

**THE REPUBLIC OF UGANDA
IN THE CONSTITUTIONAL COURT OF UGANDA
MISCELLANEOUS APPLICATION NO.....OF 2023
ARISING OUT OF CONSTITUTIONAL PETITION NO. 25 OF 2022**

**IN THE MATTER OF AN APPLICATION FOR LEAVE TO INTERVENE AS
AMICUS CURIAE BY THE APPLICANTS HEREIN ARISING FROM
CONSTITUTIONAL PETITION NO. 25 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 considering Constitutional Petition No. 25 of 2022. The Petitioners allege that the Respondents are responsible for violating the rights of street vendors through: the evictions of street vendors from the streets of Kampala City in January 2022 without any viable alternative for their economic survival or well-being; the seizure of their private property without restitution; the discriminatory impact these actions had on street vendors; and the violent and degrading manner in which the evictions and arrests were carried out. The Main Petition seeks to prohibit the recurrent judicial harassment of street vendors and ensure they can exercise their constitutional rights.
- 1.2 This Draft Amicus Brief presents the Honourable Court with a summary of relevant regional human rights law, international human rights law and international labour law with respect to the rights to work, to property, to non-discrimination, to personal security and freedom from arbitrary deprivations of liberty, and to dignity. Uganda has ratified or acceded to numerous regional and international treaties that enshrine State obligations with respect to these rights. The brief also summarizes comparative jurisprudence from national courts considering similar government actions.
- 1.3 The *amici* are concerned that the case at hand involves potential violations of the human rights of street vendors in Uganda and that the outcome of the case will constrict the livelihoods of these workers, deepening the poverty and inequality that they face.
- 1.4 The *amici* respectfully request that this Court consider the arguments and authorities in this brief to determine whether the actions of State authorities complained of by the Petitioners contravened regional human rights law, international human rights law, and international labour law.

IDENTITY AND INTEREST OF AMICI CURIAE

- 2.1 The Applicants, listed in the **Application for Leave to Intervene as Amicus Curiae by the Applicants Herein Arising from Constitutional Petition No. 25 of 2022**, respectfully submit this brief to aid the Court in its deliberations and to promote social justice and the rule of law. *Amici* are national, regional and international non-governmental organizations and individuals with expertise in regional human rights law, international human rights law, and international labour law. They work to promote respect for international law and

the strengthening of national and international justice systems to this end. The *amici* are versed in the economic realities of street vendors and of other workers in the informal economy and have analyzed the applicability of international human rights law and international labour law to the situation of informal economy workers in diverse contexts.

- 2.2 As in **Prof J. Oloka-Onyango & 8 others v Amama Mbabazi and 3 Others**;¹ **Initiative for Social Economic Rights (ISER) v Auma Lucy and 2 Others**;² **Foundation for Human Rights Initiative & 7 Others v Amama Mbabazi and 3 Others**;³ **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**,⁴ the applicants are interested in “the promotion of human rights, good governance and fidelity to the law,”⁵ and seek to offer insight into novel legal concepts.
- 2.3 The Applicants respectfully request that this Court consider the information in this brief to determine whether the actions of State authorities conflict with obligations Uganda has duly and freely undertaken by virtue of becoming a party to numerous regional and international treaties.

QUESTIONS PRESENTED

- 3.1 Did the actions of the Respondents in **Constitutional Petition No. 25 of 2022; Platform for Vendors in Uganda Limited & Another versus Kampala City Council Authority & Another**, contravene regional human rights law, international human rights law, or international labour law?

SUMMARY OF ARGUMENTS

- 4.1 The actions for which petitioners seek relief in *Platform for Vendors v the Kampala Capital City Authority* violated street vendors’ right to work, to property, to non-discrimination, to personal security and freedom from arbitrary deprivations of

¹ Supreme Court of Uganda, Civil Application No. 02 of 2016

² Lira High Court, Miscellaneous Application No. 102 of 2019

³ Supreme Court of Uganda, Civil Application No. 03 of 2016

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

⁵ 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

liberty, and to dignity under the African Charter on Human and Peoples' Rights (African Charter). Uganda is a party to the Charter.

- 4.2 In instruments adopted by the African Commission on Human and Peoples' Rights (the Commission), which guide governments in implementing the Charter, the Commission indicates that governments should create enabling conditions that promote the rights and opportunities of workers in the informal sector. Here, Respondents suppressed the labour of street vendors without guaranteeing alternative means of livelihood.
- 4.3 Under the Charter, States are prohibited from depriving individuals of their property except when deprivation is in the public interest and in accordance with established law. It does not appear that the seizure and destruction of street vendors' goods was genuinely in the public interest since the actions taken were disproportionate to the publicly stated aim of decongesting the city. In addition, the Respondents arguably ran afoul of the non-discrimination provisions of the Charter, since those provisions protect individuals from unjustified treatment that disparately impacts groups based on their socio-economic status. Moreover, the fact that state officials and private citizens were permitted to harass and humiliate street vendors infringed upon their right to dignity.
- 4.4 The actions at issue in this case—including forced evictions, arbitrary arrests, physical abuse, confiscation and destruction of property—also run counter to human rights guaranteed in the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). Uganda is a party to both treaties. Specifically, unfairly depriving street vendors and other workers in the informal economy of pre-existing livelihoods amounts to a violation of the right to work and to an adequate standard of living under the ICESCR. Taking unjustified measures that result in unequal enjoyment of human rights guaranteed under international human right law by individuals of low socio-economic status constitutes discrimination. Further, failing to protect people from arbitrary physical abuse and from arbitrary deprivations of their liberty exposed the victims to violations of their rights to liberty and security of person.
- 4.5 Under international labour law, including International Labour Convention 122 on Employment Policy, States should develop policies that support full, productive and freely chosen employment. The International Labour Organization (ILO) has encouraged Member States to support workers in the informal economy through both increasing opportunities in the formal economy

and ensuring that rights and protections extend to the informal economy. Among other things, the ILO has recommended that States develop integrated policy frameworks that would increase the social protections and income security of informal workers. The ILO has also encouraged States to take measures to respect fundamental principles and rights at work and to formalize informal economy workers' rights to property and land. The Respondents' actions in this case signify a retrogression, as street vendors were evicted without developing this policy framework.

- 4.6 Finally, when faced with similar State actions in other contexts, courts in African countries have held that evictions of street vendors implicated such vendors' rights to livelihood, non-discrimination, equality under the law, property, dignity and freedom from ill-treatment.

INTRODUCTION TO DRAFT LEGAL ARGUMENTS

- 5.1 This brief summarizes how regional and international human rights treaties and international labour rights treaties ratified or acceded to by Uganda define State obligations with respect to the rights to work, to property, to non-discrimination, to personal security and freedom from arbitrary deprivation of liberty, and to dignity.

Status of International Law and Constitutional Interpretation

- 5.2 The Learned Court should be guided by developments in regional and international human rights law, particularly the many treaties to which Uganda is a party that outline Uganda's binding obligations to ensure workers in the informal economy can exercise their human rights and enjoy legal protections.
- 5.3 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**,⁶ this Honourable Court held that the intent of article 287⁷ of the Ugandan

⁶ Constitutional Petitions No 2 & 8 of 2002, [2009] UGCC 1 (5 February 2009)

⁷ 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

Constitution was to reaffirm the State's commitment to treaties in effect prior to 1995, and incorporate the obligations in such treaties into law.⁸ 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.”

