

**THE REPUBLIC OF UGANDA  
IN THE CONSTITUTIONAL COURT OF UGANDA  
MISCELLANEOUS APPLICATION NO.....OF 2023  
ARISING OUT OF CONSTITUTIONAL PETITION NO. 24 OF 2022**

**IN THE MATTER OF AN APPLICATION FOR LEAVE TO INTERVENE AS  
AMICUS CURIAE BY THE APPLICANTS HEREIN ARISING FROM  
CONSTITUTIONAL PETITION NO. 24 OF 2022**

- 1. THE INSTITUTE FOR HUMAN RIGHTS AND DEVELOPMENT IN AFRICA (IHRDA)**
- 2. THE INTERNATIONAL COMMISSION OF JURISTS**
- 3. THE INTERNATIONAL LAWYERS ASSISTING WORKERS (ILAW) NETWORK**
- 4. STRATEGIC INITIATIVE FOR WOMEN IN THE HORN OF AFRICA (SIHA)**
- 5. STREETNET INTERNATIONAL**
- 6. WOMEN IN INFORMAL EMPLOYMENT ORGANIZING AND GLOBALIZING (WIEGO)**
- 7. DR. AMINTA OSSOM**
- 8. DR. ANDREW GILBERT WERE**

**::::APPLICANTS**

**VERSUS**

- 1. VOICES FOR LABOUR LIMITED**
- 2. PLATFORM FOR VENDORS IN UGANDA**
- 3. UGANDA MARKET AND ALLIED EMPLOYEE UNION**
- 4. UGANDA ARTISANS AND GENERAL WORKERS UNION**
- 5. THE ATTORNEY GENERAL OF UGANDA**

**::::RESPONDENTS**

**APPLICANTS' DRAFT AMICUS CURIAE BRIEF**

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## INTRODUCTION

- 1.1 The Constitutional Court of Uganda is currently handling Constitutional Petition No. 24 of 2022, which challenges the exclusion of workers in the informal economy from core labour legislation that safeguards the rights to freedom of association, equality and non-discrimination and satisfactory, safe and healthy conditions of work. While the Constitution guarantees these rights to all workers, Uganda has failed in its obligation to respect, protect, promote and fulfil these rights for workers in the informal economy.
- 1.2 In Uganda, the primary labour legislation giving effect to these rights does not protect workers in the informal economy. **The Labour Unions Act No. 7 of 2006, the Employment Act No. 6 of 2006, the Labour Dispute Settlement and Arbitration Act No. 8 of 2006, the Workers Compensation Act Cap. 225 of 2000 and the Occupational Safety and Health Act No. 9 of 2006** apply only to employees. Most workers in Uganda do not meet the definition of “employee,” and with no alternative legislation protecting these rights, millions of workers cannot exercise the right to form or join unions, to equality and non-discrimination, and to work in satisfactory, safe and healthy conditions guaranteed to all under the Constitution.
- 1.3 This Draft Brief presents this Honourable Court with an overview of State obligations with respect to the above-enumerated rights under international and regional treaties ratified or acceded to by Uganda. The brief summarizes how international and regional treaty bodies and supervisory mechanisms have interpreted State obligations to ensure that labour rights apply to workers in the informal economy. It also offers emblematic cases illustrating how courts and States in comparable jurisdictions have addressed similar issues to those presented in this case.
- 1.4 We respectfully submit this analysis hoping it will aid the Court in its deliberation and advance the cause of “equality, democracy, social justice and progress,” as enumerated in the Preamble of the Ugandan Constitution.

## IDENTITY AND INTEREST OF THE AMICUS CURIE

- 2.1 The Applicants, listed in the **Application for Leave to Intervene as Amicus Curiae by the Applicants Herein Arising from Constitutional Petition No. 24 of 2022**, are non-governmental organizations and individuals with extensive expertise in international human rights law, regional human rights law, and comparative law. *Amici curiae* collectively possess expertise regarding jurisprudence from treaty monitoring committees of the United Nations, the

International Labour Organization, the African Commission and the African Court on Human and Peoples' Rights. *Amici* also engage in comparative research and analysis of labour rights of workers in the informal economy across national jurisdictions, and are recognized for their expertise. Many have served as *amicus curiae* in comparative Courts around the world on related issues.

- 2.2 The Applicants work to promote respect for international law and strengthen national and international justice systems to protect worker rights. As in **Prof J. Oloka-Onyango & 8 Others v Amama Mbabazi and 3 Others**;<sup>1</sup> **Initiative for Social Economic Rights (ISER) v Auma Lucy and 2 Others**;<sup>2</sup> **Foundation for Human Rights Initiative & 7 Others v Amama Mbabazi and 3 Others**;<sup>3</sup> **Collaboration on International ICT Policy for East and Southern Africa (CIPESA) and 2 Others v Initiative for Social and Economic Rights (ISER) LTD and 4 Others**,<sup>4</sup> the applicants are interested in “the promotion of human rights, good governance and fidelity to the law,”<sup>5</sup> and seek to offer insight into novel legal concepts.
- 2.3 The Applicants humbly apply for leave to present developments in international law and comparative jurisprudence regarding the duty of States to protect the rights of workers in the informal economy.

### QUESTIONS PRESENTED

- 3.1 Does the exclusion of workers in the informal economy from legal protections enjoyed by employees in the **Labour Unions Act No. 7 of 2006, the Employment Act No. 6 of 2006, the Labour Dispute Settlement and Arbitration Act No. 8 of 2006, the Workers Compensation Act Cap. 225 of 2000 and the Occupational Safety and Health Act No. 9 of 2006**, with no parallel regulatory system that guarantees the rights to freedom of association, equality and satisfactory, safe and healthy working conditions, contravene international human rights law, international labour law and regional human rights law?
- 3.2 How have courts in other jurisdictions approached similar questions with respect to the rights of workers in the informal economy to recognition and protection under the law?

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<sup>1</sup> Supreme Court of Uganda, Civil Application No. 02 of 2016

<sup>2</sup> Lira High Court, Miscellaneous Application No. 102 of 2019

<sup>3</sup> Supreme Court of Uganda, Civil Application No. 03 of 2016

<sup>4</sup> High Court (Civil Division) of Uganda, Miscellaneous Application No. 650 of 2022

<sup>5</sup> High Court of Uganda, Miscellaneous Application No. 650 OF 2022 (Arising Out of Misc. Cause No. 86 of 2022) by Applicants Collaboration on International ICT Policy for East and Southern Africa (CIPESA) and 2 Others

## SUMMARY OF THE ARGUMENT

- 4.1 **Constitutional Protection.** The Ugandan Constitution provides that everyone has the right to form and join a trade union, to equality before the law, to be free from discrimination, and to satisfactory, safe and healthy working conditions. International human rights law, international labour law, and regional human rights law also clearly establish that all individuals shall enjoy the rights to: freedom of association, organizing and collective bargaining; equality and freedom from discrimination; and equitable and satisfactory conditions of work. However, the primary labour legislation giving effect to these rights does not protect workers in the informal economy. The **Labour Unions Act No. 7 of 2006**, the **Employment Act No.6 of 2006**, the **Labour Disputes (Arbitration and Settlement) Act of No. 8 of 2006**, the **Workers Compensation Act Cap. 225 of 2000** and the **Occupational Safety and Health Act No.9 of 2006** apply only to “employees,” defined as workers in a contract of service or apprenticeship. There is no alternative legislation that guarantees these rights to workers in the informal economy. This is not consistent with the Constitution or Uganda’s obligations under international and regional treaties to which Uganda is a party. Most workers in Uganda do not meet the definition of employee and work in the informal economy, meaning that millions of workers – at least 8.9 million according to the Uganda Bureau of Statistics<sup>6</sup> - do not fully enjoy their Constitutional rights.
- 4.2 **Binding treatise and purposive interpretation.** In past cases, this Honourable Court has considered the treaty obligations of Uganda, and assessed international law and comparative law in its interpretation of rights under the Constitution.<sup>7</sup> This Court has previously deemed treaties to be incorporated into the Constitution in instances where Uganda is a Party to those treaties. The Court has also looked to such treaties as authoritative sources of rights not expressly provided for under the Constitution. Further, the Court has repeatedly argued in favour of an expansive and progressive reading of rights under the Constitution.
- 4.3 **Individual and collective rights for all.** International and regional treaties that Uganda is a party to entrench both individual and collective worker rights that apply broadly to “everyone,” “all people,” or “workers, without distinction.” UN treaty monitoring committees and Special Mechanisms, supervisory mechanisms of the International Labour Organization (ILO), and the African

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<sup>6</sup> Government figures separate informal employment and subsistence agriculture. If subsistence agriculture is included, approximately 14.8 million people are working in the informal economy. Uganda Bureau of Statistics, Uganda National Labour Force Survey (2019) [https://www.ubos.org/wp-content/uploads/publications/05\\_20212018-19\\_ALFS\\_Report\\_FINAL.pdf](https://www.ubos.org/wp-content/uploads/publications/05_20212018-19_ALFS_Report_FINAL.pdf)

<sup>7</sup> Treaties and comparative law is discussed in Section 5 of this brief.

Court and Commission on Human and Peoples' Rights have specifically called for workers in the informal economy to enjoy protections under relevant treaties; particularly in contexts where workers in the informal economy constitute the majority of workers. Exclusion from labour and other human rights protections has been understood as inconsistent with treaty obligations. Exclusion deprives workers of equal protection under the law, inhibits their ability to collectively improve work conditions or represent their economic interests, and entrenches both inequality and poverty.

- 4.4 **Freedom of Association and Collective Bargaining.** The Court should be guided by the overwhelming consensus in international and regional treaties that every person has a right to freedom of association, to collective bargaining and to strike.<sup>8</sup> The International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) provide that “everyone” has the right to freedom of association, and specifically to form and join trade unions for the protection of their interests. Limitations on associational rights must be necessary to a democratic society and proportionate. The UN Committee on Economic, Social and Cultural Rights has specifically called on States to protect collective labour rights for workers in the informal economy. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Convention on the Rights of Migrant Workers and Their Families (CMW) underscore the importance of organizing for the realization of rights for women workers and migrant workers.
- 4.5 The right to freedom of association and the right to organize and bargain collectively are extended to all workers in ILO Conventions 11, 87 and 98. All relevant ILO supervisory committees tasked with interpreting these Conventions and assessing state compliance have repeatedly and unambiguously stated that the rights to association, organizing and collective bargaining must extend to workers in the informal economy, including the self-employed. The African Charter on Human and Peoples' Rights (African Charter) recognizes the right to association, and interpretive documents from the African Commission on Human and Peoples' Rights (African Commission) further indicate that this right applies to workers in the informal economy. Lastly, similarly situated countries have enabled workers in the informal economy to freely organize into associations.
- 4.6 **Equality and Non-discrimination.** The exclusion of workers in the informal economy from protection across virtually all core labour laws violates their right to equality before the law and has discriminatory impacts on marginalized

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<sup>8</sup> The rights to freedom of association and collective bargaining are addressed in Section 6 of this brief.

groups who are concentrated in the informal economy.<sup>9</sup> Excluding these workers contravenes multiple treaties Uganda is bound by, which provide that all workers have a right to equal treatment and non-discrimination. Exclusion from the rights enjoyed by other workers constitutes discrimination based on informal workers' social and economic status. It contributes to systemic discrimination against marginalized groups in Uganda who are more likely to be in the informal economy, including women, young people, refugees and people of specific social status, including people living in poverty and people living in rural areas.

4.7 The ICESCR, the ICCPR, CEDAW, CMW, the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), and ILO Convention 111 on Discrimination in Employment all prohibit both direct and indirect discrimination on prohibited grounds. The committees tasked with monitoring implementation of these treaties have made strides in articulating the ways in which discrimination is aggravated when it is based on multiple grounds. These committees have also highlighted how poverty or socio-economic disadvantage exacerbate discrimination on other prohibited grounds. Some of the most sophisticated analysis to date on socioeconomic status, poverty and intersecting forms of marginalization has come from the African Commission and Court and national courts in the region. These developments are consistent with Uganda's constitutional commitments under Article 21 (2) to prohibit discrimination and Article 32, which mandates special measures in favour of historically marginalised groups.

4.8 **Satisfactory, safe and healthy work conditions.** The exclusion of workers in the informal economy from labour laws that safeguard the right to enjoy satisfactory, safe and healthy working conditions is inconsistent with the Ugandan Constitution, and with treaties ratified or acceded to by Uganda.<sup>10</sup> The Court should be guided by inclusive language in the ICESCR, ILO Convention 158 and the African Charter, which require State Parties to ensure that "everyone" enjoys the rights to satisfactory, safe, and healthy work conditions. The Court should also be aware of interpretations from the committees and courts tasked with monitoring these treaties, which have recognized that States have an obligation to adopt and enforce policies that cover workers in the informal economy. Further, the ILO Declaration on Fundamental Principles and Rights at Work includes the right to safe and healthy working conditions as a fundamental right, which all member states of the ILO are required to realize. The Court should also be guided by efforts in many comparable jurisdictions to create mechanisms that extend protections to workers in the informal economy.

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<sup>9</sup> The right to equality and non-discrimination is discussed in Section 7 of this brief.

<sup>10</sup> The right to satisfactory, safe and healthy work conditions is discussed in Section 8 of this brief.

- 4.9 **Right to remedy.** By excluding informal workers from coverage in legislation protecting the rights to freedom of association, equality and nondiscrimination, and satisfactory, safe and healthy working conditions under national law, such workers are precluded from accessing the remedies designed under law to address breaches of these rights.<sup>11</sup> The right to an effective remedy is enshrined in international and regional treaties ratified or acceded to by Uganda, including the ICCPR, the ICESCR and the African Charter.
- 4.10 The Applicants offer this analysis in the hopes that it will assist this learned Court in reaching a fair and just outcome in the Main Petition.

## **INTRODUCTION TO DRAFT LEGAL ARGUMENTS**

- 5.1 The Ugandan Constitution recognizes the rights of every person to freedom of association and collective bargaining; to equality and non-discrimination; and to equitable and satisfactory conditions of work. However, the primary labour legislation giving effect to these rights does not concretize these protections for workers in the informal economy. The **Labour Unions Act No. 7 of 2006, the Employment Act No. 6 of 2006, the Labour Dispute Settlement and Arbitration Act No. 8 of 2006, the Workers Compensation Act Cap. 225 of 2000 and the Occupational Safety and Health Act No. 9 of 2006** apply only to "employees," defined as workers in a contract of service or apprenticeship.

### **Definition of Informal Economy**

- 5.2 While definitions vary, work in the informal economy is generally understood to encompass work that falls outside the scope of labour law and other laws that protect fundamental rights.<sup>12</sup> ILO Recommendation 204 on the Transition from the Informal to the Formal Economy, which was adopted in 2015 to guide ILO Member States, defines "informal economy" to mean "all economic activities by workers and economic units that are in law or in practice not covered or insufficiently covered by formal arrangements."<sup>13</sup> The definition recognizes that

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<sup>11</sup> The right to remedy is discussed in Section 9 of this brief.

<sup>12</sup> The ILO has explained that "international standards distinguish between employment in the informal sector and informal employment. Employment in the informal sector is an enterprise-based concept and it is defined in terms of the characteristics of the place of work of the worker. By contrast, informal employment is a job-based concept and it is defined in terms of the employment relationship and protections associated with the job of the worker." ILO, Women and men in the informal economy: a statistical picture, Box 2 (2018) [https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms\\_626831.pdf](https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms_626831.pdf)

<sup>13</sup> International Labour Organization Recommendation 204 on the Transition from the Informal to the Formal Economy ¶ 2 (adopted 2015)

informality takes many forms, including own-account workers; workers holding informal jobs within formal enterprises, such as subcontractors and workers in supply chains; domestic workers; and workers in “unrecognized or unregulated employment relationships.”<sup>14</sup>

- 5.3 The Uganda Bureau of Statistics defines informal work as "employment of an informal nature in formal enterprises, as well as wage and self-employment in informal enterprises and households."<sup>15</sup> This definition specifically includes cases where an employment relationship is “in law or in practice, not subject to social protection (i.e. no provision for pension or contribution to National Social Security Fund) or entitlement to paid annual or paid sick leave.” It also includes informal enterprises not registered as a business with the Uganda Registration Services Bureau (URSB) or the Uganda Revenue Authority (URA).
- 5.4 Currently, most workers in Uganda fall outside the scope of “employee” as defined under core labour laws identified above, and are instead working in the informal economy. Overall, the Ugandan Bureau of Statistics estimates that approximately 87 percent of people in employment in Uganda working outside of subsistence agriculture are in informal employment.<sup>16</sup> This includes self-employed workers and workers in non-standard forms of employment.
- 5.5 Own-account workers comprise approximately 65% of the working population that is not in subsistence agriculture.<sup>17</sup> Workers in non-standard forms of employment may be in formal enterprises or industries, but in forms of employment that do not meet the definition of ‘employee,’ such as short-term or fixed-term contracts, temporary agencies or casual work, as well as a contract for service. This includes workers who have been classified as workers on a contract for service or other non-standard arrangement, but are in fact in disguised dependent employment.<sup>18</sup>

### **Status of International Law and Constitutional Interpretation**

- 5.6 In considering the scope of rights protected by the Constitution, the Learned Court should be guided by developments in international and regional human rights law, particularly the many treaties to which Uganda is a party that outline

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[https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:R204](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:R204)  
(hereinafter “R204”)

<sup>14</sup> R204 ¶ 3.

<sup>15</sup> Uganda National Labour Force Survey 2019 page 40

<sup>16</sup> Uganda National Labour Force Survey 2019 page 7

<sup>17</sup> Uganda National Labour Force Survey 2019 page iv

<sup>18</sup> International Labour Organization, *Informality and Social Protection in African Countries: A Forward-looking Assessment of Contributory Schemes*, page 16 (2021)

[https://www.ilo.org/wcmsp5/groups/public/---africa/---ro-abidjan/documents/publication/wcms\\_770203.pdf](https://www.ilo.org/wcmsp5/groups/public/---africa/---ro-abidjan/documents/publication/wcms_770203.pdf)

Uganda's binding obligations to ensure workers in the informal economy can exercise their human rights and enjoy legal protections.

- 5.7 In past cases, Ugandan Courts have looked to international and regional treaties as authoritative sources of law in interpreting rights under the Constitution. In **Uganda Law Society & Anor v The Attorney General**,<sup>19</sup> this Honourable Court held that the intent of Article 287<sup>20</sup> of the Ugandan Constitution was to reaffirm the State's commitment to treaties in effect prior to 1995, and incorporate the obligations in such treaties into law.<sup>21</sup> In that case, Twinomujuni JA took the view that the African Charter on Human and Peoples Rights was "part and parcel of our Constitution" and that as such it was not just an aid in the interpretation of the Constitution, but an authoritative source of rights not expressly provided for under the Constitution. Having noted that article 7 of the African Charter provided for a right of appeal as an aspect of the right to due process, Twinomujuni JA then related this to article 45 of the Constitution and was of the opinion that this provision was authority for reading a right of appeal into the Constitution. He reasons:

*"I stated earlier in this judgment that article 45 ... of our Constitution clearly states that Chapter IV of the Constitution is not exhaustive of fundamental human rights and freedoms available to the people of Uganda. An automatic right of appeal where one's fundamental rights and freedoms have been violated is one good example. In the instant case the accused persons in the Kotido trial were entitled to a right to life guaranteed under article 22(1) of the Constitution. The right of appeal was therefore automatic. A denial of that right was clearly unconstitutional."*

- 5.8 In **Center for Health, Human Rights and Development and 4 Ors v Attorney General**,<sup>22</sup> this Honourable Court considered the International Covenant on Economic, Social and Cultural Rights, the African Charter, and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa in determining the content of the right to health under the Ugandan Constitution. It also considered comparative law jurisprudence from the High

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<sup>19</sup> Constitutional Petitions No 2 & 8 of 2002, [2009] UGCC 1 (5 February 2009)

<sup>20</sup> Article 287 states "Where- any treaty, agreement or convention with any country or international organisation was made or affirmed by Uganda or the Government on or after the ninth day of October, 1962, and was still in force immediately before the coming into force of this Constitution; or Uganda or the Government was otherwise a party immediately before the coming into force of this Constitution to any such treaty, agreement or convention, The treaty, agreement or convention shall not be affected by the coming into force of this Constitution; and Uganda or the Government, as the case may be, shall continue to be a party to it."

<sup>21</sup> See also Uganda v Thomas Kwoyelo, Supreme Court of Uganda, Constitutional Appeal No. 01 of 2012 (holding "I note that by Article 287 of the 1995 Constitution of Uganda expressly recognized and expressly continued into force treaties in existence at the time its coming into force. The framers of the Constitution must have been convinced that all these treaties were still in the best interests of Uganda.")

<sup>22</sup> Constitutional Petition No. 16 of 2011 <https://www.escr-net.org/sites/default/files/caselaw/petition-16-judgement.pdf>

Court of Kenya. While the right to maternal healthcare is not expressly provided within the right to health under the Constitution, the Court referred to Uganda's obligations as a State Party to international treaties to determine the right to maternal healthcare was binding on the State. The Court ultimately concluded that Uganda had failed in its obligation to provide adequate maternal healthcare. The Court ordered the State to: prioritize and allocate sufficient funds in the national budget towards maternal health care; provide training to health care providers; conduct an audit into the status of maternal health in Uganda; and submit a report detailing the progress and implementation of the above orders.

