THE REPUBLIC OF UGANDA

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

MISCELLANEOUS CAUSE NO. _____ OF 2022

1. **INITIATIVE FOR SOCIAL AND ECONOMIC RIGHTS (ISER) LTD**
2. **THE UNWANTED WITNESS (U) LIMITED**
3. **THE WOMEN'S PROBONO INITIATIVE (U) LIMITED**
4. **HEALTH EQUITY AND POLICY INITIATIVE LIMITED**

:::::::::::::::::: APPLICANTS

VERSUS

1. **THE ATTORNEY GENERAL**
2. **NATIONAL IDENTIFICATION REGISTRATION AUTHORITY (NIRA)**

::::::::::::::: RESPONDENTS

AFFIDAVIT IN SUPPORT

I, **Dr. Thomas Fisher,** do solemnly swear or (affirm) as hereunder;

1. THAT I am an adult British Citizen of sound mind, a Senior Research Officer with Privacy International, 62 Britton Street, London, EC1M 5UY, United Kingdom, a holder of a PhD from the Centre of African Studies at the University of Edinburgh and I swear this affidavit in that capacity.

2. THAT Privacy International ("PI") was established in 1990 as non-profit, non-governmental organisation based in London although its work is global.

3. THAT I have worked at PI since 2016 and led PI's work on identity systems, working with an interdisciplinary team of lawyers, technologists, and communication specialists at PI, with exclusion being a central theme of our work. I have conducted research into identity systems in Latin America, Asia and Africa.

4. THAT PI works at the intersection of modern technologies and rights. It exposes harms and abuses, mobilises allies globally, campaigns with the public for solutions, and pressures companies and governments to change.

5. THAT PI believes that privacy is essential to the protection of autonomy and human dignity, serving as the foundation upon which other human rights are built.

6. THAT within its range of activities, PI investigates how peoples' personal data is generated and exploited, and how it can be protected through legal and technological frameworks.

7. THAT PI has worked on issues relating to identification systems since its foundation, playing a notable and influential role in scrutinising the proposed ID system in the UK

from 2002 until 2010 – which was ultimately scrapped after the government spent over £257 million and issued 15,000 cards. **(See Alan Travis, "ID cards scheme to be scrapped within 100 days", The Guardian, 27 May 2010. Available at: https://www.theguardian.com/politics/2010/may/27/theresa-may-scrapping-id-cards).**

8. THAT PI has taken its work on ID systems to the global stage. Among other work, PI has co-developed a global litigation guide for ID systems in partnership with the Harvard Law School's International Human Rights Clinic. In all of its work, Privacy International draws from the expertise of partner civil society organisations around the globe in Africa, Latin America, Europe and Asia.

9. THAT as a result, PI is at the centre of a global network critically engaging with identity systems, and is a source of research, educational resources, and analysis. On numerous occasions PI has been called as an expert on identity and digital identity issues by the UK government, and entities such as the Council of Europe's Committee of Convention 108, the United Nations Office of the High Commissioner for Human Rights (OHCHR) as well as the United Nations Special Rapporteurs on extreme poverty and human rights and on the promotion and protection of human rights and fundamental freedoms while countering terrorism.

10. THAT in April 2019, I submitted an expert affidavit on behalf of PI relating to Petition No. 56 of 2019 as consolidated with Petitions 58 & 59 of 2019 on the validity of the implementation of the National Integrated Identity Management System (NIIMS) in Kenya. My expertise was noted and recognised by the High Court of Kenya on several matters in its final judgment issued on 30 January 2020 (see ***Nubian Rights Forum & Others v. The Hon. Attorney General***, Consolidated Petitions No. 56, 58 and 59 of 2019 [hereafter "**Huduma Namba judgment**"], para. 876.)

11. THAT I have supported the research conducted by our partner organisations around the globe.

12. THAT I am a member of the Privacy and Consumer Advisory Group (PCAG), advising the UK government on how to provide users with inclusive, trusted and secure means of accessing public services. (see https://www.gov.uk/government/groups/privacy-and-consumer-advisory-group)

13. THAT I am also a member of the Privacy and Inclusion Advisory Forum (PIAF), advising the UK government on their development of a new single sign-on for accessing government services and how this can be inclusive across society.

14. THAT my expert evidence addresses some of the issues surrounding ID and exclusion, and how the UN, World Bank and other institutions recognise the risks of exclusion and discrimination from these systems.

15. THAT I will also explain the risks surrounding the use of biometrics in these systems and give examples from around the globe to illustrate risks surrounding the introduction of ID systems as well as to identify measures to mitigate these risks.