5.4 In **Center for Health, Human Rights and Development and 4 Ors v Attorney General**,⁹ this Honourable Court considered the International Covenant on Economic, Social and Cultural Rights, the African Charter on Human and People's Rights, 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 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 the government of Uganda had failed in its obligation to provide adequate maternal healthcare. The Court ordered the government 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

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.”

⁸ 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.”)

⁹ Constitutional Petition No. 16 of 2011 <https://www.escri-net.org/sites/default/files/caselaw/petition-16-judgement.pdf>

health in Uganda; and submit a report detailing the progress and implementation of the above orders.

5.5 In **Uganda v Kwoyelo Thomas**,¹⁰ 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.”

5.6 In **Tinyefuza v Attorney General**¹¹ 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**”.*

5.7 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.¹²

¹⁰ Constitutional Appeal No. 1 of 2012

¹¹ Constitutional Petition No. 1 of 1996 (unreported)

¹² 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

- 5.8 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**¹³ 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**¹⁴ 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.
- 5.9 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**¹⁵ as authority for the assertion that freedom of expression was inherent in the concept of a democratic and pluralistic society.
- 5.10 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).
- 5.11 In **Francis Tumwesigye Ateenyi v Attorney General**,¹⁶ the Court summarized the principles it has adopted in interpreting the Constitution which included

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 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."

¹³ Constitutional Appeal No. 2 of 2002

¹⁴ (1986) 8 EHRR 407

¹⁵ (1976) 1 EHRR 737 ¶ 49

¹⁶ Constitutional Petition No. 36 of 2018

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.

- 5.12 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 requires that States 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 perpetrated by third parties, including private actors. The obligation to fulfil means that States must take positive action to provide, facilitate and otherwise promote the enjoyment of human rights.¹⁷

RIGHT TO WORK

- 6.1 The Respondents' actions likely violated the Petitioners' right to work under regional and international human rights law and international labour law. The African Commission on Human and Peoples' Rights has recommended that Governments create enabling conditions that promote the rights and opportunities of those working in the informal economy. The unfair suppression of the labour of informal economy workers contravenes the International Covenant on Economic, Social and Cultural Rights. Furthermore, ILO Convention Number 122 on Employment Policy obligates States to set out policies that promote full, productive and freely chosen employment. The ILO has moreover encouraged Member States to stabilize the situation of workers in the informal economy, like street vendors, by respecting their right to work and by formalizing their activities.

Regional Human Rights Law

- 6.2 Article 15 of the African Charter provides that “[e]very individual shall have the right to work under equitable and satisfactory conditions.”¹⁸ Uganda ratified the Charter in 1986.¹⁹ Although the African Commission has yet to hear a contentious case through its Complaints Procedure involving workers in the informal economy; several authoritative instruments adopted by the Commission

¹⁷ 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 (Feb. 6, 2006).

¹⁸ African Charter on Human and Peoples' Rights [hereinafter ‘African Charter’], June 27, 1981, CAB/LEG/67/3 rev. 5, 21 I.L.M. 58, art. 15.

¹⁹ African Charter, Party status as at Oct. 30, 2022, <https://www.achpr.org/ratificationtable?id=49>.

indicate that the right to work under the Charter applies to workers in the informal economy. The Commission is mandated to interpret the Charter.²⁰

- 6.3 For example, the Pretoria Declaration on Economic, Social and Cultural Rights in Africa (Pretoria Declaration), which is incorporated into Commission Resolution 73 on Economic, Social and Cultural Rights in Africa, expressly references those working in the informal economy as possessing a right to work.²¹ The Declaration, which responds to the lack of implementation of economic, social and cultural rights on the continent, calls on States to ensure the full realization of economic, social and cultural rights. By means of its incorporation into Resolution 73, the Declaration has “an authoritative value in the interpretation of economic, social and cultural rights,”²² including for understanding the right to work.
- 6.4 According to the Pretoria Declaration, States should create enabling conditions that promote the rights and opportunities of those in the informal economy.²³ Two phrases in the Declaration—“creation of enabling conditions” and “taking measures to promote the rights and opportunities of”—indicate that States must not only refrain from depriving workers in the informal economy of their freely chosen employment, but must also foster an environment conducive to promoting opportunities for those in the informal sector.
- 6.5 In addition to the Pretoria Declaration, the African Commission adopted another instrument relevant to the rights of informal workers in November 2010: The Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in the African Charter on Human and Peoples’ Rights (Principles and Guidelines).²⁴ The document, which was developed by the Commission “to assist State Parties to comply with their obligations under the African Charter,”²⁵ includes a section entitled “Right to Work (Article 15)”, in which the Commission emphasizes the significance of the right to work. In that section, the Commission explains that the right to work “is essential for the realization of other economic,

²⁰ African Charter, art. 45(3).

²¹ Pretoria Declaration on Economic, Social and Cultural Rights in Africa [hereinafter ‘Pretoria Declaration’], Dec. 7, 2004, ACHPR/Res.73(XXXVI) 04, Annex.

²² Sibonile Khoza, *Promoting Economic, Social and Cultural Rights in Africa: The African Commission Holds a Seminar in Pretoria*, 4 AFR. HUM. RIGHTS LAW J. 339 (2004).

²³ Pretoria Declaration, art. 6(6).

²⁴ 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 [hereinafter ‘Principles and Guidelines’], Oct. 24, 2011, available at https://www.achpr.org/public/Document/file/English/achpr_instr_guide_draft_esc_rights_eng.pdf.

²⁵ Principles and Guidelines at “Preamble.”

social and cultural rights” and “forms an inseparable and inherent part of human dignity.”²⁶

6.6 Moreover, the Principles and Guidelines describe the right to work as “integral to an individual’s role within society.” The instrument also recognizes equitable and decent work as “critical for both survival and human development.”²⁷ This provision illustrates why upholding the right to work for workers in the informal economy is imperative. Doing so does not simply realize a single right in the African Charter but further implicates other rights guaranteed to the workers in question, as elaborated below.

6.7 The Principles and Guidelines echo the Pretoria Declaration by indicating that States are obliged to do more than simply refrain from obstructing enjoyment of the right to work. States are also required to create an enabling environment for the full realization of the right to work, including for those who work in the informal economy.²⁸ In particular, States should not interfere with individuals’ rights to “freely and voluntarily choose what work to accept.”²⁹ States should also guarantee “conditions that ensure the realization of the dignity of the individual.”³⁰

6.8 By reducing—rather than expanding—the livelihood opportunities of street vendors, the Respondents violated the vendors’ right to work under regional human rights law. After informing the public that street vendors must vacate the streets, security officials and a youth enforcement team under the direction of the Kampala Capital City Authority (KCCA) confiscated street vendors’ kiosks and merchandise, preventing them from plying their trade.³¹ Street vendors who resisted the taking of their goods and the breakdown of their stalls faced arrest or physical intimidation.³² These actions deprived street vendors of their livelihood and their opportunity to earn a living through the only means available to them.

²⁶ Principles and Guidelines, ¶ 57.

²⁷ Principles and Guidelines, ¶ 57.

²⁸ Principles and Guidelines, ¶ 58.

²⁹ Principles and Guidelines, ¶ 58.

³⁰ Principles and Guidelines, ¶ 58.