5.9 In **Uganda Vs. Kwoyelo Thomas**,<sup>23</sup> the Supreme Court stated the following with respect to applying Uganda's obligations under international human rights law:

***"In discussing these obligations and laws, I must express the view that when a country commits itself to international obligations, one must assume that it does so deliberately, lawfully and in its national interest. By the time the State goes through all the procedures of ratification and domestication, it must have seriously considered its overall national interest in the context of its role as a member of the United Nations. Therefore, a State should not easily shun its obligations as and when it wishes to. This must particularly hold true when the issue at hand is the massive violations of the human rights of its own people, whether by state actors or individuals or groups of individuals. I note that by Article 287 of the 1995 Constitution of Uganda expressly recognized and expressly continued into force treaties in existence at the time its coming into force. The framers of the Constitution must have been convinced that all these treaties were still in the best interests of Uganda."***

5.10 In **Tinyefuza vs Attorney General**<sup>24</sup> Justice Engonda–Ntende J reiterated the importance of international law and standards in interpreting and applying rights in the Constitution:

***"In matters of interpretation where the words of the Constitution or other law are ambiguous or unclear or are capable of several meanings a benchmark has been established to enable us to make a choice. And the choice ought to lead to a just, free and democratic society ... In doing so we may have to use aids in construction that reflect an objective search for the correct construction. These may include international instruments to which this court has acceded and thus elected to be judged in the community of nations"***

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<sup>23</sup> Constitutional Appeal No. 1 of 2012

<sup>24</sup> Constitutional Petition No. 1 of 1996 (unreported)

- 5.11 Justice Engonda’s position in the above case is in line with **Principle 28(i)(b) of the National Objectives and Directive Principles of State Policy**, which provides that the foreign policy of Uganda shall be based on, among other things, respect for international law and treaty obligations.<sup>25</sup>
- 5.12 The Supreme Court considered and applied both international human rights law and comparative law in the case of **Charles Onyango Obbo and Anor V Attorney General**<sup>26</sup> in finding that section 50 of the Penal Code Act, which made publication of false news a criminal offence, contravened the right to freedom of expression protected under Article 29 of the Constitution. Mulenga JSC observed that the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) protected the right to freedom of expression under article 10, citing the decision of the European Court of Human Rights in **Lingens v Austria**<sup>27</sup> to the effect that freedom of expression constituted one of the essential foundations of a democratic society and one of the basic conditions for its progress and for each individual’s self-fulfilment.
- 5.13 Odoki CJ similarly applied article 19 of the International Covenant on Civil and Political Rights and analysed also article 10 of the ECHR and the European Court’s interpretation thereof, as well as comparative jurisprudence from Zimbabwe and the United States. He found that although the Uganda Constitution does not define freedom of expression, it is generally accepted that it entails the freedom to hold opinions and to seek, receive and impart information and ideas of all kinds without interference by public authorities. He went on to quote the European Court’s judgment in **Handyside v The United Kingdom**<sup>28</sup> as authority for the assertion that freedom of expression was inherent in the concept of a democratic and pluralistic society.
- 5.14 Tsekooko JSC for his part took the view that by incorporating into the Constitution human rights provisions set out in various international instruments, the framers of the Constitution had consciously opted for an objective test in determining what restrictions on fundamental rights were acceptable and demonstrably justifiable in a free and democratic society, as required under article 43(2).

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<sup>25</sup> The Vienna Convention on the Law of Treaties, which is widely accepted as customary international law, further states that “[e]very treaty in force is binding upon the parties to it and must be performed by them in good faith.” Vienna Convention on the Law of Treaties Article 26 (23 May 1969) [https://legal.un.org/ilc/texts/instruments/english/conventions/1\\_1\\_1969.pdf](https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf) See also Article 27 which states that “[a] party may not invoke the provisions of its internal law as justification for its failure to perform a treaty.”

<sup>26</sup> Constitutional Appeal No. 2 of 2002

<sup>27</sup> (1986) 8 EHRR 407

<sup>28</sup> (1976) 1 EHRR 737 ¶ 49

- 5.15 In **Francis Tumwesigye Ateenyi Vs Attorney General**,<sup>29</sup> the Court summarized the principles it has adopted in interpreting the Constitution which included emphasising a progressive, liberal and flexible interpretation keeping in view the ideals of the people, their social economic and political cultural values so as to extend the same to the maximum possible.
- 5.16 By becoming a party to international and regional human rights and labour rights treaties, Uganda assumes obligations to respect, protect, promote, and fulfill those rights. The obligation to respect means that States must refrain from interfering with or curtailing the enjoyment of human rights. The obligation to protect requires States to protect individuals and groups against human rights abuses. The obligation to fulfil means that States must take positive action to facilitate the enjoyment of basic human rights.<sup>30</sup>
- 5.17 There are a wide range of international and regional human rights treaties Uganda is bound by that apply rights broadly to all people, everyone or all workers, without distinction. These include the International Covenant on Economic Social and Cultural Rights (ICESCR),<sup>31</sup> the International Covenant on Civil and Political Rights (ICCPR),<sup>32</sup> the Convention on the Rights of the Child,<sup>33</sup> the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW),<sup>34</sup> the Convention on the Rights of Persons with Disabilities (CRPD),<sup>35</sup> the International Convention on the Protection of Rights of all Migrants Workers

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<sup>29</sup> Constitutional Petition No. 36 of 2018

<sup>30</sup> See, e.g. Committee on Economic, Social and Cultural Rights, General Comment No. 18: Right to Work [hereinafter 'CESCR General Comment 18'] (article 6), ¶ 22, E/C.12/GC/18 (6 February 2006).

<sup>31</sup> The International Covenant on Economic Social and Cultural Rights was adopted by General Assembly resolution 2200A (XXI) on 16 December 1966 and entered into force 3 January 1976

<https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights> ("ICESCR"). Uganda acceded to the ICESCR on 21 January 1987

[https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/treaty.aspx?treaty=cescr&lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/treaty.aspx?treaty=cescr&lang=en)

<sup>32</sup> The International Covenant on Civil and Political Rights was adopted by General Assembly resolution 2200A (XXI) of 16 December 1966, and entered into force 23 March 1976

<https://www.ohchr.org/sites/default/files/Documents/ProfessionalInterest/ccpr.pdf> ("ICCPR"). Uganda acceded to the ICCPR on 21 June 1995

[https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/Treaty.aspx?Treaty=CCPR&Lang=en](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?Treaty=CCPR&Lang=en)

<sup>33</sup> The Convention on the Rights of the Child was adopted by General Assembly resolution 44/25 of 20 November 1989 and entered into force 2 September 1990

<https://www.ohchr.org/sites/default/files/Documents/ProfessionalInterest/crc.pdf> ("CRC"). Uganda ratified the CRC on 17<sup>th</sup> August 1990

[https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/Treaty.aspx?Treaty=CRC&Lang=en](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?Treaty=CRC&Lang=en)

<sup>34</sup> The Convention on the Elimination of All Forms of Discrimination against Women was adopted by General Assembly resolution 34/180 of 18 December 1979 and entered into force 3 September 1981

<https://www.ohchr.org/sites/default/files/Documents/ProfessionalInterest/cedaw.pdf> ("CEDAW").

Uganda ratified CEDAW on 22 July 1985

[https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=182&Lang=EN](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=182&Lang=EN)

<sup>35</sup> The Convention of the Rights of People with Disabilities was adopted by General Assembly resolution 61/106 on 13 December 2006 and entered into force on 3 May 2008.

<https://social.desa.un.org/issues/disability/crpd/convention-on-the-rights-of-persons-with-disabilities-crpd> ("CRPD"). Uganda ratified the CRPD on 25<sup>th</sup> November 2008,

[https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=182&Lang=EN](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=182&Lang=EN)

and Their Families (CMW),<sup>36</sup> International Labour Convention 87 on Freedom of Association and Protection of the Right to Organise,<sup>37</sup> International Labour Convention 98 on the Right to Organise and Collective Bargaining,<sup>38</sup> ILO Convention 11 on the Right to Association in Agriculture,<sup>39</sup> International Labour Convention 111 on Discrimination in Employment and Occupation,<sup>40</sup> International Labour Convention 122 on Employment Policy,<sup>41</sup> ILO Convention 190 on Violence and Harassment,<sup>42</sup> International Labour Convention 158 on Termination of Employment,<sup>43</sup> International Labour Convention 81 on Labour Inspection,<sup>44</sup> the African Charter on Human and People's Rights (African

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<sup>36</sup> The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families was adopted by General Assembly resolution 45/158 and entered into force 18 December 1990 <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-convention-protection-rights-all-migrant-workers>. ("CMW") Uganda acceded to the CMW on 14<sup>th</sup> November 1995, [https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=182&Lang=EN](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=182&Lang=EN)

<sup>37</sup> International Labour Organization Convention 87 on Freedom of Association and Protection of the Right to Organise was adopted in 1948  
[https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_INSTRUMENT\\_ID:312232](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312232)  
2 ("C87") Uganda ratified C87 on 2 June 2005

[https://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300\\_INSTRUMENT\\_ID:312232](https://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:312232)

<sup>38</sup> International Labour Organization Convention 98 on the Right to Organise and Collective Bargaining was adopted in 1949  
[https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C098](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C098) ("C98")  
Uganda ratified C98 on 4 June 1963

[https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C098](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C098)

<sup>39</sup> International Labour Organization Convention 11 on the Right of Association in Agriculture was adopted in 1921  
[https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C011](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C011) ("C11")  
Uganda ratified C11 on 4 June 1963

[https://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300\\_INSTRUMENT\\_ID:312156](https://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:312156)

<sup>40</sup> International Labour Organization Convention 111 on Discrimination in Employment and Occupation was adopted in 1958  
[https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C111](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C111) ("C111").  
Uganda ratified C111 on 2 June 2005

[https://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300\\_INSTRUMENT\\_ID:312256](https://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:312256)

<sup>41</sup> International Labour Organization Convention 122 on Employment Policy Convention was adopted in 1964

[https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_INSTRUMENT\\_ID:312267](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312267)  
7 ("C122"). Uganda ratified C122 on 23 June 1967.

[https://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300\\_INSTRUMENT\\_ID:312267](https://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:312267)

<sup>42</sup> International Labour Organization Convention 190 on Violence and Harassment in the World of Work was adopted June 2019

[https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C190](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C190)

("C190") Uganda ratified C190 on 7 August 2023 [https://www.ilo.org/global/topics/violence-harassment/news/WCMS\\_889746/lang-en/index.htm](https://www.ilo.org/global/topics/violence-harassment/news/WCMS_889746/lang-en/index.htm)

<sup>43</sup> International Labour Convention 158 on Termination of Employment was adopted in 1982

[https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C158](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C158)

("C158") Uganda ratified C158 on 18 July 1990

[https://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300\\_INSTRUMENT\\_ID:312303](https://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:312303)

<sup>44</sup> International Labour Organization Convention 81 on Labour Inspection was adopted in 1947

[https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C081](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C081)

("C81"). Uganda ratified C81 on 4 June 1963

[https://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300\\_INSTRUMENT\\_ID:312226](https://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:312226)

Charter),<sup>45</sup> and the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (Maputo Women's Rights Protocol).<sup>46</sup>

- 5.18 This brief will discuss State obligations under these treaties and comparative national jurisprudence and practice with respect to the rights to freedom of association, organizing and collective bargaining; equality and non-discrimination; and satisfactory, safe and healthy working conditions.

## **THE RIGHTS TO FREEDOM OF ASSOCIATION AND TO ORGANIZING AND COLLECTIVE BARGAINING**

- 6.1 **Article 29 of the Constitution** provides that “[e]very person shall have the right to form or join a trade union”, which is consistent with international and regional law. However, the core laws that Uganda has enacted to protect the right to freedom of association and collective bargaining does not extend to workers without a recognized, formal employment relationship.
- 6.2 **Sections 2 and 3 of the Labour Unions Act, 2006** defines a labour union as a group of employees, and only extend rights to freedom of association and collective bargaining to such employees. The Act defines an employee as a worker in a contract of service or apprenticeship. **Regulation 5(e)(iv) of the Labour Unions (Registration) Regulations, 2012** requires that unions provide the names of union officers’ employers. This effectively precludes self-employed workers from freely forming, joining or assuming leadership positions in unions.
- 6.3 **Sections 2 and 25 of the Labour Disputes Arbitration and Settlement Act, 2006** apply only to workers with an employment relationship, including protections of the right to strike contained in Sections 30, 31 and 32 of the Act. Likewise, **Section 73 of the Employment Act, 2006** provides protection against retaliation for organizing and participating in a strike. However, it too only applies to workers in a contract of service or apprenticeship.
- 6.4 The majority of workers in Uganda, including workers in a contract for service and self-employed workers, do not meet the definition of an ‘employee.’ Despite this exclusion, there is no alternative legislation that guarantees associational

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<sup>45</sup> The African Charter on Human and People's Rights was adopted 1 June 1981 [https://au.int/sites/default/files/treaties/36390-treaty-0011\\_-\\_african\\_charter\\_on\\_human\\_and\\_peoples\\_rights\\_e.pdf](https://au.int/sites/default/files/treaties/36390-treaty-0011_-_african_charter_on_human_and_peoples_rights_e.pdf) (“the African Charter”). Uganda ratified the African Charter on 21 October 1986. <https://treaties.un.org/pages/showDetails.aspx?objid=08000002800cb09f>

<sup>46</sup> The Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa was adopted 11 July 2003 [https://au.int/sites/default/files/treaties/37077-treaty-charter\\_on\\_rights\\_of\\_women\\_in\\_africa.pdf](https://au.int/sites/default/files/treaties/37077-treaty-charter_on_rights_of_women_in_africa.pdf) (“Maputo Women's Rights Protocol”). Uganda ratified the Maputo Protocol in 22 July 2010. <https://au.int/sites/default/files/treaties/37077-sl-PROTOCOL%20TO%20THE%20AFRICAN%20CHARTER%20ON%20HUMAN%20AND%20PEOPLE%27S%20RIGHTS%20ON%20THE%20RIGHTS%20OF%20WOMEN%20IN%20AFRICA.pdf>

rights to workers who fall outside the definition of employee under Uganda labour law. As a consequence, workers in the informal economy cannot form, join or lead trade unions or engage in strikes or other forms of collective action. Those protections have allowed workers in other sectors to make significant gains in relation to their wages and working conditions.

- 6.5 Exclusion from these critical worker rights protections is inconsistent with both the Ugandan Constitution and international and regional law. Multiple treaties ratified or acceded to by Uganda, including the ICESCR<sup>47</sup>, the ICCPR,<sup>48</sup> ILO Conventions 11, 87, and 98,<sup>49</sup> and the African Charter, extend the rights to freedom of association and to organizing and collective bargaining to “everyone,” “every individual,” or workers “without distinction,” as enumerated hereunder.<sup>50</sup> In other jurisdictions, States protect the associational rights of workers in the informal economy, allowing them to effectively advocate for their interests and address inequality.

### **International Human Rights Law**

- 6.6 Article 8 of the ICESCR guarantees that “everyone” has the right to form and join trade unions. This includes the right of trade unions to freely function and the right to strike.<sup>51</sup> Limitations on associational rights are permitted only if prescribed by law and “necessary in a democratic society in the interest of national security or public order or for the protection of the rights and freedoms of others.”<sup>52</sup>
- 6.7 The Committee on Economic, Social and Cultural Rights (UN CESCR) is an official body of experts monitoring implementation of the ICESCR.<sup>53</sup> In General Comment 18, the UN CESCR specifically recognizes that the guarantees in the ICESCR must extend to workers in the informal economy.<sup>54</sup> The UN CESCR has also recognized that “trade unions play a fundamental role in ensuring respect for the right to work.”<sup>55</sup>
- 6.8 While some rights in the ICESCR are subject to progressive realization, aspects of the right to work impose immediate obligations on state parties, in particular

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<sup>47</sup> ICESCR Article 8

<sup>48</sup> ICCPR Article 22

<sup>49</sup> C11 Article 1, C87 Article 2 and C98 Article 1

<sup>50</sup> ACHRC Article 10

<sup>51</sup> ICESCR Article 8

<sup>52</sup> ICESCR Article 1(a)

<sup>53</sup> Economic and Social Council Resolution, U.N. Doc. E/RES/1985/17 (May 28, 1985)

<sup>54</sup> Committee on Economic, Social and Cultural Rights (UN CESCR) General Comment 18 ¶¶ 10, 44  
<https://www.refworld.org/docid/4415453b4.html>

<sup>55</sup> GC 18 ¶ 54

the obligation to guarantee rights are exercised “without discrimination of any kind”.<sup>56</sup> This means that States should immediately ensure that all people equally enjoy the right to freely associate, the right to form and join trade unions as they wish, and the right to strike.

6.9 In General Comment 23 the UN CESCR emphasised that “trade union rights, freedom of association and the right to strike are crucial means of introducing, maintaining and defending just and favourable conditions at work.”<sup>57</sup> The UN CESCR acknowledged that “the concept of work and workers has evolved from the time of the drafting of the Covenant to include new categories such as self-employed workers, workers in the informal economy, agricultural workers, refugee workers and unpaid workers.”<sup>58</sup> As such, States should guarantee the rights of informal workers just as they would the rights of workers in the formal economy.

6.10 In 2015 Concluding observations to Uganda<sup>59</sup>, the UN CESCR noted with concern that workers are concentrated in the informal economy and “not adequately covered by labour and social protection regulations.”<sup>60</sup> The UN CESCR called on Uganda to:

*“[E]nsure that all workers, including in the informal economy, fully enjoy their economic, social and cultural rights. In this connection the Committee draws the State party’s attention to ILO recommendation No. 204 (2015)”<sup>61</sup>.*

6.11 When reviewing other State Parties’ implementation of the ICESCR, the UN CESCR has also taken into consideration how well these States protect workers in the informal economy. For example, the UN CESCR recently recommended that El Salvador “take all necessary measures to ensure that workers in the informal economy benefit from basic labour standards and social protection.”<sup>62</sup> The UN CESCR urged South Africa to “ensure that all workers, including those in precarious employment, effectively participate in the decision-making process relating to their working conditions and exercise their legitimate rights.”<sup>63</sup>

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<sup>56</sup> UN CESCR GC 18 ¶ 19

<sup>57</sup> UN Committee on Economic, Social and Cultural Rights, General Comment No. 23 on the right to just and favourable conditions of work ¶ 1 (2016) <https://www.refworld.org/docid/5550a0b14.html> (“GC 23”)

<sup>58</sup> GC 23 ¶ 4 and 5

<sup>59</sup> Committee on Economic, Social and Cultural Rights, Concluding observations on the initial report of Uganda (July 8, 2015) [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2FC.12%2FUGA%2FCO%2F1&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2FC.12%2FUGA%2FCO%2F1&Lang=en)

<sup>60</sup> UN CESCR Concluding observations on Uganda ¶ 20

<sup>61</sup> UN CESCR Concluding observations on Uganda ¶ 20

<sup>62</sup> UN Committee on Economic, Social and Cultural Rights, Concluding Observations on the 6th Periodic Report of El Salvador, E/C.12/SLV/CO/6, (14 October 2022)

<sup>63</sup> UN Committee on Economic, Social and Cultural Rights, Concluding Observations on the 6th Periodic Report of South Africa, E/C.12/ZAF/CO/1 (29 November 2018) [https://academy.ishr.ch/upload/resources\\_and\\_tools/CESCR%20concluding%20observations%20on%20South%20Africa\\_en.pdf](https://academy.ishr.ch/upload/resources_and_tools/CESCR%20concluding%20observations%20on%20South%20Africa_en.pdf)

- 6.12 The ICCPR provides that “[e]veryone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of [their] interests.” (emphasis added)<sup>64</sup> These rights are not restricted based on employment status, and apply to any category of worker, as well as more generally to all people.
- 6.13 States may restrict freedom of association under the ICCPR only where it is “necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals, or the protection of the rights and freedoms of others.”<sup>65</sup> There is no such rationale offered for the exclusion of the vast majority of workers in Uganda from the ability to form and join unions or engage in collective action.
- 6.14 Under Article 11 of the CEDAW, State Parties are required to take all appropriate measures to eliminate discrimination against women in the field of employment, in order to ensure that women and men enjoy the same rights equally. The Committee on the Elimination of all Forms of Discrimination against Women (CEDAW Committee),<sup>66</sup> the independent groups of experts tasked with interpreting rights under the Convention, held that Article 11 should apply “to self-employed women and not to female employees exclusively.”<sup>67</sup> In addition, Article 7(c) of CEDAW recognizes the right of women to “participate in non-government organizations and associations concerned with the public and political life of the country.” All workers, particularly women, have the right to organize and engage in trade unions, as a critical means to furthering economic and social rights and advancing gender equality, and as central to their equal participation in civic life. Equal protection of associational rights has particular salience for women since a vast majority of women workers in Uganda earn a livelihood in the informal economy.<sup>68</sup> Thus, the associational rights of women working in the informal economy should be protected.

