, in a country where a vast number of people, especially the poor, are digitally excluded or not digitally literate. This has prevented many from accessing such mechanisms.
37. THAT one of the most disturbing aspects of the Aadhaar project in India is that **despite orders from the Supreme Court about having in place alternatives to Aadhaar, as well as having override mechanisms in place for those who cannot get Aadhaar or are unable to authenticate biometrically, in fact and on the ground such remedies are not visible**. Based on my own research, this failure to act has led to prolonged exclusions and violations of rights. See evidence listed above.
38. THAT similar to the situation of those excluded in Uganda, this has meant that poor people are spending money in trying to understand why they have been excluded and what they can do to fix the problem. This has been made more difficult by the fact that the UIDAI does not have adequate offices for grievance redress; across this vast country, it has only eight regional offices. See Vyom Anil & Jean Drèze, *Without Aadhaar, without identity*,



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THE INDIAN EXPRESS (2021), <https://indianexpress.com/article/opinion/columns/flaw-in-aadhaar-architecture-uidai-card-enrolment-7389133/>.

39. THAT a crucial lesson from the experience in India has been that court orders that recognize the harmful effects of exclusion and attempt to provide remedial measures, such as allowing for alternative forms of identification, override mechanisms and functioning redress and complaint mechanisms, must be drafted precisely and clearly. Courts must also be vigilant in ensuring compliance with their orders, must continue to monitor developments carefully, and intervene forcefully when needed. For instance, when the Supreme Court verdict struck down use of Aadhaar by private entities, the Indian government brought an Ordinance that reinstated access by amending another law. See Reetika Khera, *The Aadhaar Ordinance: Overruling the Supreme Court*, BLOOMBERGQUINT, March 1, 2019, <https://www.bloombergquint.com/shell.html>.
40. THAT a decade of experience in India has shown that the biometric identification technology underlying the system is prone to errors and failures and that relying on the central database as the single source of identification will lead to exclusions. The story of Aadhaar is a story of "pain without gain".
41. THAT I make this affidavit in support of the instant application to enforce rights violated by the exclusionary effects of the National Digital ID System in Uganda as an expert, in good faith and for no other or improper purpose.
42. THAT whatever I have stated herein is true to the best of my knowledge and belief.

SWORN at New Delhi this 17th day of May 2022.
By the said **DR. REETIKA KHERA**

Here

DEPONENT

BEFORE ME

BEFORE ME Rajendra
RAJENDRA KUMAR
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GOVERNMENT OF INDIA
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