³¹ See *Street vendors petition court over eviction from Kampala*, The Independent, March 26, 2022, <https://www.independent.co.ug/street-vendors-petition-court-over-eviction-from-kampala/>; KCCA steps up operations to evict street vendors, The Independent, January 8, 2022, <https://www.independent.co.ug/kcca-steps-up-operations-to-evict-street-vendors/#comments>.

³² See, e.g., *See Street vendors petition court over eviction from Kampala*, The Independent, March 26, 2022, <https://www.independent.co.ug/street-vendors-petition-court-over-eviction-from-kampala/>; KCCA steps up operations to evict street vendors, The Independent, January 8, 2022, <https://www.independent.co.ug/kcca-steps-up-operations-to-evict-street-vendors/#comments>.

International Human Rights Law

- 6.9 Under international human rights law, States must recognize the rights of all people under their jurisdiction to work.³³ Pursuant to the ICESCR, which Uganda acceded to in 1987,³⁴ Uganda is obligated to protect individuals' rights to make "a decent living for themselves and their families."³⁵ Further, Uganda must ensure "the continuous improvement of living conditions" for all.³⁶
- 6.10 In particular, as explained by the Committee on Economic, Social and Cultural Rights, Uganda must not unfairly deprive those in their jurisdiction of existing employment.³⁷ The Committee is an official, independent body of experts monitoring implementation of the Covenant.³⁸ As with all economic, social and cultural rights, Uganda has committed to progressively realize the right to work of all persons within its jurisdiction.³⁹ If retrogressive steps are taken, decreasing existing access to work to individuals or groups of people, Uganda has the burden of demonstrating that the steps undertaken are justified and introduced only after consideration of all alternatives.⁴⁰
- 6.11 In 2015 Concluding observations to Uganda, the Committee on Economic, Social and Cultural Rights⁴¹ specifically recommended that Uganda increase the ability of workers in the informal economy to enjoy rights, calling 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)⁴²."*
- 6.12 The Committee on Economic, Social and Cultural Rights has encouraged States to take positive actions to formalize the informal economy. In particular, the Committee has recommended that States undertake legislative and other measures to increase the protections afforded to those working in the informal

³³ International Covenant on Economic, Social and Cultural Rights [hereinafter 'ICESCR'], Dec. 16, 1966, 993 U.N.T.S. 3, A/RES/2200A (XXI), arts. 6-7.

³⁴ ICESCR, Party Status as at Oct. 18, 2022,

https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-3&chapter=4.

³⁵ ICESCR, art. 7 (a).

³⁶ ICESCR, art.11 (1).

³⁷ General Comment No. 18 ¶

³⁸ Economic and Social Council Res. 1985/17, U.N. Doc. E/RES/1985/17 (May 28, 1985).

³⁹ CESCR General Comment 18, ¶ 19.

⁴⁰ CESCR General Comment 18, ¶ 21; CESCR General Comment No. 3: The Nature of States Parties' Obligations E/1991/23 (14 December 1990) ¶ 9

⁴¹ CESCR 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

⁴² CESCR Concluding observations on the initial report of Uganda, ¶ 20.

economy. According to the Committee, such measures should “reflect the fact that people living in an informal economy do so for the most part because of the need to survive, rather than as a matter of choice.”⁴³

6.13 In General Comment 23, the Committee on Economic, Social and Cultural Rights stressed the need to realize the right to just and equitable conditions of work within the informal economy, finding that:

“Although [informal] workers account for a significant percentage of the world’s workforce, they are often excluded from national statistics and legal protection, support and safeguards, exacerbating vulnerability. While the overall objective should be to formalize work, laws and policies should explicitly extend to workers in the informal economy and States parties should take steps to gather relevant disaggregated data so as to include this category of workers in the progressive realization of the right to just and favourable conditions of work. For that purpose, the informal economy should be included in the mandate of the respective monitoring and enforcement mechanism. Women are often 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.”⁴⁴

6.14 By unfairly and unlawfully preventing street vendors and other workers in the informal economy from making a decent living and improving their living conditions, the Respondents have acted in violation of Uganda’s obligations with respect to the right to work under international human rights law. The Respondents’ actions decreased existing access to work, constituting a retrogression in rights. In addition, the government has taken retrogressive steps without considering all alternatives. The alternatives currently suggested by Respondents—including the option of the vendors obtaining vending licences and moving to official marketplaces—were unfeasible. In addition, while the Trade Licensing Act, the Local Governments (Kampala City) (Maintenance of Law and Order) Ordinance, and the Local Governments (Kampala City) Street Traders Byelaws Statutory Instrument 243-23 together regulate the activities of hawkers and vendors, this legal framework does not articulate the conditions for

⁴³ CESCR General Comment 18, ¶ 10.

⁴⁴ Committee on Economic, Social and Cultural Rights, General Comment No. 23: on the right to just and favourable conditions of work [hereinafter ‘CESCR General Comment 23’] (article 7), ¶ 47(d), E/C.12/GC/23 (Apr. 27, 2017).

obtaining licences. It also gives licensing authorities absolute discretion to reject or revoke vending licences and hawking permits at their whim.⁴⁵

6.15 Moreover, according to vendors, the suggestion by the Respondents that they relocate to official marketplaces was not practical since the marketplaces in question did not have sufficient space to accommodate displaced vendors.⁴⁶ Vendors have also raised concerns about the location of registered marketplaces, which they claim are far away from central economic areas - which are vendors' "natural markets" - thus separating vendors from their customers and depriving the vendors of the revenue that they need to survive and make a living.⁴⁷ The result is that street vendors are faced with the choice of undertaking an unpredictable process to obtain a licence, and the licence could be revoked at any time. In addition, they are expected to relocate to market locations where they would not earn a living, or otherwise be subject to abuse. This is not fair. By unfairly suppressing the existing livelihood of vendors, the Respondents infringed on the vendors' right to work guaranteed by international human rights law.

6.16 International human rights law requires States to refrain from, and protect against, forced evictions from home and land.⁴⁸ *Amici* are of the opinion that analogous obligations should be applied to forced evictions from locations necessary to maintain an individual's work and livelihood, although treaty bodies have yet to issue an opinion on this matter.

⁴⁵ See Trade Licensing Act, Sect. 16 (7) & (8), the Local Governments (Kampala City)(Maintenance of Law and Order) Ordinance 2006, Regulation 13 (2); and the Local Governments (Kampala City) Street Traders Bye Laws Statutory Instrument 243-23, Regulation 5.

Second petition (petitioners' brief), para. 8 (d).

⁴⁶ See KCCA steps up operations to evict street vendors, *The Independent*, January 8, 2022, <https://www.independent.co.ug/kcca-steps-up-operations-to-evict-street-vendors/#comments>; KCCA to crack down on street vendors, NITV News, Dec. 1, 2021, <https://www.youtube.com/watch?v=ZHLGy6eYVhU>.

⁴⁷ See, e.g., KCCA steps up operations to evict street vendors, *The Independent*, January 8, 2022, <https://www.independent.co.ug/kcca-steps-up-operations-to-evict-street-vendors/#comments>. This aforementioned interview echoes hesitations about the placement of markets expressed by other vendors in the past. See Vendor's eviction outs Kampala at a Crossroads, *Monitor*, Sept. 6, 2011, <https://www.monitor.co.ug/uganda/lifestyle/reviews-profiles/vendors-eviction-puts-kampala-at-a-crossroads-1499552>.