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<sup>64</sup> ICCPR Article 22

<sup>65</sup> ICCPR Article 22(2)

<sup>66</sup> The Committee on the Elimination of all Forms of Discrimination against Women (hereinafter CEDAW Committee) consists of 23 experts and is tasked with implementing and interpreting CEDAW. See United Nations website, Treaty Bodies: Committee on the Elimination of Discrimination against Women <https://www.ohchr.org/en/treaty-bodies/cedaw>

<sup>67</sup> CEDAW Committee, *Elisabeth de Blok et al. v. the Netherlands*, Communication No. 36/2012, UN Doc. CEDAW/C/57/D/36/2012 (March 24, 2014) (challenging a national insurance scheme for workers that excluded individuals who were self-employed)

<sup>68</sup> See, e.g. International Center for Research on Women, Impact of COVID-19 on Women Workers in the Urban Informal Economy in Uganda and Kenya Secondary Data Review (2022) <https://www.icrw.org/wp-content/uploads/2022/06/Impact-of-COVID-19-on-Women-Workers-in-the-Urban-Informal-Economy-in-Uganda-and-Kenya-Secondary-Data-Review.pdf> (indicating that around 88 percent of women workers work in the informal sector, at page 12)

- 6.15 The CEDAW Committee has identified associational rights as crucial to the livelihoods of both rural women and migrant women. In General Recommendation 26, the CEDAW Committee stated that women migrant workers must enjoy the same legal protections as all workers in a country, including the right to organize and freely associate.<sup>69</sup> In General Recommendation 34, the CEDAW Committee recommended that States protect the collective bargaining rights of rural women workers to ensure decent working conditions for those workers.<sup>70</sup> The CEDAW Committee has not distinguished between employees and informal economy workers when monitoring fulfilment of these rights. In its concluding observations for South Africa, for example, the CEDAW Committee criticized the State for failing to enable live-in domestic workers to form or join trade unions.<sup>71</sup>
- 6.16 The associational rights of migrant workers are addressed by Article 26 of the International Convention on the Protection of the Rights of Migrant Workers and Members of their Families (CMW).<sup>72</sup> Article 27 (2) of the CMW provides that “no restrictions may be placed on the exercise of these rights other than those that are prescribed by law and which are necessary in a democratic society in the interests of national security, public order (*ordre public*) or the protection of the rights and freedoms of others.”
- 6.17 The Special Procedures Mechanisms of the Human Rights Council have likewise encouraged UN Member States to protect the associational rights of informal economy workers. In a 2016 report to the UN General Assembly, former UN Special Rapporteur Maina Kiai stressed the importance of freedom of association for marginalized workers to address exploitation and poverty. Serving as UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Kiai observed that the majority of the world’s workers are “unable to exercise their fundamental rights to associate or assemble, and [do not have] access to remedies when these rights are violated.”<sup>73</sup> Associational rights, he argued, “enable people to voice and represent their interests,” and “are key to

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<sup>69</sup> CEDAW Committee General Recommendation No. 26 on women migrant workers ¶ 26 (2008) [https://www2.ohchr.org/english/bodies/cedaw/docs/gr\\_26\\_on\\_women\\_migrant\\_workers\\_en.pdf](https://www2.ohchr.org/english/bodies/cedaw/docs/gr_26_on_women_migrant_workers_en.pdf)

<sup>70</sup> CEDAW Committee General Recommendation No. 34 on the rights of rural women ¶ 52 (d) (2016) <https://digitallibrary.un.org/record/835897?ln=en>

<sup>71</sup> Committee on the Elimination of Discrimination against Women, Concluding observations on the fifth periodic report of South Africa (2021) <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N21/352/34/PDF/N2135234.pdf?OpenElement>

<sup>72</sup> States must recognize the rights of migrant workers to (a) take part in meetings and activities of trade unions and of any other associations established in accordance with law; (b) freely join any trade union or other such association; and (c) seek the aid and assistance of any trade union or other such association. CMW Article 26

<sup>73</sup> Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, report on the exercise and enjoyment of the rights to freedom of peaceful assembly and of association in the workplace ¶ 10 (2016) <https://undocs.org/Home/Mobile?FinalSymbol=A%2F71%2F385&Language=E&DeviceType=Desktop&LangRequested=False> (“SR FOAA 2016”)

the realization of both democracy and dignity, to holding States accountable and to empowering human agency.”<sup>74</sup> He concluded that “without assembly and association rights, workers have little leverage to change the conditions that entrench poverty, fuel inequality and limit democracy”.<sup>75</sup>

- 6.18 Further, a report of the Working Group on the Issue of Discrimination against Women and Girls in Law and Practice, which was presented to the Human Rights Council in 2020, stressed that all women workers, including workers in the informal economy, should enjoy their rights without discrimination.<sup>76</sup> In the report, the Working Group identified State support for “women’s collective action and organizing” as critical to ensuring women’s rights in the changing world of work.<sup>77</sup>

### **International Labour Law**

- 6.19 Uganda is a Member State of the ILO and ratified Convention 87 (C87) in 2005,<sup>78</sup> and Convention 98 (C98) in 1963.<sup>79</sup> Further, the 1998 ILO Declaration on Fundamental Principles and Rights at Work (amended in 2022), deemed both C87 and C98 “fundamental” conventions. The Declaration calls on all Member States to respect, promote and realize the principles of fundamental conventions regardless of individual ratification. Uganda ratified ILO Convention 11 on the Right to Association in Agriculture (C11) in 1921.<sup>80</sup>

### ***Right to Freedom of Association***

- 6.20 Article 2 of C87 protects the right of “*workers and employers, **without distinction whatsoever,***” (emphasis added) to establish and join “organisations of their own choosing without previous authorisation.” The only permitted exclusion is contained in Article 9, which grants Member States the flexibility to exclude members of the police and non-civilian members of the armed forces

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<sup>74</sup> SR FOAA 2016 ¶ 16

<sup>75</sup> SR FOAA 2016 ¶ 11

<sup>76</sup> Report of the Working Group on discrimination against women and girls, Women’s human rights in the changing world of work ¶ 50 (2020)

<https://www.undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2F44%2F51&Language=E&DeviceType=Desktop&LangRequested=False>

<sup>77</sup> Working Group on discrimination against women and girls ¶ 55

<sup>78</sup> International Labour Organization, Ratifications of International Labour Organization Convention 87 on Freedom of Association and Protection of the Right to Organise Convention, 1948

[https://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300\\_INSTRUMENT\\_ID:312232](https://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:312232)

<sup>79</sup> International Labour Organization, Ratifications of International Labour Organization Convention 98 on the Right to Organise and Collective Bargaining (1949)

[https://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300\\_INSTRUMENT\\_ID:312243](https://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:312243)

<sup>80</sup> Ratifications of C011 - Right of Association (Agriculture) Convention, 1921 (No. 11)

[https://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300\\_INSTRUMENT\\_ID:312156](https://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:312156)

from the right to associate if they so choose. C11 requires State Parties to “secure all those engaged in agriculture the same rights of association and combination as to industrial workers,” including repealing “any statutory or other provisions restricting such rights.”<sup>81</sup>

- 6.21 The ILO supervisory system includes the ILO Committee on Freedom of Association (ILO CFA)<sup>82</sup> the ILO Committee of Experts on the Application of Conventions and Recommendations (ILO CEACR),<sup>83</sup> and the ILO Conference Committee on the Application of Standards (ILO CAS).<sup>84</sup> All these bodies have repeatedly held that workers in the informal economy must enjoy the right to freedom of association.
- 6.22 In assessing Uganda’s compliance with C11 on freedom of association in agriculture, the ILO CEACR specifically noted that “while the 1995 Constitution provides that every person shall have the right to freedom of association, the existing legislation only covers employees in the formal sector, whereas agriculture forms a large part of the informal sector.”<sup>85</sup> It also noted that “the National Union of Plantation and Agricultural Workers only covers workers in commercial agriculture and does not include medium-sized and smallholder farms where the majority of the workforce are.”<sup>86</sup>
- 6.23 The ILO CFA has made clear on repeated occasions that coverage of the right of association “is not based on the existence of an employment relationship, which is often non-existent, for example in the case of agricultural workers, self-employed workers in general or those who practise liberal professions, who should nevertheless enjoy the right to organize.”<sup>87</sup>

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<sup>81</sup> C11 Article 1.

<sup>82</sup>The CFA is a specialized tripartite body tasked with examining complaints of violations of freedom of association. *See, e.g.* ILO Committee on Freedom of Association

<https://www.ilo.org/global/standards/applying-and-promoting-international-labour-standards/committee-on-freedom-of-association/lang-en/index.htm>

<sup>83</sup> The Committee of Experts on the Application of Conventions and Recommendations (ILO CEACR) was formed in 1926 by a resolution of the International Labour Conference. It is composed of 20 eminent jurists appointed by the ILO Governing Body to review reports submitted by governments and social partners under Article 22 of the ILO Constitution. Its work is to indicate the extent to which the law and practice of each member state are in conformity with ratified conventions. *See, e.g.*, ILO, Rules of the Game: An introduction to the standards related work of the International Labour Organization (Geneva, ILO, 2019), p.18.

<sup>84</sup> The ILO Conference Committee on the Application of Standards (ILO CAS) was established in 1926 as a standing body of the International Labour Conference. Its function is to provide additional information and provide public pressure on a list of cases selected by the employers and workers and drawn from the annual report of the CEACR.

<sup>85</sup> ILO CEACR Direct Request to Uganda regarding Convention 11 on the Right of Association (Agriculture), adopted 2010, published 100th ILC session (2011) [https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100\\_COMMENT\\_ID,P11110\\_COUNTRY\\_ID,P11110\\_COUNTRY\\_NAME,P11110\\_COMMENT\\_YEAR:2331510,103324,Uganda,2010](https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P11110_COUNTRY_ID,P11110_COUNTRY_NAME,P11110_COMMENT_YEAR:2331510,103324,Uganda,2010)

<sup>86</sup> *Id.*

<sup>87</sup> International Labour Organization, Compilation of decisions of the Committee on Freedom of Association ¶ 387 (2018) (hereinafter “ILO CFA Compilation”)

<https://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/freedom-of->

- 6.24 The ILO CFA has emphasised that States have a duty to “take the necessary measures to ensure that self-employed workers fully enjoy freedom of association rights, in particular “the right to join the organizations of their own choosing.”<sup>88</sup> It has specifically found that laws that restrict the right to associate to workers in an employment relationship are inconsistent with C87, holding that “[i]t is contrary to Convention No. 87 to prevent trade unions of self-employed workers who are not subordinate to, or dependent on, a person.”<sup>89</sup>
- 6.25 The ILO CEACR has repeatedly held that “the right to organize should be guaranteed to all workers without distinction or discrimination of any kind, including to workers without an employment contract, domestic workers, agricultural workers, workers in the informal economy and self-employed workers.”<sup>90</sup> The ILO CAS has also repeatedly determined that excluding self-employed workers from the rights to associate and organize contravenes C87.<sup>91</sup>
- 6.26 Article 3 of C87 provides that worker organizations have a right: “to draw up their constitutions and rules, to elect their representatives in full freedom, to organise their administration and activities and to formulate their programmes.” C87 prohibits “any interference” from state authorities that would inhibit that right. The ILO CFA has repeatedly held that “[i]t is the prerogative of workers’ and employers’ organizations to determine the conditions for electing their leaders,”<sup>92</sup> and States should refrain from determining conditions of eligibility.<sup>93</sup> Current Ugandan law requires union registrants to list union officials’ employers, which restricts union leadership to those with an employment relationship. Such

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[association/WCMS\\_632659/lang--en/index.htm](https://www.ilo.org/dyn/WCMS_632659/lang--en/index.htm) citing the following individual cases heard by the CFA: Case No. 2423, ¶ 479; Case No. 2602, ¶ 365, Case No. 2786, ¶ 453; Case No. 2757, ¶ 990; Case No. 2602, ¶ 461, Case No. 2888, ¶ 1084; and Case No. 3042, ¶ 532

<sup>88</sup> ILO CFA Compilation ¶ 388 citing 376th Report, Case No. 2786, ¶ 349.

<sup>89</sup> ILO CFA Compilation ¶ 1389 citing 356th Report, Case No. 2699, ¶ 1389.

<sup>90</sup> The ILO Conference Committee on the Application of Standards (ILO CAS) was established in 1926 as a standing body of the International Labour Conference. Its function is to provide additional information and provide public pressure on a list of cases selected by the employers and workers and drawn from the annual report of the CEACR.

<sup>91</sup> ILO CAS Individual Case on Türkiye regarding Convention 87 on Freedom of Association and Protection of the Right to Organise, Discussion: 2011, Publication: 100th ILC session (2011) [https://www.ilo.org/dyn/normlex/en/F?p=1000:13100:0::NO:13100:P13100\\_COMMENT\\_ID,P11110\\_COUNTRY\\_ID,P11110\\_COUNTRY\\_NAME,P11110\\_COMMENT\\_YEAR:2556553,102893,T%C3%BCrkiye,2011](https://www.ilo.org/dyn/normlex/en/F?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P11110_COUNTRY_ID,P11110_COUNTRY_NAME,P11110_COMMENT_YEAR:2556553,102893,T%C3%BCrkiye,2011) ; See also ILO CAS Individual Case on Cambodia regarding Convention 87 on Freedom of Association and Protection of the Right to Organise, Discussion: 2017, Publication: 106th ILC session (2017) [https://www.ilo.org/dyn/normlex/en/F?p=1000:13100:0::NO:13100:P13100\\_COMMENT\\_ID,P11110\\_COUNTRY\\_ID,P11110\\_COUNTRY\\_NAME,P11110\\_COMMENT\\_YEAR:3330983,103055,Cambodia,2017](https://www.ilo.org/dyn/normlex/en/F?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P11110_COUNTRY_ID,P11110_COUNTRY_NAME,P11110_COMMENT_YEAR:3330983,103055,Cambodia,2017)

<sup>92</sup> ILO CFA Compilation ¶ 588 citing 343rd Report, Case No. 2426, ¶ 282; 358th Report, Case No. 2740, ¶ 656; and 363rd Report, Case No. 2740, ¶ 702.

<sup>93</sup> ILO CFA Compilation ¶ 589 citing 343rd Report, Case No. 2443, ¶ 310; 346th Report, Case No. 1865, ¶ 789; 350th Report, Case No. 2567, ¶ 1156, Case No. 2621, ¶ 1238; 354th Report, Case No. 2567, ¶ 944; 362nd Report, Case No. 2723, ¶ 842, Case No. 2750, ¶ 947; 365th Report, Case No. 2829, ¶ 575, Case No. 2723, ¶ 778; 367th Report, Case No. 2952, ¶ 877; 371st Report, Case No. 2979, ¶ 150; 376th Report, Case No. 3113, ¶ 986; and 377th Report, Case No. 2750, ¶ 33

restrictions impermissibly infringe on the right of unions to elect their representatives in full freedom.

6.27 In summary, all relevant ILO supervisory bodies have repeatedly and unambiguously concluded that States have a duty to ensure that workers in the informal economy enjoy rights under C87. This includes the right to freely form and join unions of their own choosing, and design their own activities and programmes. The ILO CEACR has specifically recognized the obligation to extend coverage to workers in the informal economy in the context of agriculture. The ILO CEACR has also identified a conflict between the expansive rights provided for in the Ugandan Constitution and the narrower protections provided to workers through national implementing legislation.

### ***Right to Collectively Bargain***

6.28 Article 4 of C98 requires States to “encourage and promote the full development and utilisation of machinery for voluntary negotiation between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements.” As with C87, the ILO supervisory system has determined that workers in the informal economy, including the self-employed, must have the right to bargain collectively.

6.29 For example, the ILO CFA has held that States should ensure that workers who are self-employed “fully enjoy trade union rights for the purpose of furthering and defending their interest, including by the means of collective bargaining.” As such States should “identify, in consultation with the social partners concerned, the particularities of self-employed workers that have a bearing on collective bargaining so as to develop specific collective bargaining mechanisms relevant to self-employed workers.”<sup>94</sup>

6.30 The ILO CEACR has also repeatedly affirmed that all workers, including workers in the informal economy and self-employed workers, must enjoy the right to organize and bargain collectively. The ILO CEACR has called on States to ensure the application of C87 to workers in the informal economy by amending the definition of worker in labour legislation to ensure the inclusion of self-employed workers.<sup>95</sup> The ILO CEACR has also urged States to adopt specific measures to

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<sup>94</sup> ILO CFA Compilation ¶ 1285 citing Case No. 2786, ¶ 349; *See also, e.g.* ILO CAS Interim Report No 346, regarding Case No 1865 on the Republic of Korea, complaint 1995 (2007 followup) [https://www.ilo.org/dyn/normlex/en/f?p=1000:50002:0::NO:50002:P50002\\_COMPLAINT\\_TEXT\\_ID:2903785](https://www.ilo.org/dyn/normlex/en/f?p=1000:50002:0::NO:50002:P50002_COMPLAINT_TEXT_ID:2903785) (ordering the Republic of Korea to amend laws criminalizing the exercise of collective bargaining rights by workers in the informal construction industry, among other issues)

<sup>95</sup> CEACR Direct Request of Niger regarding Convention 98 on the Right to Organise and Collective Bargaining, adopted 2005, published 95th ILC session (2006) [https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100\\_COMMENT\\_ID,P11110\\_CO](https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P11110_CO)

address the particular difficulties encountered by workers in the informal economy.<sup>96</sup>

### **Recommendation 204**

- 6.31 ILO Recommendation 204 on the Transition from the Informal to the Formal Economy (R204) was adopted in 2015 to guide ILO Member States on how to effectively protect the labour rights of workers in the informal economy. While not binding, R204 was negotiated by representatives of governments, workers and employers to define the current understanding of rights for workers in the informal economy and provides important guidance to States and national courts in contextualizing these rights.
- 6.32 R204 repeatedly emphasizes the need to extend the right to association and collective bargaining to workers in the informal economy.<sup>97</sup> R204 calls on States to “create an enabling environment” for workers to engage in bargaining and social dialogue in the transition to the formal economy.<sup>98</sup> States are also urged to ensure that national laws and policies protect the right to freedom of association and the right to engage in collective bargaining.<sup>99</sup>

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[UNTRY\\_ID,P11110\\_COUNTRY\\_NAME,P11110\\_COMMENT\\_YEAR:2256219,103254](https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P11110_COUNTRY_ID,P11110_COUNTRY_NAME,P11110_COMMENT_YEAR:2256219,103254) (requesting information on whether the definition of ‘worker’ in the Labour Code excludes self-employed workers, “thus excluding a large proportion of workers in the informal sector of the economy from the provisions on freedom of association and collective bargaining in particular”)

<sup>96</sup> CEACR Observation to Haiti regarding Convention 98 on the Right to Organise and Collective Bargaining, adopted 2016, published 106th ILC session (2017)

[https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100\\_COMMENT\\_ID,P11110\\_COUNTRY\\_ID,P11110\\_COUNTRY\\_NAME,P11110\\_COMMENT\\_YEAR:3296780,102671,Haiti,2016](https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P11110_COUNTRY_ID,P11110_COUNTRY_NAME,P11110_COMMENT_YEAR:3296780,102671,Haiti,2016); See also, e.g. CEACR Direct Request of Niger regarding Convention 98 on the Right to Organise and Collective Bargaining, adopted 2005, published 95th ILC session (2006)

[https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100\\_COMMENT\\_ID,P11110\\_COUNTRY\\_ID,P11110\\_COUNTRY\\_NAME,P11110\\_COMMENT\\_YEAR:2256219,103254,Niger,2005](https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P11110_COUNTRY_ID,P11110_COUNTRY_NAME,P11110_COMMENT_YEAR:2256219,103254,Niger,2005); CEACR Observation on New Zealand regarding Convention 98 on the Right to Organise and Collective Bargaining, adopted 2021, published 110th ILC session (2022)

[https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100\\_COMMENT\\_ID,P11110\\_COUNTRY\\_ID,P11110\\_COUNTRY\\_NAME,P11110\\_COMMENT\\_YEAR:4122540,102775,New%20Zealand,2021](https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P11110_COUNTRY_ID,P11110_COUNTRY_NAME,P11110_COMMENT_YEAR:4122540,102775,New%20Zealand,2021); CEACR Direct Request on Somalia regarding Convention 98 on the Right to Organise and Collective Bargaining, adopted 2020, published 109th ILC session (2021)

[https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100\\_COMMENT\\_ID,P11110\\_COUNTRY\\_ID,P11110\\_COUNTRY\\_NAME,P11110\\_COMMENT\\_YEAR:4050209,103244,Somalia,2020](https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P11110_COUNTRY_ID,P11110_COUNTRY_NAME,P11110_COMMENT_YEAR:4050209,103244,Somalia,2020); CEACR Observation on Brazil regarding Convention 98 on the Right to Organise and Collective Bargaining, adopted 2019, published 109th ILC session (2021)

[https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100\\_COMMENT\\_ID,P11110\\_COUNTRY\\_ID,P11110\\_COUNTRY\\_NAME,P11110\\_COMMENT\\_YEAR:4061795,102571,Brazil,2020](https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P11110_COUNTRY_ID,P11110_COUNTRY_NAME,P11110_COMMENT_YEAR:4061795,102571,Brazil,2020)

<sup>97</sup> See, e.g. R204 ¶ 31 (States should “ensure that those in the informal economy enjoy freedom of association and the right to collective bargaining, including the right to establish and, subject to the rules of the organization concerned, to join organizations, federations and confederations of their own choosing. See also Preamble,

[https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:R204](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:R204)

<sup>98</sup> See also R204 ¶ 16 calls on States to “take measures to achieve decent work and to respect, promote and realize the fundamental principles and rights at work for those in the informal economy,” including “freedom of association and the effective recognition of the right to collective bargaining.”

<sup>99</sup> See R204 ¶¶ 31, 33

- 6.33 R204 Paragraph 9 calls on States to “adopt, review and enforce national laws and regulations or other measures to ensure appropriate coverage and protection of all categories of workers and economic units.” Paragraph 11 further calls for an “integrated policy framework” that addresses, among other things “the organization and representation of employers and workers to promote social dialogue.”<sup>100</sup>
- 6.34 International labour law, including interpretations from relevant supervisory bodies of the ILO, has consistently emphasized the duty of States to ensure that all workers, including workers in the informal economy, can freely and fully exercise the right to collective bargaining.

### **Regional Human Rights Law**

- 6.35 Article 10 of the African Charter provides that “every individual” has the right to freedom of association. States may restrict the right, but only when the right has been exercised outside the bounds of the law and when another public interest, such as the rights of others, collective security, morality or common interest, supersede the right to free association.<sup>101</sup>
- 6.36 In 2010, the African Commission on Human and Peoples’ Rights (the African Commission) developed The Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights “to assist State Parties to comply with their obligations under the African Charter.”<sup>102</sup> The Principles and Guidelines call on States to “[e]nsure the right to freedom of association, including the rights to collective bargaining, to strike and other related organisational and trade union rights,” including “the right to form and join a trade union of choice”, and the right of trade unions to function freely without undue interference.”<sup>103</sup>
- 6.37 Article 15 of the African Charter protects the right of “every individual” to work under equitable and satisfactory conditions and to receive equal pay for equal work. The African Commission adopted the Pretoria Declaration on Economic, Social and Cultural Rights in Africa (Pretoria Declaration) in 2004. The Pretoria Declaration states that the right to work under Article 15 includes, at a minimum, the rights to “freedom of association, including the rights to collective bargaining, strike and other related trade union rights,” and expressly states

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<sup>100</sup> R204 Article 11 (d-e)

<sup>101</sup> African Charter Article 10(1); African Commission, Interights, Institute for Human Rights and Development in Africa, and Association mauritane des droits de l’Homm v Mauritania, Communication 242/01, ¶ 78 (4 June 2004)

<sup>102</sup> African Commission on Human and Peoples’ Rights, Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in the African Charter on Human and Peoples’ Rights Preamble (24 October 2011)

<sup>103</sup> Principles and Guidelines Article 59

that those working in the informal sector are covered under Article 15.<sup>104</sup> Commission Resolution 73 on Economic, Social and Cultural Rights in Africa<sup>105</sup> gives the Pretoria Declaration “an authoritative value in the interpretation of economic, social and cultural rights.”<sup>106</sup> Accordingly, workers in the informal economy should enjoy rights to collective bargaining, to strike and other trade union rights.