⁴⁸ The obligation to refrain from and protect against forced evictions arises from, *inter alia*, the Universal Declaration of Human Rights; the ICESCR(Article 11 ¶ 1); the ICCPR (Articles 17, 23 and 27); the Covenant on the Rights of the Child (Article 27 ¶ 3); the non-discrimination provisions found in Article 14 ¶ 2 (h) of the Covenant on the Elimination of All Forms of Discrimination against Women; and Article 5 (e) of the International Convention on the Elimination of All Forms of Racial Discrimination. *See also* Office of the UN High Commissioner on Human Rights, Forced evictions: Special Rapporteur on the right to adequate housing <https://www.ohchr.org/en/special-procedures/sr-housing/forced-evictions>

6.17 The Committee on Economic, Social and Cultural Rights has encouraged States to adopt legislation to prohibit forced evictions and ensure that, prior to carrying out any evictions, all feasible alternatives are explored in consultation with the affected persons.⁴⁹ When justified, evictions should be carried out in full accordance with international human law.⁵⁰ Further, States should apply several procedural protections before evicting people from their homes or from land that they occupy. In particular, States should genuinely consult with those affected.⁵¹ They should provide adequate and reasonable notice to all affected persons prior to the scheduled date of eviction, and provide legal aid to those who need it to seek redress from the courts.⁵² Further, affected persons are entitled to legal remedies, such as adequate compensation for any loss of property.⁵³

6.18 In 2007, the UN Special Rapporteur on Adequate Housing presented to the Human Rights Council a set of "Basic principles and guidelines on development-based evictions and displacement"⁵⁴ setting out in more detail international human rights standards that should be upheld in such contexts. The Special Rapporteur developed Basic Principles and Guidelines to assist States in developing policies and legislation to prevent forced evictions at the domestic level. They provide detailed guidance to States, regional and local Governments and other actors on the procedural standards that should be upheld prior to, during and after evictions. For instance, they specify required remedies for any evictions carried out, such as resettlement, rehabilitation; monitoring and follow up.⁵⁵ *Amici* are of the view that an analogous understanding of procedural rights should exist in cases where victims are forcibly removed from the spaces necessary to maintain a livelihood.

International Labour Law

6.19 In addition to the standards of the international human rights treaty system, the ILO has set out International Labour Conventions that directly address the right to work.⁵⁶

⁴⁹ CESCR General Comment 7 on the right to adequate housing (Art.11.1): forced evictions 20/05/97 (1997) <https://www.refworld.org/docid/47a70799d.html>

⁵⁰ CESCR General Comment 7, ¶14.

⁵¹ CESCR General Comment 7, ¶15.

⁵² CESCR General Comment 7, ¶15.

⁵³ CESCR General Comment 7, ¶15.

⁵⁴ UN Special Rapporteur on Adequate Housing, Basic Principles and Guidelines on Development-based Evictions and Displacement A/HRC/4/18, Annex I (2007)

⁵⁵ Basic Principles and Guidelines on Development-based Evictions and Displacement.

⁵⁶ International Labour Organization, The Regulatory Framework and the Informal Economy https://www.ilo.org/wcmsp5/groups/public/---ed_emp/---emp_policy/documents/publication/wcms_210446.pdf

- 6.20 ILO Convention 122 on Employment Policy,⁵⁷ which Uganda ratified in 1967,⁵⁸ creates an affirmative obligation on States to promote and prioritize an active policy of “full, productive and freely chosen employment.”⁵⁹ The policy must ensure that every worker may freely choose their employment and utilize their “skills and endowments” irrespective of social origin.⁶⁰ Employment policies should be developed and implemented in consultation with “the persons affected,” in particular, representatives of workers.⁶¹
- 6.21 In assessing Uganda’s compliance with Convention 122, the ILO Committee of Experts on the Application of Conventions and Recommendations (ILO CEACR),⁶² specifically stressed that Uganda should adopt measures to “extend access to justice, property rights, labour rights and business rights to informal economy workers and businesses.”⁶³ The ILO CEACR also called on Uganda to address the disproportionate number of youth and women in the informal economy.
- 6.22 The right to work is also protected in the ILO Declaration on Fundamental Principles and Rights at Work, a foundational document that “is an expression of commitment by governments, employers' and workers' organizations to uphold basic human values - values that are vital to our social and economic lives.”⁶⁴
- 6.23 Viewing the expansion of the informal economy to be a particular challenge to the full recognition of workers’ rights, the ILO also developed a recommendation on the transition from the informal to formal economy in 2015.⁶⁵

⁵⁷ International Labour Organization, Convention concerning Employment Policy [hereinafter ‘ILO Convention 22’], July 9, 1964, No. 122.

⁵⁸International Labour Convention 122, Party Status as at Oct. 23, 2022, https://www.ilo.org/dyn/normlex/en/?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:312267

⁵⁹ ILO Convention 122, art. 1.

⁶⁰ ILO Convention 122, art. 1 (a) & (c).

⁶¹ ILO Convention 122, art. 3.

⁶² 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.

⁶³ 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/?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P11110_COUNTRY_ID,P11110_COUNTRY_NAME,P11110_COMMENT_YEAR:4116341,103324,Uganda,2021

⁶⁴ International Labour Organization, Declaration on Fundamental Principles and Rights at Work, June 18, 1988, (as revised), 37. I.L.M. 1237.

⁶⁵ International Labour Organization, Recommendation concerning the Transition from the Informal to the Formal Economy [hereinafter ‘ILO Recommendation 204’], June 12, 2015, No. 204, Preamble.

Recommendation 204 is intended to guide ILO Member States to ensure that workers in the informal economy can access rights at work and social protection and can participate in social dialogue.⁶⁶ Recommendation 204 instructs Member States, including Uganda, to create an “integrated policy framework,”⁶⁷ which, among other things, entails “respect for and promotion [o]f the fundamental principles and rights at work,”⁶⁸ “the establishment of social protection floors,”⁶⁹ and the provision of “income security.”⁷⁰

- 6.24 The Respondents proceeded to evict vendors without establishing this policy framework. In the past, authorities have engaged in policy dialogues with street vendors focused on formalizing some of their activities. However, the actions at issue in this case necessarily frustrate those plans.

RIGHT TO PROPERTY

- 7.1 The destruction and seizure of goods without compensation both for the goods lost and as restitution for the harm of deprivation constitutes a violation of the right to property under regional human rights law. Under the African Charter, States are prohibited from encroaching on individuals’ right to property except in such instances where doing so is previously provided for by law and done in the public interest. In cases where the State unfairly deprives individuals of their property, restitution must be provided for the harm of deprivation, in addition to compensation provided for the property itself. Moreover, international labour standards provide that States should formalize rights to productive property and land in order to facilitate workers’ transition between informal and formal economies. This right to property is fortified by Article 26 of the Constitution of Uganda.

Regional Human Rights Law

- 7.2 Article 14 of the African Charter provides that the right to property must be guaranteed. The Article states that the right to property can only be encroached upon when doing so fulfills a public need or a general community interest.⁷¹

⁶⁶ ILO Recommendation 204, at Preamble, ¶ 1(a).

⁶⁷ ILO Recommendation 204, at ¶ 10.

⁶⁸ ILO Recommendation 204, at ¶ 11(d).

⁶⁹ ILO Recommendation 204, at ¶ 11(n).

⁷⁰ ILO Recommendation 204, at ¶ 11(r).

⁷¹ African Charter, art. 14.