- 6.38 The reporting guidelines for parties to the African Charter also reinforce the fact that the Charter provides for associational rights. States must submit periodic reports to the African Commission detailing how the State implements and safeguards rights guaranteed by the Charter.<sup>107</sup> Under the reporting guidelines, States are asked to include evidence that they are protecting “the rights to unionise, to collective bargaining, and to strike.”<sup>108</sup>

### **Comparative Law and Jurisprudence**

- 6.39 In other jurisdictions, workers in the informal economy have been permitted to form legally recognized trade unions and associations, and State bodies have engaged in bargaining and consultation with these entities. In some jurisdictions, regulations have been passed that secure a formal role for representatives of workers in the informal economy, particularly street vendors, in decisions that impact their livelihoods. *Amici* offer a few examples that reflect efforts to extend the rights to association and to engage in meaningful collective bargaining with workers in the informal economy.
- 6.40 For instance, India adopted the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act in 2014. The Act grew out of a series of court cases in India that affirmed the rights of street vendors. In **Sodan Singh v New Delhi Municipal Committee**, the Indian Supreme Court held that street vendors have a right to access pavements to exercise their constitutional right to trade and carry on a business.<sup>109</sup> **Olga Tellis & Others v Bombay Municipal Corporation**<sup>110</sup> expanded on this ruling, and found that the constitutional right

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<sup>104</sup> Pretoria Declaration on Economic, Social and Cultural Rights in Africa ACHPR/Res.73(XXXVI) 04 (7 December 2004)

<sup>105</sup> Pretoria Declaration on Economic, Social and Cultural Rights in Africa ACHPR/Res.73(XXXVI) 04 (7 December 2004)

<sup>106</sup> Sibonile Khoza, Promoting Economic, Social and Cultural Rights in Africa: The African Commission Holds a Seminar in Pretoria, 4 African Human Rights Law Journal 339 (2004)

<sup>107</sup> African Charter Article 62

<sup>108</sup> African Commission, State Party Reporting Guidelines for Economic, Social and Cultural Rights in the African Charter on Human and Peoples’ Rights (Tunis Reporting Guidelines) Section 7(B)(ii) (October 2011)

<sup>109</sup> *Sodan Singh v New Delhi Municipal Committee* 1992 SC1153 (1,3)

<sup>110</sup> *Olga Tellis & Others v Bombay Municipal Corporation* 1985 SCC (3) 545

to life included a right to livelihood<sup>111</sup>. This resulted in the passage of the Street Vendors Act, which mandated the creation of street vending committees responsible for decision-making. These committees are composed of different stakeholders, including street vendors, local authorities and residents' associations. Under the Street Vendor Regulation, street vendors must constitute 40% of the Statutory Town Vending Committees and at least one third of each Committee must be female. Statutory Town Vending Committees have now been established by two associations of workers in the informal economy, NASVI (National Alliance of Street Vendors of India) and SEWA (Self Employed Women's Association). The Vending Committees provide for inclusive regulation of street vending and meaningful participation in negotiation.<sup>112</sup>

- 6.41 By organizing women in the informal economy into a union, SEWA has been able to engage in a variety of strategies to ensure that women in the informal economy can exercise their rights. SEWA registered as a trade union in 1972.<sup>113</sup> Its initiatives since then have included organizing access to financial and social security services.<sup>114</sup>
- 6.42 In other countries, trade unions and associations of workers in the informal economy are entering into memoranda of understanding (MOUs) or collective agreements with municipalities.<sup>115</sup> For example, in Liberia, in the context of conflict between police and street vendors, replete with raids, arrests and confiscation of wares, traders registered the Federation of Petty Traders and Informal Workers Union of Liberia, which initiated negotiations with the city. This led to the adoption of one of the first written agreements between a street vendor association and the city in 2018.<sup>116</sup> It too established a multi-stakeholder task force to address and regulate street vending. The task force included street vendors.<sup>117</sup>
- 6.43 In Zimbabwe, the Chamber of Informal Economy Associations (ZCIEA), a trade union consisting of informal economy workers, also succeeded in concluding MOUs with 20 local authorities.<sup>118</sup> The exercise of associational rights by street vendors was central to the realisation of these agreements and to the resulting improvements in the vendors' working conditions.

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<sup>111</sup> Like India, this Honourable court has also held that the right to life includes the right to livelihood in *Salvatori Abuki v The Attorney General* [1997] UGCC 5; Constitutional Case No. 2 of 1997

<sup>112</sup> See WIEGO analyses for developments in agreements between street vending unions and associations and municipalities WIEGO Research – Collective Bargaining in the Informal Economy Street Vendors (January 2016) <https://www.wiego.org/sites/default/files/publications/files/Horn-WIEGO-Collective-Bargaining-Research-2015.pdf>

<sup>113</sup> Self Employed Women's Association website, "About Us" <https://www.sewa.org/about-us/>

<sup>114</sup> Self Employed Women's Association website, "SEWA's Services" <https://www.sewa.org/sewa-services/>

<sup>115</sup> Marlese Von Broembsen, *Collective Bargaining for Self-Employed Street Vendors?*, 2 *Global Labour Rights Reporter* 36 (2022)

<sup>116</sup> Von Broembsen pages 39-40

<sup>117</sup> Von Broembsen pages 39-40

<sup>118</sup> Von Broembsen page 40

6.44 In conclusion, the international and regional treaties to which Uganda is a party all require that State Parties recognize and protect the rights of workers in the informal economy to freely form, join and lead unions, bargain collectively and engage in strikes and industrial actions. The bodies tasked with monitoring these treaties have explicitly addressed the critical importance of including workers in the informal economy within labour rights protections. There are increasingly good examples of countries that have found ways to extend collective rights to workers in the informal economy and facilitate meaningful bargaining. This has in turn resulted in safer, more equitable working conditions for workers in the informal economy. The Court is thus invited to consider the treaty obligations of Uganda, and the global context of increasing efforts to advance the rights of workers in the informal economy in national laws and practice.

### **THE RIGHT TO EQUALITY AND NON-DISCRIMINATION**

- 7.1 The right of every person to equality and non-discrimination is foundational to international human rights law, international labour law and regional human rights law.<sup>119</sup> Treaty monitoring bodies have increasingly recognized that the denial of worker and other human rights that results from informality under the law entrenches poverty and inequality, and has a discriminatory impact on groups on groups that are overrepresented in the informal economy.
- 7.2 There are multiple dimensions of discrimination which have bearing on the case before the Court: (1) The issue of direct discrimination against workers in the informal economy, who are excluded from legal protections afforded to other workers on the basis of their social and economic standing. (2) The issue of indirect discrimination, where facially neutral laws such as labour laws in Uganda have discriminatory impacts on the equal enjoyment of rights by marginalized workers more likely to be in the informal economy, including women, young people, people living in poverty, people in rural areas and refugees. (3) Systemic discrimination, where legal rules and other factors enhance the relative disadvantages experienced by already-marginalized segments of society. (4) Intersectional discrimination, where those affected by exclusion from this legislation face discrimination on more than one ground.
- 7.3 Workers in the informal economy who wish to form a union, obtain compensation for a work-related injury or otherwise exercise labour rights cannot do so on an equivalent basis as workers deemed to be employees. The ICESCR explicitly

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<sup>119</sup> It is elaborated in Article 2 of the United Nations Universal Declaration of Human Rights, Article 2(1) of the ICCPR, Article 2(2) the ICESCR, Article 2 of CEDAW, Articles 1 and 2 of ILO C111 and Article 2 of the the African Charter, among others.

prohibits discrimination based on social status,<sup>120</sup> which the UN CESCR has interpreted to include socio-economic status. The ICCPR prohibits discrimination based on “social origin,”<sup>121</sup> while the International Convention on the Protection of the Rights of All Migrant Workers prohibits discrimination on the grounds of “social origin” and “economic position.”<sup>122</sup>

- 7.4 Some of the most sophisticated jurisprudence on discrimination based on socio-economic standing has emerged from the African Court and comparative national courts in Africa. The African Court has found that discrimination based on economic status is impermissible. The Court has also linked discriminatory legal frameworks to a legacy of colonial exploitation. Here, this Court is called upon to consider the binary delineation between contracts for service and other forms of work. These concepts are derived from English common law, which defined the scope of rights and duties based on the existence of a “master-servant” relationship.
- 7.5 Virtually all the human rights treaties Uganda is bound by prohibit both direct and indirect discrimination on prohibited grounds.<sup>123</sup> The recognition of indirect discrimination, that seemingly neutral rules can have unequal impacts and perpetuate pre-existing inequalities, represents a substantive approach to equality that has been recognized by treaty bodies and comparative national courts. Substantive equality requires both interrogating how neutral laws impact social, economic and cultural forms of inequality, and requires that State Parties take positive steps to ensure that they do not maintain, but rather alleviate, the disadvantages that marginalized groups experience.<sup>124</sup> Uganda is therefore obliged to interrogate the ways in which the facially neutral exclusions from protections in labour laws maintains and even exacerbates existing marginalization of vulnerable groups, and take steps to alleviate that negative impact.

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<sup>120</sup> Article 1

<sup>121</sup> Article 2

<sup>122</sup> Article 7.

<sup>123</sup> Prohibited grounds vary according to the particular treaty.

<sup>124</sup> *See, e.g.* UN CESCR General Comment No 16, Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social and Cultural Rights at ¶ 7 (2005)

- 7.6 In Uganda, women<sup>125</sup>, young people<sup>126</sup>, refugees<sup>127</sup>, and people of specific socioeconomic standing, including people living in poverty<sup>128</sup> and people living in rural areas<sup>129</sup>, are more likely to be in informal employment. These groups are therefore disproportionately impacted by exclusion.
- 7.7 As discussed below, multiple treaty bodies, including the UN CESCR, the ILO CEACR, the CEDAW Committee, the CERD Committee, and the African Commission have acknowledged that the exclusion of informal workers from legal protections has gendered impacts. Women workers make their living predominantly through the informal economy, and work traditionally done by women is more likely to be devalued and informalized. Uganda has an obligation to assess the effect of apparently gender-neutral rules, to determine if they have gendered impacts, and remedy those gendered impacts where they exist. Women in Uganda are less likely to be in formal employment and far more likely to be trapped in informal employment over the long term, which is particularly relevant for lifetime earnings and access to social protections<sup>130</sup>. Excluding the vast majority of women workers from labour protections is not consistent with Uganda's obligation to ensure that rights are equally enjoyed regardless of gender or sex.
- 7.8 The UN CESCR has called on States to eliminate systemic discrimination, which is the term given for legal rules, customs, and other factors that create disadvantages for certain segments of a population. Here, the presence of large populations of women, young people and refugees in the informal economy means that these populations face additional disadvantages under the existing labour law. The same is true for people living in poverty and people living in rural areas, who are also overrepresented in the informal economy.

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<sup>125</sup> See, e.g. International Center for Research on Women, Impact of COVID-19 on Women Workers in the Urban Informal Economy in Uganda and Kenya Secondary Data Review (2022) <https://www.icrw.org/wp-content/uploads/2022/06/Impact-of-COVID-19-on-Women-Workers-in-the-Urban-Informal-Economy-in-Uganda-and-Kenya-Secondary-Data-Review.pdf> ("In Uganda, nearly 14 million or 98 percent of Uganda's total working-age population is engaged in the informal sector; of these, 87 percent are women workers" at page 3)

<sup>126</sup> See, e.g. The Independent, 87% of youths are in insecure, unsafe informal jobs: EPRC research (11 March 2022) <https://www.independent.co.ug/87-of-youths-are-in-insecure-unsafe-informal-jobs-eprc-research/>

<sup>127</sup> See, e.g. International Labour Organization, Review of national policy, legislative and regulatory frameworks, and practice in Uganda (27 January 2023) [https://www.ilo.org/global/programmes-and-projects/prospects/publications/WCMS\\_866792/lang-en/index.htm](https://www.ilo.org/global/programmes-and-projects/prospects/publications/WCMS_866792/lang-en/index.htm)

<sup>128</sup> See, e.g. Uganda Bureau of Statistics, National Labour Force Survey 2021 [https://www.ubos.org/wp-content/uploads/publications/11\\_2022NLFS\\_2021\\_main\\_report.pdf](https://www.ubos.org/wp-content/uploads/publications/11_2022NLFS_2021_main_report.pdf)

<sup>129</sup> Uganda National Labour Force Survey

<sup>130</sup> See International Center for Research on Women, Impact of COVID-19: A policy analysis on the women workers in the urban informal economy in Uganda (2022) <https://www.icrw.org/wp-content/uploads/2022/03/Gendered-Impact-of-COVID-19-on-Women-Workers-in-the-Informal-Sector-Uganda-Final.pdf>

7.9 Further, treaty monitoring committees and comparative courts are increasingly recognizing intersectional discrimination, where discrimination occurs on a combination of prohibited grounds, such as a combination of gender, age and socio-economic standing. The UN CESCR, the CEDAW Committee, the CERD Committee, and the ILO CESCR all require States to pay close attention to intersectional inequality. Thus, Uganda has an obligation to assess and redress the intersectional discrimination against marginalized workers that results from informality under the law.

### **International Human Rights Law**

7.10 Article 2 of the ICESCR requires State Parties to guarantee all rights enunciated in the Covenant “without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” UN CESCR General Comment 20 stresses that right applies to “everyone,” and that it includes the right to work, the right to just and favorable conditions of work and trade union freedoms.<sup>131</sup> Currently, workers in the informal economy cannot exercise these rights on an equivalent basis with workers in the formal economy. No rational basis is offered for that exclusion.

7.11 State Parties have a duty to eliminate both formal and substantive discrimination.<sup>132</sup> The elimination of formal discrimination requires ensuring that a State’s constitution, laws and policy documents do not discriminate on prohibited grounds, including on the basis of socio-economic status.<sup>133</sup>

7.12 The ICESCR expressly includes “social origin” as a protected class. Per GC 20, social origin includes “economic and social status.”<sup>134</sup> GC 20 states that “individuals and groups of individuals must not be arbitrarily treated on account of belonging to a certain economic or social group or strata within society.”<sup>135</sup> Here, workers in the informal economy arbitrarily cannot exercise core rights extended to other workers.

7.13 The UN CESCR has stressed that the mere elimination of formal discrimination is not enough to ensure “substantive equality.” Instead, States must pay “sufficient attention to groups of individuals which suffer historical or persistent prejudice” and “adopt the necessary measures to prevent, diminish and

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<sup>131</sup> United Nations Committee on Economic, Social and Cultural Rights General Comment No. 20 Non-discrimination in economic, social and cultural rights E/C.12/GC/20 (2009) ¶ 3 <https://digitallibrary.un.org/record/659980?ln=en> (hereinafter UN CESCR GC 20)

<sup>132</sup> UN CESCR GC 20 ¶ 8

<sup>133</sup> UN CESCR GC 20 ¶ 8(a)

<sup>134</sup> UN CESCR GC 20 ¶ 24

<sup>135</sup> UN CESCR GC 20 ¶ 35

eliminate the conditions and attitudes which cause or perpetuate substantive or de facto discrimination.”<sup>136</sup>

- 7.14 The UN CESCR further explains the State obligation to prevent both direct and indirect forms of differential treatment, either of which can amount to discrimination under article 2.2 of the Covenant.<sup>137</sup> Direct discrimination includes detrimental acts or omissions on the basis of prohibited grounds.<sup>138</sup> Indirect discrimination refers to “laws, policies or practices which appear neutral at face value, but which have a disproportionate impact on the exercise of Covenant rights as distinguished by prohibited grounds of discrimination.”<sup>139</sup> State Parties bear a duty to amend and regularly review their legislation to ensure that it does not discriminate or lead to discrimination, whether formally or substantively, in relation to the exercise and enjoyment of Covenant rights.<sup>140</sup>
- 7.15 UN CESCR has further recognized systemic discrimination, which can be understood as legal rules, policies, practices, or predominant cultural attitudes in either the public or private sector that create relative disadvantages for some groups, and privileges for other groups.<sup>141</sup> Here, the Court should consider whether legal exclusion from basic labour rights perpetuates the social and economic disadvantages faced by workers in the informal economy.
- 7.16 States that are party to the ICCPR must ensure non-discrimination and equal protection of the law,<sup>142</sup> including in “legislation and the application thereof.”<sup>143</sup> The Human Rights Committee states that discrimination should be understood as “any distinction, exclusion, restriction or preference which is based on any ground,” including social origin, sex, national origin, property, birth or other status, “and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms.”<sup>144</sup> Differentiation is only permissible where it is reasonable, objective and the aim is to achieve a purpose which is legitimate under the ICCPR.<sup>145</sup> The Human Rights Committee has further emphasized that “the principle of equality sometimes requires States parties to take affirmative

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<sup>136</sup> UN CESCR GC 20 ¶ 9

<sup>137</sup> UN CESCR GC 20 ¶ 10

<sup>138</sup> UN CESCR GC 20 ¶ 10

<sup>139</sup> *Id.* at ¶ 10(b): For instance, requiring a birth registration certificate for school enrolment may discriminate against ethnic minorities or non-nationals who do not possess, or have been denied, such certificates.

<sup>140</sup> UN CESCR GC 20 at ¶ 37

<sup>141</sup> UN CESCR GC 20 at ¶ 12.

<sup>142</sup> ICCPR Articles 9 and 26.

<sup>143</sup> Human Rights Committee, General Comment 18, Non-discrimination U.N. Doc. HRI/GEN/1/Rev.1 ¶ 26 (1994)

<sup>144</sup> Human Rights Committee GC 18 at ¶ 7

<sup>145</sup> Human Rights Committee GC 18 at ¶ 12

action in order to diminish or eliminate conditions which cause or help to perpetuate discrimination.<sup>146</sup>

- 7.17 The Court should consider the discriminatory impact that exclusion from core labour rights and protections has on the groups more likely to be in informal employment in Uganda, including women, young people, refugees and people of specific social status, including people living in rural areas and people living in poverty.
- 7.18 Many treaty bodies have recognized the specific, gendered impacts of a failure to extend labour protections to cover the informal economy. The UN CESCR has explicitly acknowledged that “women are overrepresented in the informal economy, for example as casual workers, home workers or own account workers, which in turn exacerbates inequalities in areas such as remuneration, health and safety, rest, leisure and paid leave.”<sup>147</sup> The UN CESCR has recognized that women are often denied the ability to enjoy rights “by virtue of the lesser status ascribed to them by tradition or custom, as a result of overt or covert discrimination due to the intersection of sex with factors such as race, colour, language, religion...social origin, property etc”.<sup>148</sup> The UN CESCR directs states to take into account the effect of apparently gender-neutral rules, to determine if they have gendered impacts.<sup>149</sup>
- 7.19 Further, under Article 11 of CEDAW, States Parties are required to take all appropriate measures to eliminate discrimination against women in the field of employment.<sup>150</sup> The notion that commitments to substantive equality require interrogating neutral laws and the ways in which they can perpetuate pre-existing inequality “because they do not take into account existing economic, social and cultural inequalities, particularly those experienced by women,”<sup>151</sup> is well established in international and regional human rights law, and should be applied by the Court in consideration of this case.

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<sup>146</sup> Human Rights Committee GC 18 at ¶ 10

<sup>147</sup> UN CESCR GC 23 ¶ 47(d)

<sup>148</sup> UN CESCR GC 23 ¶ 5

<sup>149</sup> UN CESCR GC 23 ¶ 18

<sup>150</sup> This includes “(a) The right to work as an inalienable right of all human beings; (b) The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment;(c) The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training;(d) The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work;(e) The right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave and (f) The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.”

<sup>151</sup> UN CESCR General Comment No 16 (2005), Substantive issues Arising in the Implementation of the International Covenant on Economic, Social and Cultural Rights ¶ 9

- 7.20 In similar contexts, such as in South Africa and Zimbabwe, researchers have affirmed that women working in the informal economy experience compounded inequalities in terms of access to credit, payment of wages, working conditions, job security and social benefits.<sup>152</sup> Extending national labour protections to the sectors in which women work would help reduce these inequalities.
- 7.21 The UN CESCR has further identified age, place of residence, nationality and economic and social situation as prohibited grounds of discrimination.<sup>153</sup> Article 7 of the International Convention on the Protection of the Rights of All Migrant workers prohibits discrimination against migrant workers on the grounds of “social origin” as well as “economic position.”
- 7.22 According to the UN Special Rapporteur on Extreme Poverty and Human Rights “strengthening the prohibition of discrimination on grounds of socio-economic disadvantage is a key tool towards poverty eradication.”<sup>154</sup> The UN Guiding Principles on Extreme Poverty and Human Rights state that “poverty frequently originates from discriminatory practices, both overt and covert. Those living in poverty are also subject to discriminatory attitudes and stigmatization from public authorities and private actors precisely because of their poverty. Thus, those living in poverty tend to experience several intersecting forms of discrimination, including on account of their economic status.”<sup>155</sup>
- 7.23 Treaty monitoring committees have called on States to apply positive “special measures” in situations where groups have experienced historical or persistent discrimination.<sup>156</sup> The goal of these measures is to bring about equality in fact, or “substantive equality” between groups.<sup>157</sup> To achieve substantive equality, States should undertake positive measures that actually preference

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<sup>152</sup> Elmarie Fourie, Women Workers in the Informal Economy and the Function and Future of Labour Law, Stell LT 398 at 406 (2020) for a discussion of women workers in the informal economy in South Africa. For a similar analyses of gendered impacts of work in the informal economy in Zimbabwe see ILO, Women in the informal economy in Zimbabwe (2017) [https://www.ilo.org/wcmsp5/groups/public/---africa/---ro-abidjan/---sro-harare/documents/publication/wcms\\_619740.pdf](https://www.ilo.org/wcmsp5/groups/public/---africa/---ro-abidjan/---sro-harare/documents/publication/wcms_619740.pdf)

<sup>153</sup> UN CESCR GC 20 at ¶¶ 29, 30, 34, and 35

<sup>154</sup> Report of the UN Special Rapporteur on Extreme Poverty and Human Rights, United Nations, 13 July 2022, A/77/157 at 5 <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N22/423/82/PDF/N2242382.pdf?OpenElement>

<sup>155</sup> UN Guiding Principles on Extreme Poverty and Human Rights Section III ¶ 18 [https://www.ohchr.org/sites/default/files/Documents/Publications/OHCHR\\_ExtremePovertyandHumanRights\\_EN.pdf](https://www.ohchr.org/sites/default/files/Documents/Publications/OHCHR_ExtremePovertyandHumanRights_EN.pdf)

<sup>156</sup> See UN CESCR General Comment No.16, Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social and Cultural Rights at ¶¶ 15, 35-36 (2005) (hereinafter UN CESCR GC 16); CEDAW Committee, General recommendation No. 25 on temporary special measures ¶ 12-14 (2004) (hereinafter UN CEDAW GC 25); UN Committee on the Elimination of Racial Discrimination, General Recommendation No. 32, The meaning and scope of special measures at ¶ 11 (2009) (hereinafter UN CERD GR 25); UN CESCR GC 20 at ¶¶ 8-9. The names for these measures differ by jurisdiction. They can also be referred to as “affirmative measures”, “affirmative action” or “positive action”. See UN CERD GR 25 at ¶ 12.

<sup>157</sup> It is also known as “effective equality” or “de facto equality.” See UN CESCR GC 16 at ¶ 15 ; UN CEDAW GC 25 at ¶ 18; UN CERD GR 25 at ¶ 11.

disadvantaged groups. The measures should work to ensure that disadvantaged groups enjoy human rights on an equal basis as groups that have been privileged.<sup>158</sup> States' enactment of these measures often involves differential treatment or treatment resulting in a disparate impact on prohibited grounds. However, the measures remain legitimate as long as the rationale for the differentiation is in line with the goals of international human rights law.<sup>159</sup> In addition to having legitimacy, the measures should be: necessary, fair, proportional, appropriate to the situation to be remedied, and only instituted for the period needed to bring about equality in fact.<sup>160</sup>

7.24 UN Treaty Bodies, including the UN CESCR,<sup>161</sup> the CERD Committee,<sup>162</sup> and the CEDAW Committee,<sup>163</sup> have endorsed recognition of intersectional discrimination, where individuals or groups face discrimination on more than one prohibited grounds. "Such cumulative discrimination has a unique and specific impact on individuals and merits particular consideration and remedying."<sup>164</sup> The CEDAW Committee urges states to pay particular attention where gender discrimination is mixed with other forms of discrimination, including discrimination based on class and age.<sup>165</sup>

7.25 When reviewing States' fulfilment of non-discrimination obligations, treaty monitoring committees have taken into consideration how well States protect workers in the informal economy. For example, in 2022 concluding observations to Zimbabwe, the CERD Committee expressed concern that non-discrimination and labour rights legislation did not explicitly cover the informal sector and domestic work.<sup>166</sup> The CERD Committee recommended that Zimbabwe, "[a]mend its legislation prohibiting discrimination and its labour laws to explicitly cover the informal sector and domestic work;" and "[t]ake measures to address discrimination on the intersecting grounds of race, class and gender in all areas

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<sup>158</sup> See UN CESCR GC 20 at ¶¶ 8-9, UN CESCR GC 16 at ¶ 36; UN CERD GR 25 at ¶ 12

<sup>159</sup> UN CESCR GC 20 at ¶ 9; UN CESCR GC 16 at ¶ 36; UN CEDAW GC 25 at ¶ 20; UN CERD GR 25 at ¶ 11

<sup>160</sup> See UN CESCR GC 20 at ¶ 9; UN CESCR GC 16 at ¶ 36; UN CEDAW GC 25 at ¶¶ 27, 35, ; UN CERD GR 25 at ¶¶ 16, 27

<sup>161</sup>GC 20 calls on State Parties to recognize where individuals or groups face discrimination on more than one of the prohibited grounds, and stresses that "[s]uch cumulative discrimination has a unique and specific impact on individuals and merits particular consideration and remedying

<sup>162</sup> Committee on the Elimination of Racial Discrimination, General Recommendation 25, Gender Related Dimensions of Racial Discrimination U.N. Doc. A/55/18 at 152 (2000)  
<http://hrlibrary.umn.edu/gencomm/genrexxv.htm>

<sup>163</sup> Committee on the Elimination of All Forms of Discrimination Against Women, General recommendation No. 25, on temporary special measures ¶ 12 (2004)  
[https://www.un.org/womenwatch/daw/cedaw/recommendations/General%20recommendation%2025%20\(English\).pdf](https://www.un.org/womenwatch/daw/cedaw/recommendations/General%20recommendation%2025%20(English).pdf) ("CEDAW GR 25")

<sup>164</sup> UN CESCR GC 20 at ¶ 17

<sup>165</sup> CEDAW GR 25 ¶ 12

<sup>166</sup> UN Committee on the Elimination of Racial Discrimination, Concluding observations on the combined 5th to 11th periodic reports of Zimbabwe CERD/C/ZWE/CO/5-11 ¶ 31 (16 September 2021)  
[https://digitallibrary.un.org/record/3987548/files/CERD\\_C\\_ZWE\\_CO\\_5-11-EN.pdf](https://digitallibrary.un.org/record/3987548/files/CERD_C_ZWE_CO_5-11-EN.pdf)

of employment.”<sup>167</sup> The CERD Committee emphasized that the informal sector and domestic work are “both sectors in which Black women predominate and face low wages, poor working conditions and racist dehumanizing treatment from employers and customers of different racial or ethno-linguistic identities which is reminiscent of the pre-independence era.”<sup>168</sup> The Court here should consider, as treaty bodies and comparative jurisdictions have, whether the distinction between the formal and the informal economy is also rooted in legal conceptions from the pre-independence era in Uganda, where “formal” recognized employment useful to extractive economic models is distinguished from “informal” work, work deemed unnecessary to the colonial project or associated with marginalized peoples.

- 7.26 In a 2023 report, the UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association specifically calls on States to recognize limitations on informal economy workers’ rights to freedom of peaceful assembly and of association as both direct and indirect discrimination, and to take appropriate remedial measures to rectify that discrimination.<sup>169</sup> The report specifically notes that “[c]lear legal restrictions on the ability of workers in the informal economy to organize themselves, de facto restrictions through overly discretionary or bureaucratically impossible to access procedures, and failure to take sufficient steps to support the ability of workers in the informal economy to organize may all be understood as violating States’ obligation to ensure equal, non-discriminatory systems.”<sup>170</sup>

### **International Labour Law**

- 7.27 Uganda ratified Convention 111 (C111) on Discrimination in Employment and Occupation, along with Convention 100 on Equal Remuneration in 2005.<sup>171</sup> Both are also fundamental conventions<sup>172</sup> that are binding on all ILO Member States regardless of individual ratification.<sup>173</sup> Uganda very recently ratified Convention

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<sup>167</sup> CERD Concluding observations on Zimbabwe ¶ 31

<sup>168</sup> CERD Concluding observations on Zimbabwe ¶ 31

<sup>169</sup> Report of the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Advancing the rights of freedom of peaceful assembly and of association of workers in the informal economy, A/HRC/53/38/Add.3 ¶ V pages 17-20 (2023) <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G23/127/91/PDF/G2312791.pdf?OpenElement> (“SR FOAA 2023”)

<sup>170</sup> SR FOAA 2023 ¶ 79

<sup>171</sup> ILO website, Ratifications for Uganda

[https://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200\\_COUNTRY\\_ID:103324](https://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:103324)

<sup>172</sup> ILO website, Conventions and Recommendations <https://www.ilo.org/global/standards/introduction-to-international-labour-standards/conventions-and-recommendations/lang--en/index.htm>

<sup>173</sup> International Labor Organization Declaration on Fundamental Principles and Rights at Work Article 2 (1998, as amended 2022)

[https://www.ilo.org/dyn/normlex/en/f?p=1000:62:0::NO:62:P62\\_LIST\\_ENTRIE\\_ID:2453911:NO](https://www.ilo.org/dyn/normlex/en/f?p=1000:62:0::NO:62:P62_LIST_ENTRIE_ID:2453911:NO)

190 on Violence and Harassment in the World of Work (C190), on August 7, 2023.<sup>174</sup>

7.28 C111 calls on States to design a national policy to promote “equality of opportunity and treatment in respect of employment and occupation.”<sup>175</sup> Under C111, the right to non-discrimination applies to all workers. The ILO CEACR has repeatedly held that “all workers without distinction” must be afforded adequate protection against discrimination.<sup>176</sup> This applies “whether or not they are in a dependent employment relationship or are self-employed.”<sup>177</sup> The ILO CEACR has emphasized that the purpose of C111 “is to protect all persons against discrimination in employment and occupation,” indicating that C111 “applies to all sectors of activity, the public and private sectors, formal economy and informal economy.”<sup>178</sup> Further, the ILO CEACR has stressed the need to ensure that self-employed and casual workers “enjoy protection in practice against discrimination with respect to land, credit and access to goods and services necessary to carry out their occupation.”<sup>179</sup>

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<sup>174</sup> ILO website, Uganda becomes the 32nd country in the world, and the 8th country in Africa, to ratify Convention No. 190 on violence and harassment in the world of work (August 7, 2023)

[https://www.ilo.org/global/topics/violence-harassment/news/WCMS\\_889746/lang--en/index.htm](https://www.ilo.org/global/topics/violence-harassment/news/WCMS_889746/lang--en/index.htm)

<sup>175</sup> C111 Article 2

<sup>176</sup> See, e.g., CEACR Observation to Colombia regarding Convention 111 on Discrimination in Employment and Occupation, adopted 2016, published 106th ILC session (2017)

[https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100\\_COMMENT\\_ID,P11110\\_COUNTRY\\_ID,P11110\\_COUNTRY\\_NAME,P11110\\_COMMENT\\_YEAR:3278320,102595,Colombia,2016;](https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P11110_COUNTRY_ID,P11110_COUNTRY_NAME,P11110_COMMENT_YEAR:3278320,102595,Colombia,2016;)

CEACR Direct Request of United Arab Emirates regarding Convention 111 on Discrimination in Employment and Occupation, adopted 2021, published 110th ILC session (2022)

[https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100\\_COMMENT\\_ID,P11110\\_COUNTRY\\_ID,P11110\\_COUNTRY\\_NAME,P11110\\_COMMENT\\_YEAR:4123457,103495,United%20Arab%20Emirates,2021](https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P11110_COUNTRY_ID,P11110_COUNTRY_NAME,P11110_COMMENT_YEAR:4123457,103495,United%20Arab%20Emirates,2021)

(urging the State to amend discrimination laws to cover workers in the informal economy);

CEACR Direct Request of Latvia regarding Convention 111 on Discrimination in Employment and Occupation, adopted 2020, published 109th ILC session (2021)

[https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100\\_COMMENT\\_ID,P11110\\_COUNTRY\\_ID,P11110\\_COUNTRY\\_NAME,P11110\\_COMMENT\\_YEAR:4057663,102738,Latvia,2020](https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P11110_COUNTRY_ID,P11110_COUNTRY_NAME,P11110_COMMENT_YEAR:4057663,102738,Latvia,2020)

(calling on Latvia to extend certain categories of protection to informal workers); CEACR Observation to Bangladesh regarding Convention 111 on Discrimination in Employment and Occupation, adopted 2019, published 109th ILC session (2021)

[https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100\\_COMMENT\\_ID,P11110\\_COUNTRY\\_ID,P11110\\_COUNTRY\\_NAME,P11110\\_COMMENT\\_YEAR:4022893,103500,Bangladesh,2019](https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P11110_COUNTRY_ID,P11110_COUNTRY_NAME,P11110_COMMENT_YEAR:4022893,103500,Bangladesh,2019)

(calling on Bangladesh to address exclusion of domestic workers from discrimination protections); CEACR

Direct Request of Malawi regarding Convention 111 on Discrimination in Employment and Occupation, adopted 2016, published 106th ILC session (2017)

[https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100\\_COMMENT\\_ID,P11110\\_COUNTRY\\_ID,P11110\\_COUNTRY\\_NAME,P11110\\_COMMENT\\_YEAR:3295781,103101,Malawi,2016](https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P11110_COUNTRY_ID,P11110_COUNTRY_NAME,P11110_COMMENT_YEAR:3295781,103101,Malawi,2016)

(specifically requesting coverage of self-employed workers in anti-discrimination provisions)

<sup>177</sup> See, eg CEACR Observation to Colombia regarding Convention 111 on Discrimination in Employment and Occupation, adopted 2016, published 106th ILC session (2017)

<sup>178</sup> CEACR Observation to Togo regarding Convention 111 on Discrimination in Employment and Occupation, adopted 2021, published 110th ILC session (2022)

[https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13100:0::NO::P13100\\_COMMENT\\_ID,P11110\\_COUNTRY\\_ID,P11110\\_COUNTRY\\_NAME,P11110\\_COMMENT\\_YEAR:4120377,103050,Togo,2021](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13100:0::NO::P13100_COMMENT_ID,P11110_COUNTRY_ID,P11110_COUNTRY_NAME,P11110_COMMENT_YEAR:4120377,103050,Togo,2021)

<sup>179</sup> CEACR Direct Request of Yemen regarding Convention 111 on Discrimination in Employment and Occupation, adopted 2012, published 102nd ILC session (2013)

[https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100\\_COMMENT\\_ID,P11110\\_COUNTRY\\_ID,P11110\\_COUNTRY\\_NAME,P11110\\_COMMENT\\_YEAR:3078037,103523,Yemen,2012](https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P11110_COUNTRY_ID,P11110_COUNTRY_NAME,P11110_COMMENT_YEAR:3078037,103523,Yemen,2012)

- 7.29 In assessing Uganda’s compliance with ILO Convention 122 on Employment Policy,<sup>180</sup> the ILO CEACR has specifically made reference to the need to adopt measures to extend access to justice and labour rights to informal economy workers, and to address the disproportionate number of youth and women in the informal economy.<sup>181</sup> The ILO CEACR called on Uganda to provide information regarding the over-representation of youth in informal employment, and noted disparities “in the share of women and men in employment, with men accounting for most of paid employment, while women constitute the majority of the self-employed population.”<sup>182</sup> This reflects the duty of State Parties, and specifically Uganda, to ensure equitable access to justice and address discriminatory impacts of informalization.
- 7.30 The ILO CEACR has called on Uganda to ensure that its laws and policies address indirect discrimination. Indirect discrimination “refers to situations in which the same condition, treatment or criterion is applied to everyone, but results in a disproportionately harsh impact on some persons on the basis of characteristics such as race, colour, sex or religion.”<sup>183</sup> Here, the lack of protection across key labour legislation has a disproportionately harsh impact on marginalized groups concentrated in the informal economy, including women, young people, refugees, rural residents, and people living in poverty.
- 7.31 Prohibited grounds of discrimination under C111 include “race, colour, sex, religion, political opinion, national extraction or social origin.”<sup>184</sup> The ILO CEACR has held that discrimination on the basis of social origin includes “situations in which an individual’s membership of a class, socio-occupational category or caste determines his or her occupational future.”<sup>185</sup> Workers in the informal

<sup>180</sup> Uganda ratified Convention 122 in 1967.

[https://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300\\_INSTRUMENT\\_ID:312267](https://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:312267)

<sup>181</sup> CEACR Observation to Uganda regarding ILO Convention 122 on Employment Policy, adopted 2021, published 110th ILC session (2022)

[https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100\\_COMMENT\\_ID,P11110\\_COUNTRY\\_ID,P11110\\_COUNTRY\\_NAME,P11110\\_COMMENT\\_YEAR:4116341,103324,Uganda,2021](https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P11110_COUNTRY_ID,P11110_COUNTRY_NAME,P11110_COMMENT_YEAR:4116341,103324,Uganda,2021)

<sup>182</sup> CEACR Observation to Uganda regarding ILO Convention 122 on Employment Policy, adopted 2021, published 110th ILC session (2022)

[https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100\\_COMMENT\\_ID,P11110\\_COUNTRY\\_ID,P11110\\_COUNTRY\\_NAME,P11110\\_COMMENT\\_YEAR:4116341,103324,Uganda,2021](https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P11110_COUNTRY_ID,P11110_COUNTRY_NAME,P11110_COMMENT_YEAR:4116341,103324,Uganda,2021)

<sup>183</sup> CEACR Direct Request to Uganda regarding ILO Convention 111 on Discrimination in Employment and Occupation (2016)

[https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100\\_COMMENT\\_ID,P11110\\_COUNTRY\\_ID,P11110\\_COUNTRY\\_NAME,P11110\\_COMMENT\\_YEAR:3252475,103324,Uganda,2015](https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P11110_COUNTRY_ID,P11110_COUNTRY_NAME,P11110_COMMENT_YEAR:3252475,103324,Uganda,2015)

<sup>184</sup> C111 Article 1

<sup>185</sup> Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part 1B), Giving globalization a human face, ¶ 802 (2012)

[https://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---relconf/documents/meetingdocument/wcms\\_174846.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_174846.pdf) (“ILO CEACR 2012 Report III(1B); ILO Committee of Experts on the Application of Conventions and Recommendations, Equality in Employment and Occupation: Report III (Part 4B): General Survey of the Reports on the Discrimination in Employment and Occupation Convention No 111 and Recommendation (No 111), ¶ 54 (1988)

[https://www.ilo.org/public/libdoc/ilo/P/09661/09661\(1988-75-4B\).pdf](https://www.ilo.org/public/libdoc/ilo/P/09661/09661(1988-75-4B).pdf)

economy do not work in insecure and unprotected forms of employment by choice, but as “a consequence of a lack of opportunities in the formal economy and in the absence of other means of livelihood.”<sup>186</sup> As discussed above, women, young people, people in poverty and people living in rural areas are all more likely to be in the informal economy as opposed to formal employment. Studies have found that women and workers with less education are both significantly more likely to be trapped in informal employment over the long term.<sup>187</sup> The positive duty the State has under Article 32 of the Constitution should be understood to include an obligation to remedy the discriminatory impacts of informality by ensuring workers in the informal economy can exercise core labour rights.

7.32 The ILO CEACR has also emphasized the need to recognize the interactions between different grounds of discrimination, stating that “more attention needs to be given to addressing multiple and structural discrimination.”<sup>188</sup> It has also specifically called on “all member States to take concrete steps towards ensuring that workers in the informal economy benefit fully” from the rights to non-discrimination, freedom of association and collective bargaining, freedom from forced and child labour and the right to safety and health at work.<sup>189</sup>

7.33 Convention 190 on Violence and Harassment in the World of Work (C190),<sup>190</sup> the most recently adopted ILO Convention, specifically and repeatedly calls on States to extend protections against violence and harassment, including violence and harassment rooted in discrimination, to workers in the informal economy.

7.34 Under C190, States must extend protections against work-related violence and harassment to “workers and other persons in the world of work, including employees as defined by national law and practice, as well as persons working irrespective of their contractual status.”<sup>191</sup> C190 covers “all sectors, whether private or public, both in the formal and informal economy.”<sup>192</sup> At the negotiations around C190 in Geneva, the representative of the Ugandan government, who

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<sup>186</sup> R204 Preamble; *See also* UN CESCR GC 20 ¶ 10

<sup>187</sup> An ILO report finds, at page 189, that “all else being equal, women in temporary jobs have a 30 to 45 per cent lower probability of moving to standard employment compared to men” in Uganda, and than men also have a higher likelihood of moving out of part time work. *See also* page 30. Page 143 discusses that non-standard work “may be a stepping stone for educated young workers aspiring to high-skilled jobs, but seems to be a dead end for lower-educated ones.” ILO, Non-Standard Forms of Employment Around the World (2016)

[https://www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/@publ/documents/publication/wcms\\_534326.pdf](https://www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/@publ/documents/publication/wcms_534326.pdf)

<sup>188</sup> ILO CEACR 2012 Report III(1B) ¶ 960

<sup>189</sup> ILO CEACR 2012 Report III(1B) ¶ 964

<sup>190</sup> Convention 190 on Violence and Harassment in the World of Work Adopted June 2019 (hereinafter “C190”)

[https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C190](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C190)

<sup>191</sup> C190 Article 2

<sup>192</sup> C190 Article 2

also served as a spokesperson for the group of aligned African countries, eloquently advocated for the need to ensure that all workers were covered under the Convention, irrespective of their contractual status. The delegate specifically stressed that omitting this language would leave the most vulnerable workers, those in the informal economy, unprotected.<sup>193</sup>

- 7.35 C190 requires States to “take appropriate measures to prevent violence and harassment in the world of work, including recognizing the important role of public authorities in the case of informal economy workers.”<sup>194</sup> These protections were adopted out of a recognition that marginalised workers, including workers in the informal economy, are often the most likely to experience violence and harassment at work. Further, C190 requires States to extend protections across the entire “world of work” including private and public spaces where they are places of work.<sup>195</sup>
- 7.36 Under ILO R204, States are similarly obligated to create an “integrated policy framework” which should address, among other issues “the promotion of equality and the elimination of all forms of discrimination and violence.”<sup>196</sup> States have a specific and heightened obligation to adopt proactive measures to prevent discrimination against workers in the informal economy, which requires access to justice for abuse of their rights at work.

### **Regional Human Rights Law**

- 7.37 Regional human rights law similarly prohibits discrimination and the unequal treatment of individuals under the law. Article 2 of the African Charter prohibits discrimination where it affects enjoyment of a Charter-guaranteed right or freedom. It provides that “every individual is entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind.”<sup>197</sup> States are prohibited from distinguishing between individuals on grounds including race, ethnic group, color, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status.<sup>198</sup>

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<sup>193</sup> Reports of the Standard-Setting Committee on Violence and Harassment in the World of Work: Summary of proceedings, ¶ 324, see also ¶ 347 (2018) [https://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---relconf/documents/meetingdocument/wcms\\_631807.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_631807.pdf)

<sup>194</sup> C190 Article 8(a)

<sup>195</sup> C190 Article 3

<sup>196</sup> R204 ¶ 7(h), *See also* ¶ 16(d) requiring States to “take measures to achieve decent work and to respect, promote and realize the fundamental principles and rights at work for those in the informal economy, namely ... the elimination of discrimination in respect of employment and occupation.”