Further, a State should only encroach on an individual's right to property as previously provided for by an appropriate legal framework.⁷²

- 7.3 Through its Complaints Procedure,⁷³ the African Commission has decided against States in cases where officials unjustifiably confiscated or destroyed property belonging to those in their jurisdiction.⁷⁴ It has also found that States contravene the right to property when they deprive individuals of assets that constitute a source of livelihood.⁷⁵
- 7.4 In the case of ***Zimbabwe Lawyers for Human Rights & Associated Newspapers of Zimbabwe***, for example, the Commission found that Zimbabwe violated the African Charter when it confiscated the equipment of a newspaper that refused to register with the country's Media and Information Commission.⁷⁶ The Commission found that, even if Zimbabwe sought to enforce respect for the rule of law through the seizure, it should have done so by seeking a Court Order. Failing to seek a Court Order meant that its actions were not proportional and, therefore not genuinely in the public interest.⁷⁷
- 7.5 Moreover, property does not need to be of high value in order to fall within the protection of Article 14. In ***Institute for Human Rights and Development in Africa v. Angola***, the Commission found against Angola when it seized items such as shoes, wristwatches, generators and clothing from foreigners it wished to expel.⁷⁸ In that case, the Commission held that Angola's actions violated Article 14 because the State had "failed to allow [the victims] opportunity to deal with their belongings" and had not "provided evidence to prove that its actions were necessitated either by public need or community interest."⁷⁹

⁷²African Charter, art. 14.

⁷³ Among other tasks, the Commission is mandated to "interpret all the provisions of the [C]harter at the request of a State Party, an institution of the OAU or an African Organisation recognised by the OAU." See African Human Rights Charter, art. 45 (3).

⁷⁴ Rachel Murray, "Chapter 15: Article 14: Right to Property," *THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS: A COMMENTARY* (2019).

⁷⁵ See *Zimbabwe Lawyers for Human Rights & Associated Newspapers of Zimbabwe v. Zimbabwe*, Communication 284/03, Afr. Comm'n H.P.R. (Apr. 3, 2009).

⁷⁶ *Zimbabwe Lawyers for Human Rights & Associated Newspapers of Zimbabwe v. Zimbabwe*, at ¶ 179. The registration had been required by a new law, which the newspaper was challenging as unconstitutional. *Id.*, at ¶¶ 1-6.

⁷⁷ *Zimbabwe Lawyers for Human Rights & Associated Newspapers of Zimbabwe v. Zimbabwe*, at ¶¶ 175-179.

⁷⁸ *Institute for Human Rights and Development in Africa v. Angola*, Communication 292/04, Afr. Comm'n H.P.R (May 22, 2008)

⁷⁹ *Institute for Human Rights and Development in Africa v. Angola*, at ¶¶ 71-73.

- 7.6 Finally, under regional human rights law, States are required to pay restitution to victims to remedy the harm of having their right to property violated. The restitution should be supplementary to compensation for the lost property itself.⁸⁰
- 7.7 According to the Petitioners, security officials under the direction of the KCCA confiscated, and in some cases, destroyed, street vendors' property and inventory. The actions are incompatible with Uganda's obligations under regional human rights law. Neither were they proportional to the KCCA's public interest aims. Such seizure and damage of property is not consistent with Article 14 of the African Charter.

International Labour Law

- 7.8 In assessing Uganda's compliance with ILO Convention 122 on Employment Policy, the ILO Committee of Experts of the Applications of Conventions and Recommendations has urged Uganda to extend access to property rights to informal economy workers and businesses.⁸¹ It has made similar calls to Rwanda, reflecting that policies to achieve full and productive employment and to reduce poverty should include protecting property linked to workers' livelihoods, particularly those traditionally excluded from such protections.⁸²
- 7.9 ILO Recommendation 204 specifically addresses the importance of property rights in facilitating a transition from the informal to the formal economy. According to the Recommendation, Member States of the ILO should increase informal workers' income security "by providing the means for such workers . . . to obtain recognition of their existing property as well as by providing the means to formalize property rights and access to land."⁸³ The Recommendation also suggests that States put development strategies in place that would "regulate[e] access for use of public space and regulate access to public natural resources for subsistence livelihoods."⁸⁴

⁸⁰ See John K. Modise v Botswana, Communication 284/03, Afr. Comm'n H.P.R. (Nov. 6, 2000); Zimbabwe Lawyers for Human Rights & Associated Newspapers of Zimbabwe v. Zimbabwe.

⁸¹ ILO CEACR, Observation to the government of Uganda regarding Convention 122 on Employment Policy, adopted 2021, published 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

⁸² ILO CEACR, Observation to the government of Rwanda regarding Convention 122 on Employment Policy, adopted 2021, published 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:3249143,103460,Rwanda,2015

⁸³ ILO Recommendation 204, at ¶ 13.

⁸⁴ ILO Recommendation 204, at ¶ 11(o).

7.10 This language illustrates a link between protection of property rights and security of income for informal economy workers. For street vendors in particular, access to public space is vital since this access provides a connection between consumers, who demand certain goods and services, and the vendors who supply those services and goods. When that access is insecure - including because of harassment, confiscations of goods and/or evictions - street vendors regularly lose customers, working capital and income.⁸⁵ They are also made more vulnerable to exploitation, to physical attacks and to solicitation to corruption.⁸⁶

RIGHT TO NON-DISCRIMINATION AND EQUALITY

8.1 Treating workers in the informal economy differently from other workers without a reasonable justification constitutes a violation of the rights to non-discrimination and equal protection of the law under regional and international human rights law. Under the African Charter, States are prohibited from taking actions that are unjustified and result in disparate enjoyment of human rights, including by those of low socio-economic status. Further, the State is required to ensure equal protection of the law. Similarly, under international human rights treaties, States are obliged to avoid unjustified actions that would result in disparate enjoyment of treaty-protected rights and ensure equality before the law.

Regional Human Rights Law

8.2 Article 2 of the African Charter provides that “[e]very individual [is] entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind.”⁸⁷ The African Commission has indicated that any act or omission that has “the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on equal footing, of all rights and freedoms” amounts to unreasonable, impermissible discrimination.⁸⁸ Importantly, the Commission has clarified that demonstrating an intention to discriminate is not required. Rather, situations that produce the

⁸⁵ See Sally Roever & Caroline Skinner, *Street Vendors and Cities*, 28 *Environment and Urbanization* 359, 366-368 (2016).

⁸⁶ See Roever & Skinner, *Street Vendors and Cities*, at 366-368.

⁸⁷ African Charter, art. 5.

⁸⁸ African Charter, art. 2. See *Zimbabwe Lawyers for Human Rights & Associated Newspapers of Zimbabwe v. Zimbabwe*, ¶ 91.