<sup>197</sup> African Charter Article 2

<sup>198</sup> African Charter Article 2

- 7.38 The African Commission defines discrimination as “any conduct or omission”<sup>199</sup> that aims to create a “distinction, exclusion, restriction or preference based on one of the reasons listed under Article 2 of the Charter”<sup>200</sup> The act or omission must have the purpose or effect of “annulling or restricting recognition, enjoyment or exercise [of rights and freedoms] by all persons [o]n an equal basis.”<sup>201</sup> There is no requirement to prove intention to discriminate. In fact, neutral laws and apparently non-discriminatory measures can amount to discrimination if they “produc[e] the effects of an unjustified distinction.”<sup>202</sup>
- 7.39 Article 3 of the African Charter provides that “every individual” shall be “equal before the law and entitled to equal protection of the law.” The Commission has indicated that Article 3 “contains a general guarantee of equality which supplements the ban on discrimination provided for in Article 2.”<sup>203</sup> Currently, workers in the informal economy do not have the same protections under law as those in the formal economy.
- 7.40 The African Commission released its Principles on the Decriminalisation of Petty Offences in Africa in 2019, wherein it recognized that laws that criminalise petty offences have the effect of punishing, segregating, controlling and undermining the dignity of persons on the basis of their socio-economic status<sup>204</sup>. The Commission also recognized that petty offenses are “inconsistent with the principles of equality before the law and non-discrimination on the basis that they either target, or have a disproportionate impact on, the poor, vulnerable persons, key populations or on the basis of gender.”<sup>205</sup>
- 7.41 In 2020, the African Court on Human and Peoples’ Rights (“the Court”) issued an advisory opinion concluding that vagrancy laws violate Articles 2 and 3 of the African Charter and are discriminatory on the basis of economic status and gender. The Court clarified that “the scope of the right to non-discrimination extends beyond the right to equal treatment before the law.”<sup>206</sup> The African Court,

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<sup>199</sup> African Commission, Principles and Guidelines ¶ 19

<sup>200</sup> African Commission, Principles and Guidelines ¶ 19

<sup>201</sup> See African Commission, *Open Society Justice Initiative v Côte d’Ivoire*, Communication 318/06 ¶ 144 (27 May 2016)

<sup>202</sup> See African Commission, *Open Society Justice Initiative v Côte d’Ivoire*, Communication 318/06 ¶ 144 (27 May 2016)

<sup>203</sup> African Commission, *Antoine Bissangou v Republic of Congo* Communication No. 253/2002 ¶ 70 (15-29 November 2006)

<sup>204</sup> African Commission, Principles on the Decriminalisation of Petty Offences in Africa (Oct 25, 2018) at Principle 7 and Forward by Commissioner Med S.K. Kagwa <https://achpr.au.int/index.php/en/node/846>

<sup>205</sup> Principles on the Decriminalisation of Petty Offences in Africa at Principle 6

<sup>206</sup> African Court on Human and Peoples’ Rights, Advisory Opinion No. 001, *The Compatibility of Vagrancy Laws with the African Charter on Human and Peoples’ Rights and Other Human Rights Instruments Applicable in Africa*, (December 4, 2020) [hereinafter “African Court Vagrancy Opinion”], ¶ 66 <http://www.african-court.org/en/images/Cases/Advisory%20Opinion/Advisory%20Opinions/001-2018 - PALU-Advisory Opinion.pdf>

determined that non-discrimination has practical dimensions in that individuals should be able to enjoy the rights enshrined in the African Charter without de facto distinction of any kind relating to their social status, or any other status.<sup>207</sup>

- 7.42 The Court concluded that the expression ‘any other status’ in Article 2 of the Charter encompasses cases of discrimination that could not have been foreseen during the adoption of the Charter,<sup>208</sup> including economic status.<sup>209</sup>
- 7.43 In finding vagrancy laws to be discriminatory on the basis of economic status, the Court observed that those laws “effectively, punish the poor and underprivileged, including but not limited to [. . .] hawkers, street vendors, and individuals who otherwise use public spaces to earn a living.”<sup>210</sup> The Court viewed vagrancy laws as a “reflection of an outdated and largely Colonial perception of individuals without rights [which] dehumanizes and denigrates individuals with a perceived lower status.”<sup>211</sup> It further noted that the individuals targeted by vagrancy laws already faced challenges related to the enjoyment of their other rights, including enjoyment of socio-economic rights.<sup>212</sup> The Court emphasized that equal protection of the law “presupposes that the law protects everyone, without discrimination.”<sup>213</sup>
- 7.44 In Uganda, workers in the informal economy have vastly inferior rights under law when compared to the legal rights of workers in the formal economy. No rational justification is offered for the distinction. Workers in the informal economy that suffer workplace abuse and want to seek justice do not have access to the same rights and protections under law as workers in the formal economy. The same inequality exists for workers who wish to exercise their associational rights or access social protections. The exclusion of workers in the informal economy from labour law protections is arbitrary, especially considering that those workers constitute the majority of the workforce in Uganda.
- 7.45 The Court analyzed provisions of the Maputo Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa (Maputo Women’s Rights Protocol) and concluded that States have an obligation “to create an environment where poor and marginalised women can fully enjoy all their human rights.”<sup>214</sup> “Sanctioning the arrest of poor and marginalised women” undermined

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<sup>207</sup> African Court Vagrancy Opinion ¶ 66.

<sup>208</sup> African Court Vagrancy Opinion ¶ 66.

<sup>209</sup> African Court Vagrancy Opinion ¶ 72; ¶¶ 64-75.

<sup>210</sup> African Court Vagrancy Opinion ¶ 70

<sup>211</sup> African Court Vagrancy Opinion ¶ 79

<sup>212</sup> African Court Vagrancy Opinion ¶ 67

<sup>213</sup> African Court Vagrancy Opinion at ¶ 73

<sup>214</sup> African Court Vagrancy Opinion ¶ 137

women's rights to equal protection under the Protocol.<sup>215</sup> Hence, State measures that unjustifiably and disproportionately impact poor women amounts to gender discrimination under the Maputo Women's Rights Protocol.

- 7.46 African regional human rights bodies and African national courts<sup>216</sup> are leading the way in recognizing how socio-economic standing interacts with and compounds discrimination based on gender, age, nationality and other marginalized identities.
- 7.47 *Amici* are aware that socio-economic discrimination was considered by this Honorable Court in **Francis Tumwesigye Ateenyi v Attorney General**<sup>217</sup>. There, the Court ultimately rejected the petitioner's claim of discrimination on the basis that petitioners in the case did not provide sufficient evidence to support the claim. *Amici* note that it is imperative on the petitioners in this case to demonstrate a tangible impact in their pleadings, such as instances of State officials declining to recognize informal worker unions who sought legal recognition.

### **Comparative Law and Jurisprudence**

- 7.48 The below analysis offers several cases from comparable jurisdictions that consider the issue of intersectional discrimination against informal workers, and discrimination based on social or economic standing, in the hopes that it will assist the Court in developing its own jurisprudence with respect to these issues.
- 7.49 In the recent decision of the Constitutional Court of South Africa, **Mahlangu and Another v Minister of Labour and Others**,<sup>218</sup> domestic workers successfully challenged their exclusion from legislation ensuring compensation for work-related injuries, illnesses and death. This case presents an instructive comparative example of how other Courts have understood a legal exclusion to constitute both direct and indirect, intersectional discrimination on the basis of class, race and gender, with respect to an analogous group of historically disadvantaged workers. Moreover, the court recognized the exclusion as a legacy from the colonial and apartheid system, and a mis-recognition of traditionally women's work in the private sphere as not proper work.

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<sup>215</sup> African Court Vagrancy Opinion ¶ 137

<sup>216</sup> Discussed in the next section on Comparative Law and Jurisprudence

<sup>217</sup> Constitutional Petition No. 36 of 2018.

<sup>218</sup> *Mahlangu and Another v Minister of Labour and Others* [2020] ZACC 24  
<http://www.saflii.org/za/cases/ZACC/2020/24.html>

7.50 In **Mahlangu**, the domestic worker union challenged Section 1(xix)(v) of Compensation for Occupational Injuries and Diseases Act 130 of 1993 (COIDA)<sup>219</sup> which expressly excluded “domestic workers” from the definition of an “employee.” The effect of this exclusion was that domestic workers were ineligible for workers compensation provided under COIDA. The court found this violation constituted both direct and indirect discrimination.

7.51 In considering direct discrimination, the Court found that exclusion of domestic workers from COIDA did not serve any rational State purpose, and that “the differentiation between domestic workers and other categories of workers is arbitrary and inconsistent with the right to equal protection and benefit of the law.”<sup>220</sup>

7.52 When considering the concept of indirect discrimination, the Court applied the concept of “intersectionality” as an “interpretative criterion” to enable the Court to consider the social identities and the multiple combinations of privilege, power, and vulnerability that shape structural discrimination.<sup>221</sup> The Court quoted with approval the decisions in *Minister of Finance v Van Heerden*<sup>222</sup> and *Brink v Kitshoff*,<sup>223</sup> where Moseneke J described the role of the Court in interpreting substantive equality in light of historical context:

*“It is therefore incumbent on courts to scrutinise in each equality claim the situation of the complainants in society; their history and vulnerability; the history, nature and purpose of the discriminatory practice and whether it ameliorates or adds to group disadvantage in real life context, in order to determine its fairness or otherwise in the light of the values of our Constitution. In the assessment of fairness or*

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<sup>219</sup> Section 1 of COIDA defined an “employee” as a person who has entered into or works under a contract of service or of apprenticeship or learnership, with an employer, whether the contract is express or implied, oral or in writing, and whether the remuneration is calculated by time or by work done, or is in cash or in kind, and includes— (a) a casual employee employed for the purpose of the employer’s business; (b) a director or member of a body corporate who has entered into a contract of service or of apprenticeship or learnership with the body corporate, in so far as he acts within the scope of his employment in terms of such contract; (c) a person provided by a labour broker against payment to a client for the rendering of a service or the performance of work, and for which service or work such person is paid by the labour broker; (d) in the case of a deceased employee, his dependants, and in the case of an employee who is a person under disability, a curator acting on behalf of that employee; but **does not include**—(i) a person, including a person in the employ of the State, performing military service or undergoing training referred to in the Defence Act, 1957 (Act 44 of 1957), and who is not a member of the Permanent Force of the South African Defence Force; (ii) a member of the Permanent Force of the South African Defence Force while on ‘service in defence of the Republic’ as defined in section 1 of the Defence Act, 1957; (iii) a member of the South African Police Force while employed in terms of section 7 of the Police Act, 1958 (Act 7 of 1958), on ‘service in defence of the Republic’ as defined in section 1 of the Defence Act, 1957; (iv) a person who contracts for the carrying out of work and himself engages other persons to perform such work; **(v) a domestic employee employed as such in a private household.**” (emphasis added)

<sup>220</sup> *Mahlangu* ¶ 72

<sup>221</sup> *Mahlangu* ¶ 79

<sup>222</sup> [2004] ZACC 3; 2004 (6) SA 121 (CC); 2004 (11) BCLR 1125 (CC)

<sup>223</sup> *N.O.* [1996] ZACC 9; 1996 (4) SA 197 (CC); 1996 (6) BCLR 752 (CC).

*otherwise a flexible but situation sensitive approach is indispensable because of shifting patterns of hurtful discrimination and stereotypical response in our evolving democratic society.*<sup>224</sup>

- 7.53 The Constitutional Court concluded that the exclusion of the category of “domestic worker,” while facially neutral, had a disproportionate impact on Black women who predominate in the sector, and therefore amounted to indirect discrimination on the intersecting bases of gender, race and class. Moreover, in the Court’s view, there is no qualitative difference between discrimination that occurs directly or indirectly. It found that the inclusion of domestic workers in the category of “employee” would advance the goal of substantive equality.<sup>225</sup>
- 7.54 In the 2015 case of **Makwickana v eThekweni Municipality and Others**, a street trader from Durban challenged the legal framework which permitted local authorities to seize or destroy the goods of traders whom the authorities suspected were unlicensed.<sup>226</sup> The High Court of South Africa concluded that the law’s effect was “to discriminate directly and indirectly against poor and mainly African people<sup>227</sup>.” In terms of street traders, the Court considered that “their discrimination is ostensible and direct on the grounds of their socio-economic status,” and further recognized that “subversively and indirectly race remains an additional ground of discrimination in appropriate instances<sup>228</sup>.” The Court found that the legal regulations in question “compounds the prejudice upon a race and socio-economic group already adversely impacted by poverty”.<sup>229</sup>
- 7.55 In the 2015 case of **Mayeso Gwanda v The State**<sup>230</sup>, the High Court of Malawi determined that arresting a street vendor pursuant to penal code provisions against being a rogue or vagabond violated the vendor’s rights to equality before the law, as well as rights to human dignity and freedom from ill treatment. The link between full social equality and the right to dignity has been used by Courts to engage the historical and social contexts that enables and justifies the exclusion and mistreatment of vulnerable groups. **Mahlangu** also examines the historical, gendered and racial nature of exclusions and the interconnection between the right to equality and the need to realize the dignity and worth of all persons.<sup>231</sup>

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<sup>224</sup> Mahlangu ¶ 27

<sup>225</sup> Mahlangu ¶ 88

<sup>226</sup> Makwickana v Ethekweni Municipality and Others 2015 (3) SA 165 (KZD)

<sup>227</sup> Makwickana at ¶ 124.

<sup>228</sup> Makwickana ¶ 115.

<sup>229</sup> Makwickana ¶ 128

<sup>230</sup> Mayeso Gwanda v The State 2017 MWHC 23 (Malawi)

<sup>231</sup> Mahlangu ¶ 111 – 113

- 7.56 In a series of decisions concerning access to recyclable waste, the Constitutional Court of Colombia determined that waste pickers are a marginalized group deserving of special measures. Waste pickers are workers in the informal economy who retrieve recyclable material from municipal solid waste and then redeploy that material for use or sale. Thus, government intervention that cuts off access to this waste threatens waste pickers' livelihoods. Two emblematic decisions provide examples of how the Colombia Constitutional Court has aimed to guarantee substantive equality for these informal economy workers.
- 7.57 The first case, **Sentencia T-724 of 2003**, concerned a decision of the city of Bogotá to open a bidding process for waste collection services that effectively excluded waste pickers from competing to provide those services.<sup>232</sup> The legal and regulatory rules around the process limited participation to stock-owned companies that had previously provided waste services to large cities in the preceding five years. As a consequence, waste picker cooperatives were ineligible to submit bids.<sup>233</sup> One waste pickers' association challenged its exclusion from the process as an infringement of the right to work and the right to substantive equality.<sup>234</sup> The Constitutional Court decided for the waste pickers on the grounds of inequality. Among other remedies, it ordered the city to institute special measures in response.<sup>235</sup>
- 7.58 In the second case, **Sentencia T-291 of 2009**, waste pickers in Cali, Colombia contested the closure of a public dumpsite, where they had been collecting recyclable material as a means of livelihood.<sup>236</sup> In the process of privatizing the dumpsite, the city had promised to compensate the affected waste pickers and facilitate alternative work for them.<sup>237</sup> However, the city closed the dumpsite without fulfilling these guarantees. Waste pickers filed writs to contest the city's actions.<sup>238</sup>
- 7.59 In both cases, the Constitutional Court analyzed whether the guarantee of substantive equality had been infringed by a failure to protect waste pickers. In **Sentencia T-291**, the Court considered the historical exclusion of waste pickers in the city of Cali to confirm their status as a marginalized group.<sup>239</sup> The Court analyzed factors that drove families into waste picking, such as poverty and displacement. It further considered the stigma and poor conditions that waste pickers continued to endure when confirming their status as a group facing

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<sup>232</sup> Constitutional Court of Colombia, Sentencia T-724/03 (August 20, 2003)

<sup>233</sup> Sentencia T-724/03 ¶ 1

<sup>234</sup> Sentencia T-724/03 ¶ 1

<sup>235</sup> Sentencia T-724/03 ¶¶ 11-12

<sup>236</sup> Columbia Constitutional Court, Sentencia T-291/09 (23 April 2009)

<sup>237</sup> Sentencia T-291/09 ¶ 1

<sup>238</sup> Sentencia T-291/09 ¶ 1

<sup>239</sup> Sentencia T-291/09 ¶ 8

continual marginalization.<sup>240</sup> As a remedy for the persistent inequality that waste pickers faced, the Court ordered Cali to take additional affirmative actions to incorporate waste pickers into the city's waste management system.<sup>241</sup>

7.60 In **Sentencia T-724**, the Court found that Bogotá had not adopted special measures to bring about substantive equality for waste pickers. The city had failed to do so despite the fact that such measures were mandated by the Colombian Constitution. Instead, the municipality had accentuated the marginalization that waste pickers faced.<sup>242</sup> Among other remedies, the Court ordered Bogotá to take affirmative actions to include waste pickers in subsequent bidding processes.<sup>243</sup> Both cases are instructive as to the application of the concept of substantive equality and the need for special measures to fulfill it.

7.61 In addition to the three above cases, courts in other jurisdictions have similarly held government actions impermissible because the actions involved differential treatment on the basis of socio-economic status. The UN Special Rapporteur on Extreme Poverty and Human Rights has reported on such cases from India, Chile, South Africa and elsewhere. In India, the Supreme Court held that cancelling the licenses of small-cart business owners risked pushing those workers further into poverty.<sup>244</sup> The Court accordingly struck down elements of a pro-competition policy that enabled the cancellations.<sup>245</sup> In Chile, a Santiago civil court found that treating residents of informal settlements differently in terms of entitlements to purchase land amounted to discrimination on the basis of socio-economic status.<sup>246</sup> Further, in South Africa, a provincial court found that assigning lesser policing resources to poorer areas amounted to discrimination on the basis of poverty. The court concluded that poverty fell within the catchall “other ground”<sup>247</sup> since it “cause[d] or perpetuate[d] systematic disadvantage, undermine[d] human dignity, or adversely affect[ed] the enjoyment of rights and freedoms”.<sup>248</sup>

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<sup>240</sup> Sentencia T-291/09 ¶ 8

<sup>241</sup> Sentencia T-291/09 ¶ 3

<sup>242</sup> Sentencia T-724/03 ¶ 9

<sup>243</sup> Sentencia T-724/03 ¶¶ 11-12

<sup>244</sup> See Report of the UN Special Rapporteur on Extreme Poverty and Human Rights A/77/157 at ¶ 26 (13 July 2022)

<https://undocs.org/Home/Mobile?FinalSymbol=A%2F77%2F157&Language=E&DeviceType=Desktop&LangRequested=False>.

<sup>245</sup> UNSR Report on Extreme Poverty and Human Rights at ¶ 26

<sup>246</sup> UNSR Report on Extreme Poverty and Human Rights at ¶ 26

<sup>247</sup> UNSR Report on Extreme Poverty and Human Rights at ¶ 23

<sup>248</sup> UNSR Report on Extreme Poverty and Human Rights at ¶ 23

## **RIGHT TO SATISFACTORY, SAFE AND HEALTHY CONDITIONS OF WORK**

- 8.1 The right of all workers to equitable and satisfactory conditions of work is well-established in international and regional treaties ratified or acceded to by Uganda. Inherent in that right is inclusion in the laws and policies enacted to guarantee equitable and satisfactory conditions of work. The terminology across international and regional documents differs. Article 7 of the ICESCR protects the right of everyone to “just and favourable conditions of work”, as does Article 5(i) of the CERD.<sup>249</sup> Article 15 of the African Charter protects the right of every individual to “equitable and satisfactory” working conditions. These terms encompass the same fundamental rights to a minimum standard of fairness, safety, and dignity at work. Treaty monitoring committees have confirmed that these guarantees are not limited to workers in the formal economy.<sup>250</sup>
- 8.2 Studies have found workers in the informal economy often work in more dangerous conditions and appear to be more likely to use dangerous tools or more likely to be exposed to dust, vibrations, and fumes among others.<sup>251</sup> Thus, protections from workplace hazards and exploitation are particularly significant to informal economy workers.
- 8.3 Connected to the right to satisfactory, safe and healthy conditions of work is the right to social protection. The right to social protection is enshrined in Article 9 of the ICESCR, Article 5 (e) (iv) of the CERD, Article 28 of the Convention on the Rights of Persons with Disabilities, ILO Convention 102 on Social Security and Articles 15, 16 and 17 of the African Charter on Human and Peoples’ Rights.<sup>252</sup> Uganda is a party to all these treaties.
- 8.4 By excluding workers in the informal economy from coverage under **Section 3(1) of the Employment Act**, workers in the informal economy are excluded from provisions of the Act that guarantee equitable and satisfactory working conditions. This includes, for example, measures that require access to rest breaks and leave<sup>253</sup> and protections from unjust dismissal,<sup>254</sup> among others. This is particularly significant for workers who are not classified by their employers as employees but are nevertheless in a dependent relationship.

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<sup>249</sup> See also Article 23 of the Universal Declaration of Human Rights

<sup>250</sup> See UN CESCR, GC 23 ¶ 5 ; Pretoria Declaration on Economic, Social and Cultural Rights in Africa, ¶ 6; Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in the African Charter on Human and Peoples’ Rights, ¶¶ 1(e), 59 (d), k); Women’s Rights Protocol, art. 13 (e);

<sup>251</sup> See, e.g. ILO and Organization for Economic Cooperation and Development, Tackling Vulnerability in the Informal Economy (May 2019) [https://www.oecd-ilibrary.org/development/tackling-vulnerability-in-the-informal-economy\\_2cfd8904-en;jsessionid=UFYGWNdiyZQefrIhxpCd60dMga7usqEqKmJ9g5vx.ip-10-240-5-27](https://www.oecd-ilibrary.org/development/tackling-vulnerability-in-the-informal-economy_2cfd8904-en;jsessionid=UFYGWNdiyZQefrIhxpCd60dMga7usqEqKmJ9g5vx.ip-10-240-5-27)

<sup>252</sup> See also Articles 22 and 25 of the Universal Declaration of Human Rights

<sup>253</sup> See, e.g. Article 51-61 of the Employment Act

<sup>254</sup> See, e.g. Article 70-77 of the Employment Act

- 8.5 **Section 3 of the Workers' Compensation Act** likewise excludes workers in the informal economy from obtaining compensation for work-related injuries, illnesses or deaths. Excluding workers from these protections violates both the right to equitable and satisfactory conditions of work and the right to social protection.
- 8.6 Further, excluding workers in the informal economy from the **Labour Unions Act; the Labour Unions (Registration) Regulations**, and the **Labour Disputes Arbitration and Settlement Act** deprives these workers of the associational rights that provide an effective means for pursuing equitable and satisfactory working conditions. Forming or joining trade unions and bargaining collectively is one of the most effective mechanisms for improving working conditions.

### **International Human Rights Law**

- 8.7 Article 7 of the ICESCR requires States Parties to “recognize the right of everyone to the enjoyment of just and favourable conditions of work.”<sup>255</sup> Included within that right are guarantees of fair wages and a decent living for workers and their families; safe and healthy working conditions; equal opportunity for promotion in employment; and rest, leisure and reasonable limitation of working hours.<sup>256</sup>
- 8.8 The UN CESCR has affirmed that Article 7 applies to everyone, including workers in the informal economy and self-employed workers.<sup>257</sup> It has also called on States to include informal economy workers in protective legal frameworks, occupational health and safety legislation, and in national monitoring mechanisms.<sup>258</sup>
- 8.9 In 2012, the United Nations Human Rights Council adopted the Guiding Principles on Extreme Poverty and Human Rights. The Guiding Principles, while not binding, offer persuasive authority on the current state of international standards and norms. In the Guiding Principles, the Council recognized that “poverty [i]s not solely an economic issue, but rather a multidimensional phenomenon that encompasses a lack of both income and the basic capabilities to live in dignity.”<sup>259</sup> To address extreme poverty and respect human rights, the Council called on States to “ensure that legal standards regarding just and

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<sup>255</sup> ICESCR Article 7

<sup>256</sup> ICESCR Article 7

<sup>257</sup> UN CESCR, GC 23 ¶ 5

<sup>258</sup> UN CESCR, GC 23 ¶ 47 (d), (f), (g)

<sup>259</sup> UN Guiding Principles on Extreme Poverty and Human Rights ¶ 2

[https://www.ohchr.org/sites/default/files/Documents/Publications/OHCHR\\_ExtremePovertyandHumanRights\\_EN.pdf](https://www.ohchr.org/sites/default/files/Documents/Publications/OHCHR_ExtremePovertyandHumanRights_EN.pdf)

favourable conditions of work are extended to and respected in the informal economy,<sup>260</sup> and encouraged States to collect disaggregated data assessing the dimensions of informal work.<sup>261</sup>

- 8.10 The right to social security includes the right to access and maintain benefits that protect against a range of adverse circumstances, including a lack of work-related income, as well as unaffordable access to health care, and insufficient family support.<sup>262</sup> The UN CESCR affirms that States should “ensure that the social security systems cover those persons working in the informal economy.”<sup>263</sup> Social security aims to uplift the vulnerable and marginalised from destitute conditions. It is therefore closely linked to the right to non-discrimination and equality, and the CESCR has stressed that “individuals belonging to the most disadvantaged and marginalized groups, without discrimination” must be covered.<sup>264</sup> The cycle of poverty and exclusion that many workers in the informal economy face could be alleviated by recognizing their role as workers and affording them the same rights and protections as those in the formal economy.

### **International Labour Law**

- 8.11 The ILO does not have a single convention addressing the right to equitable and satisfactory conditions of work, but rather has a constellation of conventions that address various facets of this right.<sup>265</sup> As discussed below, ILO Supervisory Mechanisms have consistently urged State Parties to ensure that protections related to working conditions extend to all workers, including workers in the informal economy.
- 8.12 Uganda ratified Convention 158 (C158) on Termination of Employment in 1990.<sup>266</sup> C158 “applies to all branches of economic activity and to all employed persons”<sup>267</sup> and guards against dismissal without a valid reason connected to the capacity or conduct of the worker or the operational requirements of the undertaking.<sup>268</sup> When reviewing States’ implementation of C158, the ILO CEACR

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<sup>260</sup> Guiding Principles on Extreme Poverty and Human Rights ¶ 83

<sup>261</sup> Guiding Principles on Extreme Poverty and Human Rights ¶ 83

<sup>262</sup> UN CESCR, General Comment 19: The right to social security E/C.12/GC/19 (4 February 2008) <https://www.refworld.org/docid/47b17b5b39c.html>

<sup>263</sup> UN CESCR GC 19 ¶ 16

<sup>264</sup> UN CESCR GC 19 ¶ 23

<sup>265</sup> ILO Website, Labour standards on Working Conditions (2017)

[https://www.ilo.org/global/topics/dw4sd/themes/working-conditions/WCMS\\_560706/lang-en/index.htm](https://www.ilo.org/global/topics/dw4sd/themes/working-conditions/WCMS_560706/lang-en/index.htm)

<sup>266</sup> Ratifications of C158 - Termination of Employment Convention, 1982 (No. 158)

[https://www.ilo.org/dyn/normlex/en/?p=1000:11300:0::NO:11300:P11300\\_INSTRUMENT\\_ID:312303](https://www.ilo.org/dyn/normlex/en/?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:312303)

<sup>267</sup> ILO Convention 158 on Termination of Employment No. 158, Article 2 (1982)

[https://www.ilo.org/dyn/normlex/en/?p=NORMLEXPUB:12100:0::NO:12100:P12100\\_INSTRUMENT\\_ID:312303:NO](https://www.ilo.org/dyn/normlex/en/?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:312303:NO) (hereinafter “C158”)

<sup>268</sup> C158 at Article 4

has taken into consideration how well States protect workers in the informal economy. For instance, the ILO CEACR has requested information from Cameroon regarding coverage of workers in the informal economy, specifically domestic workers. It urged the State to “take all possible steps” to ensure “workers in the informal economy enjoy adequate protection” under C158.<sup>269</sup>

8.13 Uganda ratified ILO Convention 81 on Labour Inspection in 1963.<sup>270</sup> The ILO released Guidelines on general principles of labour inspection (the Guidelines) in 2021 to guide States in implementing the Convention.<sup>271</sup> The Guidelines assert that “the mandate of labour inspection should apply equally to all workers and all workplaces in all sectors, whether private or public, in rural and urban areas, in the formal and the informal economy.”<sup>272</sup> Supervisory systems of the ILO have particularly drawn attention to the importance of covering the informal economy where it represents a significant part of the workforce.<sup>273</sup>

8.14 In 2022, the ILO adopted a resolution incorporating “a safe and healthy working environment” as part of the ILO Declaration on Fundamental Principles and Rights at Work.<sup>274</sup> It did so in recognition that “safe and healthy working conditions are fundamental to decent work.”<sup>275</sup> The resolution establishes Convention 155 on Occupational Safety and Health (C155) and Convention 187 on the Promotional Framework for Occupational Safety and Health (C187) as fundamental Conventions,<sup>276</sup> binding on all ILO Member States regardless of

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<sup>269</sup> CEACR Observation to Cameroon on Convention 158 on Termination of Employment, adopted 2011, published 101st ILC session (2012)

[https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100\\_COMMENT\\_ID,P11110\\_COUNTRY\\_ID,P11110\\_COUNTRY\\_NAME,P11110\\_COMMENT\\_YEAR:2700332,103038,Cameroon,2011](https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P11110_COUNTRY_ID,P11110_COUNTRY_NAME,P11110_COMMENT_YEAR:2700332,103038,Cameroon,2011)

<sup>270</sup> Ratifications of C081 - Labour Inspection Convention, 1947 (No. 81)

[https://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300\\_INSTRUMENT\\_ID:312226](https://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:312226)

<sup>271</sup> Along with Convention 129 on Labour Inspection in Agriculture, which Uganda has not ratified. After the adoption of the ILO Declaration on Social Justice for a Fair Globalization in 2008, the ILO Governing Body classified C81 and C129 as ‘governance Conventions,’ which means the ILO considers them priorities for all Member States to ratify because they are particularly important to the functioning of the international labour standards system. ILO, Guidelines on general principles of labour inspection, Introduction (2021) <https://www.ioe-emp.org/index.php?elID=dumpFile&t=f&f=156443&token=c513a6c3904b0175bf9752a409466b994a77dbbf>

<sup>272</sup> ILO Guidelines on general principles of labour inspection Section 1.1

<sup>273</sup> See, e.g. CEACR Direct Request of Namibia on Convention 81 on Labour Inspection, adopted 2022, published (2023)

[https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100\\_COMMENT\\_ID,P11110\\_COUNTRY\\_ID,P11110\\_COUNTRY\\_NAME,P11110\\_COMMENT\\_YEAR:4298066,103008,Namibia,2022](https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P11110_COUNTRY_ID,P11110_COUNTRY_NAME,P11110_COMMENT_YEAR:4298066,103008,Namibia,2022)

<sup>274</sup> Resolution on the inclusion of a safe and healthy working environment in the ILO’s framework of fundamental principles and rights at work ¶ 2 (10 June 2022)

[https://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---relconf/documents/meetingdocument/wcms\\_848632.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_848632.pdf)

<sup>275</sup> *Id.* at Preamble.

<sup>276</sup> Resolution on the inclusion of a safe and healthy working environment in the ILO’s framework of fundamental principles and rights at work ¶ 3(10 June 2022)

[https://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---relconf/documents/meetingdocument/wcms\\_848632.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_848632.pdf)

individual ratification.<sup>277</sup> While Uganda has yet to ratify either Convention, by virtue of its membership in the ILO the State is obligated “to respect, to promote and to realize” the right to a safe and healthy working environment pursuant to the obligations in these Conventions.<sup>278</sup> This obligation should be understood to inform the rights under Article 40 of the Ugandan Constitution.

8.15 C155 applies to “all branches of economic activity”<sup>279</sup> and “all workers.”<sup>280</sup> Recommendation 164, which offers additional guidance to States on how to implement C155, stresses that “[t]o the greatest extent possible, the provisions of [C155] should be applied to all branches of economic activity and to all categories of workers.”<sup>281</sup> States should include “such measures as may be necessary and practicable to give self-employed persons protection.”<sup>282</sup> States may exempt certain branches of the economy, but only in cases where “special problems of a substantial nature arise”<sup>283</sup> and such exemptions may only be adopted after a consultative process with worker representatives. Likewise States may exclude “limited categories of workers in respect of which there are particular difficulties,”<sup>284</sup> again only after a consultative process with worker representatives.

8.16 In 2015, the ILO CAS<sup>285</sup> examined Türkiye’s compliance with C155, including the exclusion of self-employed workers.<sup>286</sup> The ILO CAS called on Türkiye to ensure national law is in compliance with C155 “in particular with respect to its coverage.”<sup>287</sup> In follow-up examinations, the ILO CEACR asked the State to specify how measures “extend protections to ... workers in the informal economy” such

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<sup>277</sup> International Labor Organization Declaration on Fundamental Principles and Rights at Work Article 2 (1998, as amended 2022)

[https://www.ilo.org/dyn/normlex/en/f?p=1000:62:0::NO:62:P62\\_LIST\\_ENTRIE\\_ID:2453911:NO](https://www.ilo.org/dyn/normlex/en/f?p=1000:62:0::NO:62:P62_LIST_ENTRIE_ID:2453911:NO)

<sup>278</sup> *Id.*

<sup>279</sup> ILO Convention 155 on Occupational Safety and Health, Article 1(1) (1981)

[https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C155](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C155)

(“C155”)

<sup>280</sup> C155 at Article 2(1)

<sup>281</sup> Recommendation 164 on Occupational Safety and Health Recommendation ¶ 1 (1981)

[https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100\\_INSTRUMENT\\_ID:312502:NO](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:312502:NO)

<sup>282</sup> R164 ¶ 1

<sup>283</sup> C155 at Article 1(2)

<sup>284</sup> C155 at Article 2(2)

<sup>285</sup> The ILO Conference Committee on the Application of Standards (ILO CAS) was established in 1926 as a standing body of the International Labour Conference. Its function is to provide additional information and provide public pressure on a list of cases selected by the employers and workers and drawn from the annual report of the CEACR.

<sup>286</sup> Conference Committee on the Application of Standards, Individual Case on Türkiye regarding Occupational Safety and Health Convention No. 155, Publication: 104th ILC session (2015)

[https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100\\_COMMENT\\_ID,P11110\\_COUNTRY\\_ID,P11110\\_COUNTRY\\_NAME,P11110\\_COMMENT\\_YEAR:3241954,102893,T%C3%BCrkiye,2015](https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P11110_COUNTRY_ID,P11110_COUNTRY_NAME,P11110_COMMENT_YEAR:3241954,102893,T%C3%BCrkiye,2015)

<sup>287</sup> Conference Committee on the Application of Standards, Individual Case on Türkiye (2015)

that self-employed workers are covered.<sup>288</sup> The ILO CEACR has consistently requested information from multiple Member States concerning coverage of workers in the informal economy, including self-employed workers, under national law.<sup>289</sup>

- 8.17 C155 Articles 5(c) and 19(d) requires that workers and workers' organisations be trained on occupational safety and health. The ILO CEACR has called on States to provide information regarding "the development of training programmes and/or awareness-raising based on a participatory approach focussing on the improvement of working conditions in ... the informal sector."<sup>290</sup> The ILO CEACR has also issued requests for information when national statistics on work-related injuries only account for formal workers and do not include workers in the informal economy.<sup>291</sup>
- 8.18 C187 obligates all ILO Member States to create a national system to "promote continuous improvement of occupational safety and health to prevent occupational injuries, diseases and deaths."<sup>292</sup> The national system should be developed "in consultation with the most representative organizations of

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<sup>288</sup> CEACR Direct Request of Türkiye regarding Occupational Safety and Health Convention (No. 155), adopted 2015, published 105th ILC session (2016)

[https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100\\_COMMENT\\_ID,P11110\\_COUNTRY\\_ID,P11110\\_COUNTRY\\_NAME,P11110\\_COMMENT\\_YEAR:3257494,102893,T%C3%BCrkiye,2015](https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P11110_COUNTRY_ID,P11110_COUNTRY_NAME,P11110_COMMENT_YEAR:3257494,102893,T%C3%BCrkiye,2015)

<sup>289</sup> See, e.g., CEACR Direct Request of Brazil regarding Occupational Safety and Health Convention (No. 155), adopted 2015, published 105th ILC session (2016)

[https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100\\_COMMENT\\_ID,P11110\\_COUNTRY\\_ID,P11110\\_COUNTRY\\_NAME,P11110\\_COMMENT\\_YEAR:3252743,102571,Brazil,2015](https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P11110_COUNTRY_ID,P11110_COUNTRY_NAME,P11110_COMMENT_YEAR:3252743,102571,Brazil,2015); CEACR

Direct Request of the Netherlands regarding Occupational Safety and Health Convention (No. 155), adopted 2014, published 104th ILC session (2015)

[https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100\\_COMMENT\\_ID,P11110\\_COUNTRY\\_ID,P11110\\_COUNTRY\\_NAME,P11110\\_COMMENT\\_YEAR:3190748,102768,Netherlands,2014](https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P11110_COUNTRY_ID,P11110_COUNTRY_NAME,P11110_COMMENT_YEAR:3190748,102768,Netherlands,2014)

CEACR Direct Request of China regarding Occupational Safety and Health Convention (No. 155), adopted 2012, published 102nd ILC session (2013)

[https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100\\_COMMENT\\_ID,P11110\\_COUNTRY\\_ID,P11110\\_COUNTRY\\_NAME,P11110\\_COMMENT\\_YEAR:3084748,103404,China,2012](https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P11110_COUNTRY_ID,P11110_COUNTRY_NAME,P11110_COMMENT_YEAR:3084748,103404,China,2012); CEACR

Direct Request of Vietnam regarding Occupational Safety and Health Convention (No. 155), adopted 2009, published 99th ILC session

[https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100\\_COMMENT\\_ID,P11110\\_COUNTRY\\_ID,P11110\\_COUNTRY\\_NAME,P11110\\_COMMENT\\_YEAR:2320656,103004,Viet%20Nam,2009](https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P11110_COUNTRY_ID,P11110_COUNTRY_NAME,P11110_COMMENT_YEAR:2320656,103004,Viet%20Nam,2009) ;

See also CEACR Direct Request of Mexico regarding Occupational Safety and Health Convention (No. 155), adopted 2010, published 100th ILC session (2011)

[https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100\\_COMMENT\\_ID,P11110\\_COUNTRY\\_ID,P11110\\_COUNTRY\\_NAME,P11110\\_COMMENT\\_YEAR:2326572,102764,Mexico,2010](https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P11110_COUNTRY_ID,P11110_COUNTRY_NAME,P11110_COMMENT_YEAR:2326572,102764,Mexico,2010)

(requesting information from "both the formal and informal sectors of the mining industry")

<sup>290</sup> See, e.g. CEACR Direct Request of Mali regarding Occupational Safety and Health Convention (No. 155), adopted 2021, published 110th ILC session (2022)

[https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100\\_COMMENT\\_ID,P11110\\_COUNTRY\\_ID,P11110\\_COUNTRY\\_NAME,P11110\\_COMMENT\\_YEAR:4118011,103081,Mali,2021](https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P11110_COUNTRY_ID,P11110_COUNTRY_NAME,P11110_COMMENT_YEAR:4118011,103081,Mali,2021)

<sup>291</sup> CEACR Direct Request of Zimbabwe regarding Occupational Safety and Health Convention (No. 155), adopted 2014, published 104th ILC session (2015)

[https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100\\_COMMENT\\_ID,P11110\\_COUNTRY\\_ID,P11110\\_COUNTRY\\_NAME,P11110\\_COMMENT\\_YEAR:3187584,103183,Zimbabwe,2014](https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P11110_COUNTRY_ID,P11110_COUNTRY_NAME,P11110_COMMENT_YEAR:3187584,103183,Zimbabwe,2014)

<sup>292</sup> ILO Convention 187 on the Promotional Framework for Occupational Safety and Health Convention, Article 2(1) (2006) [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C187](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C187)

employers and workers.”<sup>293</sup> Under Article 4(3)(h), the national system shall include “support mechanisms for a progressive improvement of occupational safety and health conditions in micro-enterprises, in small and medium-sized enterprises and in the informal economy.”

- 8.19 C187 is supplemented by Recommendation 197 (R197), which offers additional guidance on how to implement its core obligations. R197 emphasizes that “the national system should provide appropriate measures for the protection of all workers, in particular, workers in high-risk sectors, and vulnerable workers such as those in the informal economy.”<sup>294</sup> States are encouraged to develop a national program that includes support for progressive improvement in micro-enterprises, small and medium-sized enterprises and the informal economy.<sup>295</sup>
- 8.20 The ILO CEACR has requested information of many States regarding the existence and adequacy of support mechanisms for progressive improvement of OSH conditions in the informal economy under Article 4(3)(h) of C187.<sup>296</sup> Further, ILO Conventions regarding health and safety in construction and agriculture make specific references to the need to include self-employed workers in regulations and processes.<sup>297</sup>

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<sup>293</sup> C187 Article 2(1) (2006)

<sup>294</sup> ILO Recommendation 197 on the Promotional Framework for Occupational Safety and Health ¶ 3 (2006)

[https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100\\_INSTRUMENT\\_ID:312534:NO](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:312534:NO) (“R197”)

<sup>295</sup> R197 at Article 14(i)

<sup>296</sup> See, e.g. CEACR Direct Request of Moldova regarding the Promotional Framework for Occupational Safety and Health Convention (No. 187) adopted 2021, published 110th ILC session (2022)

[https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100\\_COMMENT\\_ID,P11110\\_COUNTRY\\_ID,P11110\\_COUNTRY\\_NAME,P11110\\_COMMENT\\_YEAR:4117314,102695,Republic%20of%20Moldova,2021](https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P11110_COUNTRY_ID,P11110_COUNTRY_NAME,P11110_COMMENT_YEAR:4117314,102695,Republic%20of%20Moldova,2021); CEACR Direct Request of Mauritius regarding the Promotional Framework for Occupational Safety and Health Convention (No. 187) adopted 2021, published 110th ILC session (2022)

[https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100\\_COMMENT\\_ID,P11110\\_COUNTRY\\_ID,P11110\\_COUNTRY\\_NAME,P11110\\_COMMENT\\_YEAR:4115678,103106,Mauritius,2021](https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P11110_COUNTRY_ID,P11110_COUNTRY_NAME,P11110_COMMENT_YEAR:4115678,103106,Mauritius,2021);

CEACR Direct Request of Norway regarding the Promotional Framework for Occupational Safety and Health Convention (No. 187) adopted 2021, published 110th ILC session (2022)

[https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100\\_COMMENT\\_ID,P11110\\_COUNTRY\\_ID,P11110\\_COUNTRY\\_NAME,P11110\\_COMMENT\\_YEAR:4121722,102785,Norway,2021](https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P11110_COUNTRY_ID,P11110_COUNTRY_NAME,P11110_COMMENT_YEAR:4121722,102785,Norway,2021);

CEACR Direct Request of Côte d’Ivoire regarding the Promotional Framework for Occupational Safety and Health Convention (No. 187), adopted 2020, published 109th ILC session (2021)

[https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100\\_COMMENT\\_ID,P11110\\_COUNTRY\\_ID,P11110\\_COUNTRY\\_NAME,P11110\\_COMMENT\\_YEAR:4049510,103023,C%20C3%B4te%20d%27Ivoire,2020](https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P11110_COUNTRY_ID,P11110_COUNTRY_NAME,P11110_COMMENT_YEAR:4049510,103023,C%20C3%B4te%20d%27Ivoire,2020);

CEACR Direct Request of Zambia regarding the Promotional Framework for Occupational Safety and Health Convention (No. 187), adopted 2020, published 109th ILC session (2021)

[https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100\\_COMMENT\\_ID,P11110\\_COUNTRY\\_ID,P11110\\_COUNTRY\\_NAME,P11110\\_COMMENT\\_YEAR:4023696,103264,Zambia,2019](https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P11110_COUNTRY_ID,P11110_COUNTRY_NAME,P11110_COMMENT_YEAR:4023696,103264,Zambia,2019)

<sup>297</sup> Convention 167 on Safety and Health in Construction, 1988 (No. 167)

[https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_INSTRUMENT\\_ID:312312](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312312) (Article 7: “National laws or regulations shall require that employers and self-employed persons have a duty to comply with the prescribed safety and health measures at the workplace.”) Convention 184 on Safety and Health in Agriculture Convention, 2001 (No. 184)

[https://ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:55:0::NO::P55\\_TYPE,P55\\_LANG,P55\\_DOCUMENT,P55\\_NODE:SUP.en.C184./Document](https://ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:55:0::NO::P55_TYPE,P55_LANG,P55_DOCUMENT,P55_NODE:SUP.en.C184./Document) (Article 6 “National laws and regulations or the competent authority shall provide that whenever in an agricultural workplace two or more employers undertake activities, or

- 8.21 R204 repeatedly emphasises the obligation to ensure that workers in the informal economy are able to exercise their rights to safe, healthy working conditions. Article 17 requires States to “take immediate measures to address the unsafe and unhealthy working conditions that often characterize work in the informal economy; and promote and extend occupational safety and health protection to employers and workers in the informal economy.”
- 8.22 R204 also recognizes aspects of the broader right to equitable and favourable working conditions, that includes but is not limited to occupational safety and health.<sup>298</sup> States must create an “integrated policy framework” to establish among other things, “an appropriate legislative and regulatory framework;” “respect for and promotion and realization of the fundamental principles and rights at work;” “the promotion of equality and the elimination of all forms of discrimination and violence, including gender-based violence,” and “effective occupational safety and health policies.”<sup>299</sup> States are further required to create an “adequate and appropriate” system of labour inspection that extends to workplaces in the informal economy, and to provide guidance for enforcement bodies “on how to address working conditions in the informal economy.”<sup>300</sup>
- 8.23 Moreover, Uganda has ratified ILO Convention 17 on Workmen's Compensation.<sup>301</sup> This treaty was negotiated in 1929. Article 1 of C17 requires Member States to “ensure that workmen who suffer personal injury due to an industrial accident, or their dependants, shall be compensated.” This terminology, which would appear to only apply to men, is not consistent with modern understandings of human rights or labour law. However, the ILO CEACR has applied current legal standards to interpret states’ obligations under C17. The ILO CEACR has issued requests to countries that only protect employees in national law to broaden the scope of coverage to ensure that workers in the informal economy are covered, particularly in the case of high levels of informality in the country’s labour market.<sup>302</sup>

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whenever one or more employers and one or more self-employed persons undertake activities, they shall cooperate in applying the safety and health requirements”)

<sup>298</sup> See, e.g. R204 ¶ 9 creates a general obligation to “adopt, review and enforce national laws and regulations or other measures to ensure appropriate coverage and protection of all categories of workers and economic units.”