“effects of unjustified distinction”—otherwise known as a disparate impact—can amount to discrimination.⁸⁹

- 8.3 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.”⁹⁰ Member States violate Article 3 where they “exercise a power or judgement conferred by a law in a discriminatory manner.”⁹¹
- 8.4 In a recent advisory opinion related to the disparate impact of vagrancy laws in African countries, the African Court on Human and Peoples’ Rights, which interprets the African Charter at the request of AU Member States and others,⁹² affirmed that States should not make unreasonable distinctions in their treatment of individuals based on economic status, and instead must ensure their full equality before the law.⁹³ Economic status is not among the protected characteristics expressly mentioned in Article 2 of the African Charter.⁹⁴ However, the African Court on Human and Peoples’ Rights clarified in its opinion that being of low economic status falls within the Article’s catchall “any other status.”⁹⁵ Thus, laws that unreasonably punish individuals living in poverty and/or who are otherwise underprivileged are discriminatory in nature.⁹⁶
- 8.5 Street vendors generally occupy positions of low social status in Uganda and globally. Their means of livelihood generation is often stigmatized. This stigmatization is manifest when political leaders and the public link the activity of vending in public space to social ills like crime, disease, dirtiness, backwardness and urban congestion.⁹⁷ In many countries, the authorities

⁸⁹ See *Open Society Justice Initiative v. Côte d’Ivoire*, Communication 318/06, Afr. Comm’n H.P.R ¶ 144 (May 27, 2016).

⁹⁰ African Commission on Human and Peoples’ Rights, *Antoine Bissangou v. Republic of Congo* Communication No. 253/2002 ¶ 70 (15-29 November 2006)

⁹¹ *Antoine Bissangou v. Republic of Congo* ¶ 71

⁹² OAU, Protocol to the African Charter on the Establishment of an African Court on Human and Peoples’ Rights, OAU/LEG/EXP/AFCHPR/PROT(III) (June 10, 1998), art 4.

⁹³ See *The Compatibility of Vagrancy Laws with the African Charter on Human and Peoples’ Rights and Other Human Rights Instruments Applicable in Africa*, Advisory Opinion No. 001, African Court on Human and Peoples’ Rights (December 4, 2020) [hereinafter “Afr. Ct. H.P.R. Vagrancy Opinion”].

⁹⁴ Article 2 lists the following as protected characteristics, the basis of which governments are expressly prohibited from making distinctions: race, ethnic group, color, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or any other status.

⁹⁵ Afr. Ct. H.P.R. Vagrancy Opinion, ¶¶ 64-75.

⁹⁶ Afr. Ct. H.P.R. Vagrancy Opinion, ¶¶ 64-75

⁹⁷ Pamhidzai H. Bamhu, *Street Vendors and Legal Advocacy: Reflections from Ghana, India, Peru, South Africa and Thailand* (WIEGO Resource Document No. 14, 2019), 5, *available at*

regularly prioritize the interests of elite citizens and enterprises over the survival needs of vendors and of other workers living in poverty when setting policy priorities.⁹⁸ Moreover, law and policy frameworks operate on the assumption that vending in public is itself a nuisance. Those frameworks, which in African countries also incorporate colonial-era petty offenses regimes that were enacted to control African populations,⁹⁹ empower local authorities to sanction vendors at will, up to and including criminalizing them for pursuing their livelihood.¹⁰⁰

8.6 In its decision related to the disparate impact of vagrancy laws on the continent, the African Court further clarified that States must provide sufficient indication to individuals of what behavior is acceptable and what the law prohibits in order to avoid enabling discrimination.¹⁰¹ Conferring broad, unrestricted discretion on security officers or on other government officials inappropriately risks emboldening them to target those living in poverty and other marginalized individuals on the grounds of socio-economic status.¹⁰² This kind of treatment is not reasonably justified, and thus violates the right to non-discrimination under regional human rights law.

8.7 In its Principles on the Decriminalisation of Petty Offences in Africa¹⁰³, the African Commission recognized that

“The enforcement of petty offences has the effect of punishing, segregating, controlling and undermining the dignity of persons on the basis of their status. They also infringe upon the autonomy of persons by restricting their performance of life-sustaining activities in public spaces, particularly for those living in poverty. The enforcement of these laws perpetuates the stigmatisation of poverty by mandating a criminal-justice response to what

https://www.wiego.org/sites/default/files/publications/file/Bamhu-WIEGO-Resource_Document-14-Street-Vendors-Law-Five-Countries-2019.pdf.

⁹⁸ Krithika Dinesh et al., Re-examining Legal Narratives on Vagrancy, Public Spaces and Colonial Constructs: A Commentary on the ACHPR’s Advisory Opinion on Vagrancy Laws in Africa (WIEGO Law and Informality Insights No. 4, 2021), 2, available at

https://www.wiego.org/sites/default/files/publications/file/WIEGO_LawNewsletter_August%202021.pdf.

⁹⁹ See, e.g., Roever & Skinner, *Street Vendors and Cities*, at 364 (recounting colonial-era anti-informality approaches in Zimbabwe); Bahmu, *Street Vendors and Legal Advocacy*, at 5 (recalling how governments in Southern Africa used strict anti-nuisance and licensing regimes to regulate movement and control black labour); *Mayeso Gwanda v The State* 2017 MWHC 23 (Malawi), ¶ 2 (connecting petty offenses provisions in the Malawian Penal Code to the English Vagrancy Act of 1824) ; Anneke Meerkotter, *Litigating to Protect the Rights of Poor and Marginalized Groups in Urban Spaces*, 74 U. MIAMI L. REV. CAVEAT 1, 4-7(2020)(indicating that petty offense laws from Britain, France and Portugal were incorporated into the legal systems of their colonies, often verbatim).

¹⁰⁰ Dinesh et al., Re-examining Legal Narratives on Vagrancy, Public Spaces and Colonial Constructs, at 7-9. Afr. Ct. H.P.R. Vagrancy Opinion, ¶¶ 58-60.

¹⁰¹ Afr. Ct. H.P.R. Vagrancy Opinion, ¶ 71.

¹⁰² Afr. Ct. H.P.R. Vagrancy Opinion, ¶¶ 71-75.

¹⁰³ African Commission on Human and Peoples’ Rights, Principles on the Decriminalisation of Petty Offences in Africa (Oct 25, 2018) available at <https://achpr.au.int/index.php/en/node/846>

*are socio-economic and sustainable development issues. In this regard, petty offences reinforce discriminatory attitudes against marginalised persons.”*¹⁰⁴

8.8 In this case, the legal framework itself provides authorities broad discretion to treat street vendors and hawkers differently from other workers. Street vendors and hawkers are required to apply for permits and licences in order to avoid displacement and confiscation of their property. However, the legal framework that sets out the procedures to obtain such documents does not spell out the prerequisites for being granted permits and licences. Further, provisions in those frameworks expressly enable licensing authorities to reject applications or revoke licences and permits at will.¹⁰⁵ Such a legal regime lacks rationality and thus contravenes regional human rights law.

International Human Rights Law

8.9 Similar to regional human rights law, under international human rights law, all individuals are entitled to equal treatment, regardless of their social status. According to the Committee on Economic, Social and Cultural Rights, States that are party to the ICESCR are prohibited from making any distinction, exclusion, restriction, preference or other differential treatment that “has the intention or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of Covenant rights.”¹⁰⁶ States that are party to the International Covenant on Civil and Political Rights (ICCPR) must ensure non-discrimination and equal protection of the law.¹⁰⁷

8.10 As with regional human rights law, under international human rights law, State actions that have an unequal impact on certain groups of individuals can still be discriminatory, even if the actions appear universal on their face.¹⁰⁸

8.11 While economic status is not expressly listed as a prohibited grounds in the ICESCR, the Committee on Economic, Social and Cultural Rights has recognized

¹⁰⁴ Principles on the Decriminalisation of Petty Offences in Africa, Principle 7

¹⁰⁵ See Trade Licensing Act, Sect. 16 (7) & (8), the Local Governments (Kampala City)(Maintenance of Law and Order) Ordinance 2006, Regulation 13 (2); and the Local Governments (Kampala City) Street Traders Bye Laws Statutory Instrument 243-23, Regulation 5. Second petition (petitioners’ brief), para. 8 (d).