<sup>299</sup> R204 ¶ 11

<sup>300</sup> R204 ¶ 27

<sup>301</sup> Ratifications of C017 - Workmen's Compensation (Accidents) Convention, 1925 (No. 17)

[https://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300\\_INSTRUMENT\\_ID:312162](https://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:312162)

<sup>302</sup> See, e.g. CEACR Observation to Sierra Leone on Workmen's Compensation (Accidents) Convention No. 17 adopted 2021, published 110th ILC session (2022)

[https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100\\_COMMENT\\_ID,P11110\\_COUNTRY\\_ID,P11110\\_COUNTRY\\_NAME,P11110\\_COMMENT\\_YEAR:4115946,103269,Sierra%20Leone,2021;](https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P11110_COUNTRY_ID,P11110_COUNTRY_NAME,P11110_COMMENT_YEAR:4115946,103269,Sierra%20Leone,2021;) CEACR Observation to Nicaragua on Workmen's Compensation (Accidents) Convention No. 17, adopted 2011, published 101st ILC session (2012)

## **Regional Human Rights Law**

- 8.24 Article 15 of the African Charter states that “every individual shall have the right to work under equitable and satisfactory conditions, and shall receive equal pay for equal work.” The Pretoria Declaration specifies that the right to work under Article 15 includes entitlements to, among other things: (i) fair remuneration, a minimum living wage, and equal remuneration for work of equal value; (ii) effective and enhanced protections for women in the workplace including parental leave; (iii) equitable and satisfactory conditions of work, including effective and accessible remedies for work-place related injuries, hazards and accidents; (iv) promotion and protection of equitable and satisfactory conditions of work for women engaged in household labour; and (v) the right to rest and leisure.<sup>303</sup> Reading the Pretoria Declaration in conjunction with other instruments adopted by the African Commission, it is clear that these protections should be extended to workers in the informal economy.<sup>304</sup>
- 8.25 In the Principles and Guidelines, the African Commission recommended that States provide “means of redress and access to justice,” including in cases of workplace harassment. The mechanisms for redress should extend to those working in the informal economy, in irregular forms of employment and in subsistence agriculture.<sup>305</sup>
- 8.26 Several provisions in the Maputo Women’s Rights Protocol explicitly require that States guarantee all women, including those in the informal sector, equitable and satisfactory working conditions. Article 13(e) provides that States Parties must “create conditions to promote and support the occupations and economic activities of women, in particular, within the informal sector.” Article 13(f) provides that States Parties should “establish a system of protection and social insurance for women working in the informal sector and sensitise them to adhere to it.” In addition, Article 13(h) provides that States Parties should “take the necessary measures to recognize the economic value of the work of women in the home.”
- 8.27 Special Rapporteurs on the Rights of Women in Africa have likewise encouraged States to increase social protection for women workers through the provision of social services and infrastructure.<sup>306</sup> As one of the Special Mechanisms of the

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<sup>303</sup> Pretoria Declaration, at Article 6(6).

<sup>304</sup> See Pretoria Declaration ¶ 6; Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in the African Charter on Human and Peoples’ Rights, ¶¶ 1(e), 59 (d); Maputo Women’s Rights Protocol article 13 (e).

<sup>305</sup> Principles and Guidelines on Economic, Social and Cultural Rights ¶¶ 1(e), 59(k).

<sup>306</sup> See, e.g. African Commission, Statement by the Special Rapporteur on the Rights of Women in Africa on the Occasion of the “International Women’s Day,” (Mar. 8, 2019),

African Commission, the Special Rapporteur aids in implementing the Commission's monitoring mandate.<sup>307</sup>

## **Comparative Law and Jurisprudence**

- 8.28 Comparable jurisdictions have made efforts to expand rights and social protections to workers in the informal economy. *Amici* offer a few illustrative examples of policies in different jurisdictions, as evidence of a broader shift towards safeguarding the working conditions of workers in the informal economy. State efforts include: measures to address the misclassification of workers in non-standard contracts to bring more under the ambit of employment protections, particularly specific categories of workers that are often informalized such as domestic workers; efforts to extend rights and social protection schemes to self-employed workers, which often requires the State to develop mechanisms that are responsive to the specific needs of these workers; and measures that allow workers in the informal economy to organize and bargain with state authorities. These efforts are not comprehensive, but are indicative of shifting global and regional norms and standards regarding worker rights and the need to create regulatory frameworks that bring workers out of informality.
- 8.29 Many jurisdictions have made efforts to address worker misclassification and ensure workers in dependent relationships can exercise their fundamental rights, regardless of their contractual status. For example, the Mauritius Worker Rights Act, adopted in 2019 and subsequently amended, extends protections to workers in non-standard employment relationships that might otherwise not be covered. The Act defines a worker to mean “a person who enters into, or works under, an agreement or a contract of apprenticeship [...] whether by way of casual work, manual labour, clerical work, or otherwise, and however remunerated.”<sup>308</sup> The Act specifically includes part-time workers, casual workers, and any worker who an employer classifies as “a service provider or by any other such appellation, whether or not he holds a business registration number, but who performs personally the same or similar work of a comparable worker employed in the same enterprise or industry.”<sup>309</sup> Likewise, the New Zealand Employment Relations Act No. 24 of 2000 specifically deems

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<https://www.achpr.org/pressrelease/detail?id=1>. In 2019, the mandate of the Special Rapporteurship was held by Ms. Lucy Asuagbor; African Commission, Statement by the Special Rapporteur on the Rights of Women in Africa on the Occasion of the "International Women's Day," (Mar. 8, 2008), <https://www.achpr.org/pressrelease/detail?id=366> . In 2008, the mandate of the Special Rapporteurship was held by Ms. Soyata Maiga.

<sup>307</sup> See Center for Human Rights, University of Pretoria, A Guide to the African Human Rights System 32 (2016) <http://www.corteidh.or.cr/tablas/31712.pdf>

<sup>308</sup> Mauritius Workers' Rights Act of 2019 Section 2 <https://labour.govmu.org/Documents/Legislations/THE%20WORKERS%20RIGHTS%20Act%202019/A%20Consolidated%20Version%20of%20the%20Workers%27%20Rights%20Act%202019%20as%20at%202%20August%202022.pdf>

<sup>309</sup> Mauritius Workers' Rights Act of 2019 Section 2

homeworkers to be employees, even if they are engaged, employed or contracted under a contract that lists the parties as a vendor and a purchaser.<sup>310</sup>

- 8.30 South Africa's Occupation Health and Safety Act of 1993 adopts a broad definition of "employee" and explicitly applies to the self-employed. The definition of an employee under the Act includes "any person who is employed by or works for an employer and who receives or is entitled to receive any remuneration or who works under the direction or supervision of an employer or any other person."<sup>311</sup> The Act defines "work" to mean "work as an employee or as a self-employed person,"<sup>312</sup> which captures many workers in the informal economy. For purposes of coverage under the Act, a self-employed person "is deemed to be at work during such time as [the self-employed person] devotes to work."<sup>313</sup> The Act creates a duty on employers to protect both employees and persons not in their employment who may be directly affected by the business' activities and thereby exposed to health and safety hazards."<sup>314</sup>
- 8.31 Many countries have adopted specific regulations to include domestic workers in labour protections. For example, Zambia's Minimum Wages and Conditions of Employment (Domestic Workers) Order of 2011 applies generally to all household workers, and Zimbabwe's Labour Relations (Domestic Workers) Employment Regulations of 1992 includes part-time and casual domestic workers. In other countries, courts have established that domestic workers or other informalized workers should be recognized as falling within the definition of employee and subject to the same rights as other workers. For example, the Industrial Court of Kenya interpreted the Kenya Employment Law Act of 2007 to apply to domestic workers.<sup>315</sup>
- 8.32 The Employee Compensation Act of Nigeria defines an "employee" as "a person employed by an employer under oral or written contract of employment whether on a continuous, part-time, temporary, apprenticeship or casual basis."<sup>316</sup> The definition includes domestic workers and specifically states it covers those "in the formal and informal sectors of the economy."<sup>317</sup>

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<sup>310</sup> New Zealand Employment Relations Act No. 24 of 2000 Article 5  
<https://www.legislation.govt.nz/act/public/2000/0024/latest/whole.html#DLM59604>

<sup>311</sup> South Africa Occupation Health and Safety Act of 1993 Section 1(ix)  
[https://www.gov.za/sites/default/files/gcis\\_document/201409/act85of1993.pdf](https://www.gov.za/sites/default/files/gcis_document/201409/act85of1993.pdf)

<sup>312</sup> South Africa Occupation Health and Safety Act of 1993 Section (1)(liv)

<sup>313</sup> South Africa Occupation Health and Safety Act of 1993 Section (1)(liv)

<sup>314</sup> South Africa Occupation Health and Safety Act of 1993 Section 9

<sup>315</sup> Robai Musinzi v Safdar Mohamed Khan (2012) eKLR, (I.C.K.).

<sup>316</sup> Nigeria Employee Compensation Act Section 73  
[https://www.ilo.org/dyn/natlex/natlex4.detail?p\\_lang=&p\\_isn=87608&p\\_classification=15.03](https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=&p_isn=87608&p_classification=15.03)

<sup>317</sup> Nigeria Employee Compensation Act Section 73

- 8.33 Many States have made efforts to include self-employed workers in social protection schemes.<sup>318</sup> For example, Costa Rica created a scheme to extend social insurance to independent workers, including workers in the informal economy. The scheme includes coverage for maternity leave and disability compensation. Contributions are based on income, and workers with lower incomes have a sliding percentage of their contribution subsidized by the State.<sup>319</sup> The scheme also involves agreements with workers' cooperatives, highlighting the importance of worker organizing to ensure equitable and satisfactory working conditions.<sup>320</sup>
- 8.34 Kenya enacted legislation in 2013 that provides a pathway for including self-employed workers in social insurance. Section 4(e) of the National Social Security Fund Act of 2013 states that one of the Fund's objectives is to enable self-employed workers and their families to access social protection. Among other things, Section 26 of the Act empowers the responsible Cabinet Secretary to make regulations in relation to: the voluntary registration of persons who are self-employed; the review and adaptation of the Act to accommodate circumstances peculiar to self-employed contributors; the time and manner of payment of self-employed contributions; and the inclusion of an organization representing self-employed persons on the Fund Board. This was enacted to establish a clear framework for inclusion of workers in the informal economy, while providing some flexibility in how that inclusion is facilitated.
- 8.35 In Ghana, self-employed workers have been integrated into the legal framework of the National Pensions Act of 2008. They have also been incorporated into a voluntarily funded, privately managed provident fund and pension scheme, referred to as the "third tier."
- 8.36 Through Act No. 29/2017 of 29 June 2017, Rwanda established Ejo Heza, a long-term savings scheme that counts workers in the informal economy as participants. The scheme provides for old age, death and disability and its beneficiaries include self-employed persons and workers operating in the informal economy. The scheme aims to bring workers in the informal economy into the pension and savings net and contains several innovative features. Members can pay contributions based on their capacity, which makes contributions more flexible. Members can also withdraw part of their long-term savings to acquire a house, pay for education or provide collateral for a loan. The

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<sup>318</sup> See, e.g. Fabio Durán-Valverde Jorge Flores Aguilar José Francisco Ortiz Vindas Daniel Muñoz Corea Ana Carolina de Lima Vieira Lou Tessier, International Labour Organization, Innovations in extending social insurance coverage to independent workers (2013) <https://www.social-protection.org/gimi/gess/gess/RessourcePDF.action?ressource.ressourceId=42119> ("Durán-Valverde et al")

<sup>319</sup> Durán-Valverde et al, Section 7

<sup>320</sup> Durán-Valverde et al, Section 7.2.4

scheme further provides for incentives through government co-contributions, which are payable once members have saved up to specified amounts.

- 8.1 Moreover, in 2019, the Rwandan Prime Minister ordered that the public and private sectors should contribute to subsidies for the Community Based Health Insurance Scheme. Self-employed workers are members of the Scheme. The Order indicates that the Ministry of Finance and the Ministry of Health would provide subsidies for the Scheme. The Scheme would also be funded by fees collected from medical research services, gaming companies' services, motor vehicle inspections, traffic fines, and trade penalties. Health insurance entities and telecommunication companies would also be required to pay a percentage of their annual revenue towards the scheme.
- 8.37 In **Kathumba & Ors. v President of Malawi & Ors.**, the High Court of Malawi determined that the Malawi Constitution contained an implicit right to social security on the basis of explicit protection of the rights to dignity and to life.<sup>321</sup> The Court held that, in order to comply with the obligation to ensure social, economic and cultural rights under the Constitution and international law, the State must ensure that measures enacted to address COVID-19 include measures to provide access to social security, particularly to the indigent.<sup>322</sup>

## **RIGHT TO AN EFFECTIVE REMEDY**

- 9.1 The right to effective remedy is enshrined in international and regional treaties ratified or acceded to by Uganda, including the ICCPR, the ICESCR, CEDAW and the African Charter. It is also derived from the general principle of international human rights law that every breach gives rise to a corresponding obligation to provide an effective remedy. In excluding informal workers from legislation protecting the rights to freedom of association, equality and nondiscrimination, and safe, satisfactory and healthy working conditions under national law, workers are precluded from accessing the remedies designed in such legislation to address violations.

### **International Human Rights Law**

- 9.2 Article 2(3) of the ICCPR requires that where a right enshrined in the Covenant is violated, the victim must have access to an effective and enforceable remedy.<sup>323</sup>

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<sup>321</sup> *Kathumba & Ors. v President of Malawi & Ors.* (Constitutional Reference 1 of 2020) [2020] MWHC 29 ¶ 10.2.1

<sup>322</sup> *Kathumba & Ors. v President of Malawi & Ors.* ¶ 10.2.2

<sup>323</sup> See also Article 8 of The Universal Declaration of Human Rights

- 9.3 The UN CESCR has confirmed that even where the ICESCR does not include specific provisions on State parties' obligations to provide a remedy, States are required to provide effective remedies for victims as part of their obligation to take all appropriate measures to implement the rights recognized in the treaty.<sup>324</sup>
- 9.4 In assessing the right to remedy under the right to social security, the UN CESCR has determined that
- “Any person or groups who have experienced violations of their rights to social security should have access to effective judicial or other appropriate remedies at both national and international levels. All victims of violations of the right to social security should be entitled to adequate reparation, including restitution, compensation, satisfaction or guarantees of non-repetition. National ombudspersons, human rights commissions, and similar national human rights institutions should be permitted to address violations of the right. Legal assistance for obtaining remedies should be provided within maximum available resources.”*<sup>325</sup>
- 9.5 The right to an effective remedy encompasses the right to: equal and effective access to justice; adequate, effective, and prompt reparation for harm suffered; and access to relevant information concerning violations and reparation mechanisms.<sup>326</sup>
- 9.6 A key element of the right to effective remedy is the requirement of reparation. Measures intended to achieve reparation aim to “as far as possible, wipe out all the consequences of the illegal act and re-establish the situation which would, in all probability, have existed if that act had not been committed.”<sup>327</sup> The CEDAW Committee has specifically emphasised that “without reparation, the obligation to provide an appropriate remedy is not discharged. Such remedies should include different forms of reparation, such as monetary compensation, restitution, rehabilitation and reinstatement; [...] and bringing to justice the perpetrators of violations of human rights of women.”<sup>328</sup>
- 9.7 International law recognises five forms of reparation, which include a broad range of measures aimed at repairing the harm caused to survivors and victims: restitution, compensation, rehabilitation, satisfaction and guarantees of non-

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<sup>324</sup> See UN CESCR, General Comment 9: The domestic application of the Covenant, UN Doc E/C.12/1998/24 (3 December 1998)

<sup>325</sup> UN CESCR GC 19

<sup>326</sup> Principle 11, United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law UN Doc A/RES/60/147 (21 March 2006).

<sup>327</sup> *Chorzow Factory (Germany v. Poland)*, 1928 P.C.I.J. (ser. A) No. 17 ¶ 125

<sup>328</sup> Committee on the Elimination of Discrimination Against Women General Comment 28: on the Core Obligations of States Parties under Article 2, CEDAW/C/GC/28 ¶ 32 (16 December 2010)

repetition.<sup>329</sup> An especially relevant means of reparation in circumstances where a State system has enabled discrimination against a particular set of people is the guarantee of non-repetition. Within the context of effective remedy and the right to health, the UN CESCR has made clear that “any person or group” should have access to “effective judicial and other appropriate remedies” and victims “should be entitled to adequate reparation, which may take the form of restitution, compensation, satisfaction or guarantees of non-repetition.”<sup>330</sup>

### **Regional Human Rights Law**

- 9.8 The African Commission has affirmed that a right to remedy “can be generated implicitly and automatically” through a combined reading of Articles 1 and 7 of the African Charter.<sup>331</sup>
- 9.9 The Maputo Women’s Rights Protocol entrenches a free-standing right to an effective remedy by requiring State parties to “provide for appropriate remedies to any woman whose rights or freedoms, as herein recognized, have been violated.”<sup>332</sup>
- 9.10 An effective remedy is one that is appropriate in correcting the particular violation. An effective remedy would ensure mechanisms are put in place that create an environment of non-repetition of discrimination and human rights violations, in this case ensuring the informal workers can exercise their human rights. The Inter-American Court of Human Rights has stressed that remedies must be “suitable to attack the violation” and effectively enforced by competent authorities.”<sup>333</sup>
- 9.11 Under international and regional human rights law, all individuals whose rights have been violated have the right to an effective and holistic remedy. Workers in the informal economy are unable to access remedies under current law to protect the rights to association, non-discrimination and equality and safe, satisfactory and healthy working conditions.

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<sup>329</sup> Human Rights Committee, General Comment 31: Nature of the general legal obligation imposed on states parties to the covenant, CCPR/C/21/Rev.1/Add.13 ¶ 16 (26 May 2004)

<sup>330</sup> Committee on Economic, Social and Cultural Rights, General Comment 14: Right to the Highest Attainable Standard of Health (Art.12), E/C.12/2000/4 ¶ 59 (11 August 2000)

<sup>331</sup> African Commission, Groupe de Travail sur les Dossiers Judiciaires Stratégiques v Democratic Republic of Congo, Communication 259/2002 ¶ 78 (24 July 2013)

<sup>332</sup> Maputo Women’s Rights Protocol article 25(a)

<sup>333</sup> Inter-American Court of Human Rights, Usón Ramírez v Venezuela, Judgment of November 20, 2009, Preliminary Objections, Merits, Reparations and Costs ¶ 129.

## **CONCLUSION**

- 10.1 Workers in the informal economy do not enjoy the same rights protections as other workers under Uganda's current labour laws. The State's primary labour legislation, which gives effect to the rights to freedom of association, collective bargaining, and satisfactory, safe and healthy working conditions, does not extend to these workers. This exclusion from labour protections amounts to discrimination against marginalized workers who are concentrated in the informal economy. The exclusion is inconsistent with the Ugandan Constitution and with many international and regional treaties to which Uganda is a party. International human rights law, international labour law, and African regional human rights law clearly provide that all workers, including workers in the informal economy, should enjoy equal protection of their rights. Failure to extend these rights under law further constitutes a failure to afford the right to effective remedy under international and regional human rights law.
- 10.2 International law imposes a duty on States to protect the rights of all people and all workers. Courts and government entities around the world have accordingly taken steps to protect workers in the informal economy through favourable decisions and inclusive labour legislation. The government of Uganda has a variety of legal and policy mechanisms at its disposal to similarly protect workers in the informal economy.
- 10.3 Based on the above, the amici respectfully invite this honourable Court to:
- 10.4 Recognize and enforce the State duty to guarantee the rights to freedom of association and to organizing and collective bargaining to workers in the informal economy, in line with the Ugandan Constitution and treaty obligations elaborated herein above.
- 10.5 Recognize and enforce the State duty to eliminate guarantee equal protection of law and non-discrimination to all workers. The State has an obligation to address exclusions throughout labour and employment law that discriminate against workers in the informal economy, and disproportionately impact the marginalized workers most likely to be in the informal economy, in line with the Ugandan Constitution and treaty obligations.
- 10.6 Recognize and enforce the State duty to guarantee just and equitable conditions of work for workers in the informal economy, in line with the Ugandan Constitution and treaty obligations.
- 10.7 Recognize and enforce Uganda's State duty to ensure access to remedy for violations of the rights of workers in the informal economy, including the rights

to freedom of association, equality and non-discrimination and safe, satisfactory and healthy working conditions; in line with the Ugandan Constitution and treaty obligations.

- 10.8 The **1995 Uganda Constitution** in **Article 20(2)** spells out the duty of all government agencies, organs and persons in Uganda to respect, uphold and promote fundamental human rights and freedoms. This rhymes with international and regional human rights law, which imposes obligations that States are bound to respect. By becoming a party to international and regional treaties, Uganda assumes obligations and duties to respect, protect and fulfil human rights. Uganda has committed to put into place domestic measures and legislation compatible with their treaty obligations and duties.
- 10.9 *Amici* respectfully submit this brief in the hope that it will aid the Court in its deliberations.

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