¹⁰⁶ Committee on Economic, Social and Cultural Rights, General Comment No. 20: Non-discrimination in economic, social and cultural rights [hereinafter ‘CESCR General Comment 20’] (article 2, para. 2), ¶ 7, E/C.12/GC/20 (July 2, 2009).

¹⁰⁷ International Covenant on Civil and Political Rights [hereinafter ‘ICCPR’] art. 9, Dec. 16, 1966, 999 U.N.T.S. 171 ICCPR, arts. 2, 3, 26.

¹⁰⁸ CESCR General Comment 20, ¶¶ 8-10.

that distinctions based on individuals' economic status can lead to prohibited discrimination. In particular, in General Comment 20, which provides an authoritative interpretation of non-discrimination under the Covenant, the Committee suggests that economic and social status can lead to "pervasive discrimination, stigmatization and negative stereotyping."¹⁰⁹ Those negative behaviors then result in a denial of public services or access to public places in violation of the Covenant.¹¹⁰

8.12 Here, the eviction operations are discriminatory in nature. The KCCA directives distinctly affected street vendors, who are informal economy workers of limited economic means and lower social standing. The Petitioners allege that individuals living in poverty who make a living through street vending faced beatings, arrests and destruction of property because of the eviction operation while other workers did not face such punishments.

8.13 The Respondents did not take measures that affected all workers in the same way. Rather, the actions of government officials had disparate effects and increased the stigmatization of vendors. Further, the Respondent's actions prevented street vendors from equal enjoyment of their rights to work, property, personal liberty, security and dignity. As such, their actions likely infringed on the rights of the street vendors to non-discrimination and equal protection of the law.

RIGHTS TO PERSONAL SECURITY AND FREEDOM FROM ARBITRARY DEPRIVATIONS OF LIBERTY

9.1 The fact that security officials and private citizens arbitrarily arrested and physically abused street vendors violated the vendors' rights to personal security, liberty and freedom from arbitrary detention. Under international human rights law, States are prohibited from depriving individuals of their liberty except in such cases where the deprivation is lawful, reasonable, foreseeable, necessary and proportional. In addition, being subjected to violence and physical harm infringes on the right to personal security.

¹⁰⁹ CESCR, General Comment 20, ¶ 35.

¹¹⁰ CESCR, General Comment 20, ¶ 35.

International Human Rights Law.

- 9.2 The ICCPR provides that everyone is entitled to be free from arbitrary arrests or detention.¹¹¹ The Human Rights Committee, the body of independent experts tasked with monitoring compliance with the ICCPR,¹¹² has stated that freedom from arbitrary detention includes freedom from confinement or restriction of one's body.¹¹³ Any deprivation of liberty should be on the basis of pre-established law and should be reasonable, foreseeable, necessary, and proportionate to the aim sought.¹¹⁴ States that are party to the ICCPR are required to give persons deprived of liberty a rationale for their arrest or detention. That arrest or detention must also be subject to timely judicial review.¹¹⁵ Under international human rights law, individuals who are subject to unlawful arrests or detentions are entitled to compensation.¹¹⁶
- 9.3 As a separate but related right, the ICCPR provides that all individuals have a right to liberty and to maintain the security of their person.¹¹⁷ Accordingly, States that are party to the Covenant are obligated to take reasonable measures to protect those in their jurisdiction from physical harm or injury.¹¹⁸ Further, States are required to prevent cruel, inhuman or degrading treatment or punishment.¹¹⁹
- 9.4 According to media reports published at the time of the events in question, security officials and youth under their supervision subjected street vendors to intimidation, manhandling and other physical abuse.¹²⁰ In addition, vendors were placed under arrest when they resisted such actions.¹²¹ The fact that state officials conducted and enabled unreasonable detentions likely violated the vendors' right to be free from arbitrary deprivations of liberty. It also failed to respect vendors' right to personal security.

¹¹¹ ICCPR, art. 9.

¹¹² ICCPR, Part IV.

¹¹³ Human Rights Committee, General Comment No. 35 [hereinafter 'Hum. Rts. Comm. General Comment 35': Liberty and Security of Person (article 9), ¶¶ 3, 9, 12, CCPR/C/GC/35 (Dec. 16, 2014).

¹¹⁴ ICCPR, art. 9 (1); Hum. Rts. Comm. General Comment 35, ¶¶ 11, 12.

¹¹⁵ ICCPR, art. 9 (2) – (5).

¹¹⁶ ICCPR, art. 9 (5).

¹¹⁷ ICCPR, art. 9 (1).

¹¹⁸ Hum. Rts. Comm. General Comment 35, ¶¶ 3, 9.

¹¹⁹ ICCPR, art. 7.

¹²⁰ See, e.g., *Street vendors petition court over eviction from Kampala*, The Independent, March 26, 2022, <https://www.independent.co.ug/street-vendors-petition-court-over-eviction-from-kampala/>; KCCA steps up operations to evict street vendors, The Independent, January 8, 2022, <https://www.independent.co.ug/kcca-steps-up-operations-to-evict-street-vendors/#comments>.

¹²¹ KCCA steps up operations to evict street vendors, The Independent, January 8, 2022, <https://www.independent.co.ug/kcca-steps-up-operations-to-evict-street-vendors/#comments>.

RIGHT TO DIGNITY

10.1 The fact that the State subjected street vendors to humiliating and harassing treatment likely violated their right to human dignity under regional human rights law.

Regional Human Rights Law

10.2 Article 5 of the African Charter requires States to protect the dignity of all humans. It provides that every individual has a right to “the dignity inherent in a human being and to the recognition of [their] legal status.”¹²² There are three categories of actions that the African Court has classified as violations of the right to dignity: actions that amount to cruel, inhuman or degrading treatment; actions that lead to personal suffering and indignity; and actions that reflect physical and mental abuse.¹²³

10.3 In its opinion addressing the harm of overly broad vagrancy laws, for example, the African Court concluded that summarily forcing individuals to relocate based on broad, demeaning classifications was enough to violate Article 5 of the Charter. The Court made this conclusion after reasoning that laws which label individuals as vagrants, vagabonds or other such characterizations “denigrate the dignity of a human being.”¹²⁴ It also held that the vagrancy laws “deprive the underprivileged and the marginalized of their dignity by unlawfully interfering with their efforts to maintain or build a decent life.”¹²⁵ As such, vagrancy laws that are prevalent on the continent violate Article 5 of the Charter.

10.4 Law enforcement officials and youth under their command forcefully removed vendors from the streets.¹²⁶ This use of unjustified force is a violation of the right to dignity. Further, summarily removing street vendors from the spaces where they sought a decent livelihood infringed on their dignity and was thus not compatible with Article 5 of the African Human Rights Charter. Moreover, city

¹²² African Charter, art. 5.

¹²³ Afr. Ct. H.P.R. Vagrancy Opinion, ¶ 77.

¹²⁴ Afr. Ct. H.P.R. Vagrancy Opinion, ¶ 81.

¹²⁵ Afr. Ct. H.P.R. Vagrancy Opinion, ¶ 80.

¹²⁶ KCCA steps up operations to evict street vendors, The Independent, January 8, 2022, <https://www.independent.co.ug/kcca-steps-up-operations-to-evict-street-vendors/#comments>.

officials spoke scornfully of street vendors in media interviews and scapegoated them for challenges associated with the smooth running of the city.¹²⁷

COMPARATIVE CASES FROM OTHER JURISDICTIONS

- 11.1 The above legal analysis is supported by the decisions of courts in South Africa and Malawi that have held that unjustified arrests and evictions of street vendors violate the rights to dignity, to equal protection under the law and freedom from ill-treatment. Further, confiscation and destruction of vendors' wares have also been held to violate the right to property, the right to work, the right to non-discrimination and the right to access courts.
- 11.2 In the 2015 case of **Makwickana v eThekweni Municipality and Others**, a street trader from Durban challenged the legal framework that permitted local authorities to seize or destroy the goods of traders whom the authorities suspected were unlicensed.¹²⁸ The High Court of South Africa found in the trader's favour. It ruled that empowering law enforcement officers to make even initial determinations as to traders' property without guidance from a judicial officer or tribunal contravened the constitutional right to access courts.¹²⁹ It also stated that impounding or destroying the goods of informal traders in order to compel them to obtain licences was not rational and proportional, and thus violated the right to property under the South African Constitution.¹³⁰ When seizures resulted in the permanent destruction of property, this further infringed on the right of traders to work.¹³¹
- 11.3 Finally, the Court relied on expert analysis of the social deprivations faced by informal traders to conclude that they were a historically disadvantaged class in South Africa on the basis of socio-economic status. The Court further recognized intersecting discrimination based on race and poverty due to the disparate impact on indigenous black Africans and those living in poverty. The Court concluded that the law's effect was "to discriminate directly and indirectly against poor and mainly African people"¹³². The Court found that limitations of

¹²⁷ See KCCA to crack down on street vendors, NITV News, Dec. 1, 2021, <https://www.youtube.com/watch?v=ZHLGy6eYVhU>.

¹²⁸ *Makwickana v Ethekewini Municipality and Others* 2015 (3) SA 165 (KZD) (S. Afr.).

¹²⁹ *Makwickana v Ethekewini Municipality and Others*, ¶¶ 77-91.

¹³⁰ *Makwickana v Ethekewini Municipality and Others*, ¶¶ 92-94.

¹³¹ *Makwickana v Ethekewini Municipality and Others*, ¶¶ 100-102.

¹³² *Makwickana v Ethekewini Municipality and Others*, ¶ 124.

the right to property and the right to trade “compounds the prejudice upon a race and socio-economic group already adversely impacted by poverty.”¹³³

- 11.4 In South Africa in 2013, local authorities removed both licensed and unlicensed street vendors from the streets of Johannesburg and confiscated their goods as part of “Operation Clean Sweep.”¹³⁴ The municipality undertook these removals while undergoing negotiations with licensed traders about verifying their status.¹³⁵ In response to petitions brought by the South African Informal Traders Forum and the South African National Traders Retail Association, the South African Constitutional Court deemed Operation Clean Sweep unconstitutional. It concluded that the State’s goals of ensuring order, cleanliness and crime prevention were not in dispute. However, failing to distinguish between licensed and unlicensed traders and depriving the traders of the opportunity to earn a living in the interim period subjected them to “humiliation and degradation,” and thus violated their right to dignity.¹³⁶
- 11.5 A 2014 case brought in South Africa by refugees from Ethiopia and Somalia also involved considerations of the right to dignity. In that case, the South African Supreme Court of Appeal ruled that denying foreigners the opportunity to obtain vending licences in the first place infringed upon their dignity because it prevented foreigners from earning any living whatsoever and left them desperate and destitute.¹³⁷
- 11.6 In the case of **Mayeso Gwanda v The State**¹³⁸, decided in 2015, 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 dignity, equality before the law, and freedom from ill treatment. Human dignity, as emphasised by the High Court, is the foundation of other rights.¹³⁹ It has an intrinsic connection to the right to equality before the law and the right to be free from discrimination. The Court examined elements of the rights in question under international human rights law and comparative constitutional law. Following this examination, it concluded that enforcement of laws which lead to

¹³³ *Makwickana v Ethekwini Municipality and Others*, ¶ 128

¹³⁴ *South African Traders Forum and Others v. City of Johannesburg and Others* 2014 (6) BCLR 726 (CC) ¶¶ 6-11 (S. Afr.).

¹³⁵ *South African Traders Forum and Others v. City of Johannesburg and Others*, ¶¶ 8-10.

¹³⁶ *South African Traders Forum and Others v. City of Johannesburg and Others*, ¶¶ 29-34 (S. Afr.).

¹³⁷ *Somali Association of South Africa and Others v Limpopo Department of Economic Development Environment and Tourism and Others* 2015 (1) SA 151 (SCA) (S. Afr.).

¹³⁸ *Mayeso Gwanda v The State* 2017 MWHC 23 (Malawi)

<https://malawilii.org/akn/mw/judgment/mwhc/2017/23/eng@2017-01-10>

¹³⁹ *Mayeso Gwanda v The State* p. 7

the profiling of individuals are not constitutional. In the course of enforcing those laws, governments enable the targeting of marginalized groups without needing to show cause.¹⁴⁰

11.7 The right to human dignity has been used by Courts to engage the historical and social contexts that enables and justifies the exclusion and mistreatment of vulnerable groups. The Constitutional Court of South Africa held that the right to dignity in the South African Constitution aims ‘to repair indignity, to renounce humiliation and degradation, and to vest full moral citizenship to those who were denied it in the past. Unsurprisingly because not only is dignity one of the foundational values of our democratic state, it is also one of the entrenched fundamental rights.¹⁴¹’ In assessing the right of domestic workers to access workers’ compensation, the Constitutional Court examined the historical, gendered and racial nature of exclusions and connected it with the need to realize the dignity and worth of all persons.¹⁴²

11.8 In **Kathumba & Ors. v President of Malawi & Ors.**, the High Court of Malawi found that State measures enacted without due regard to the right to life and livelihood are not constitutional.¹⁴³ The Court struck down COVID-19 regulations that did not provide adequate measures to address human rights. The Court held that, in order to comply with the State’s 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 social security, healthcare, and access to food, among other things, particularly to the indigent.¹⁴⁴

CONCLUSION

12.1 The actions of the Respondents violated rights protected by regional and international human rights treaties and international labour rights treaties by which Uganda is bound as a State Party. Likewise, regional human rights law, international human rights law, and international labour law together provide rationales for the development of laws and policies that would protect rather than constrict the livelihoods of street vendors and hawkers in the course of

¹⁴⁰ *Mayeso Gwanda v The State*.

¹⁴¹ *Freedom of Religion South Africa v Minister of Justice and Constitutional Development* [2019] ZACC 34 ¶ 45

¹⁴² *Mahlangu and Another v Minister of Labour and Others* [2020] ZACC 24 ¶ 111 – 113

¹⁴³ *Kathumba & Ors. v President of Malawi & Ors.* (Constitutional Reference 1 of 2020) [2020] MWHC 29 (3 September 2020) ¶ 8.5

¹⁴⁴ *Kathumba & Ors. v President of Malawi & Ors.* ¶ 10.2.2

fulfilling the government's urban development goals. The Applicants respectfully submit this Brief in the hope that it assists the Court in a full deliberation on the rights in question.

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Jointly drawn and **SUBMITTED** by the **APPLICANTS** this day of
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