ID, Exclusion, and Discrimination

16. THAT despite the discourse that often surrounds these systems as being 'inclusive', the challenge of the systems is that they lead to deeper exclusion of those who do not have access to these systems **(see Hanmer, L. and Daham, M., 'Identification for Development: Its Potential for Empowering Women and Girls', World Bank, 9 November 2015. Available at: https://blogs.worldbank.org/voices/identification-development-its-potential-empowering women-and-girls; Pokharel, N. and Niroula, S., How a Legal Identity Leads to a Better Life, Open Society Foundations, Voices, 22 January 2015. Available at: https://www.opensocietyfoundations.org/voices/how-legal-identity-leads-better-life).**

17. THAT exclusion and discrimination have been a crucial theme that has emerged from my own research and investigation into ID systems, namely people not being able to access services that they are entitled to access (either by the state or private providers) because of either lacking the required ID documents or otherwise not being able to use them.

18. THAT a state can have a legitimate interest in ascertaining or verifying the identity of an individual. However, it does not follow from this that the state should require the possession of a singular form of ID document in order to meet that requirement; as this makes exclusion due to non-possession of a particular document arbitrary and unfair.

19. THAT when considering any use of a National ID system, it is important to understand the difference uses to which an identity system can be put. An ID system can be used to identify someone: that is, to answer the question, "who is this?". An example of this use would be when the police stop an individual and are looking to find out the person's identity. This is distinct from the use of an ID system to verify an identity; that is, to answer the question, "is this person who they claim to be?". An example of this would be a person applying for social security, when they make a claim that they are a particular person and this claim needs to be verified through evidence.

20. THAT these two uses of ID are distinct, and are important to appreciate the differences between these. Any questions surrounding national ID must be seen in this context, and the different uses to which ID can be put.

21. THAT the Secretary General of the United Nations has drawn attention in particular to the risks of exclusion in his report on the role of new technologies for the realisation of economic, social and cultural rights:

> "One major concern linked to comprehensive digital identification systems is that these systems can themselves be sources of exclusion, contrary to their purpose. Costly or difficult registration requirements, for example, may prevent poor and disadvantaged populations from fully participating in an identity system. Women in some regions face legal or customary barriers to obtaining official identification. A lack of Internet connectivity, needed for online authentication, also can contribute to exclusion. Older persons and members of some occupational groups performing mostly manual labour may have difficulties providing fingerprints that are clear enough for the purposes of the identify systems. Services that require authentication at the point of delivery create problems for older persons or persons with disabilities who may not be able to travel. Difficulties also arise when the name and gender in

identity documentation are not properly reflected in the identity system, exposing people with non-binary gender identity to particular risks. Lastly, exclusion can also result from a particular group being given identity documents that are different from those of others." **(Exhibit TF1, Available from https://www.ohchr.org/sites/default/files/HRBodies/HRC/RegularSessions/Session43/Documents/A_HRC_43_29.pdf para 33)**

22. THAT the Secretary General of the United Nations concluded: "not being able to prove one's identity can severely inhibit, and even effectively block, access to essential services, including housing, social security, banking, health care and telecommunications **(Available from https://www.ohchr.org/sites/default/files/HRBodies/HRC/RegularSessions/Session43/Documents/A_HRC_43_29.pdf para 30)**

23. THAT while judicial consideration of the differentiated impacts of ID-related exclusion on specific communities is incipient, the fact that they exist has already been recognised.

24. THAT in Kenya, the High Court identified that there may be a segment of the population who ran the risk of exclusion, highlighting "a need for a clear regulatory framework that addresses the possibility of exclusion in NIIMS. Such a framework will need to regulate the manner in which those without access to identity documents or with poor biometrics will be enrolled in NIIMS". **(see *Huduma Namba Judgment*, para. 1012)**

25. THAT when ID is made a requirement to access public services, it becomes relevant to the fulfilment of a State's obligations in relation to economic, social and cultural rights under the International Covenant for Economic, Social and Cultural Rights (ICESCR). When a State Party to the ICESCR such as Uganda takes action which furthers or impedes access to social protection and, as applicable, healthcare, the right to social security and the right to health (Articles 9 and 12 respectively) are engaged. Each of these rights has multiple dimensions which, among others, encompass notions of availability and accessibility. These, in turn, require States to ensure that the rights are effectively respected, protected and fulfilled. **(Committee on Economic, Social and Cultural Rights, General Comment No. 14: The Right to the Highest Attainable Standard of Health, para.12. Available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2f2000%2f4&Lang=en)**

26. THAT the potential for ID systems to have exclusionary effect has been highlighted by the UN Secretary General. In a report addressed to the Human Rights Council, he noted that "not being able to prove one's identity can severely inhibit, and even effectively block, access to essential services, including housing, social security, banking, health care and telecommunications". **(available at https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session43/Documents/A_HRC_43_29.pdf)**

27. THAT where specific groups cannot effectively access ID systems, concerns of discrimination may arise.

28. THAT the ICESCR, in its Article 2, imposes an obligation on State parties to guarantee the rights contained therein "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".

29. THAT the ICESCR does not explicitly mention age-based discrimination against the elderly. However, it is understood by the UN Committee on Economic and Social Rights (CESCR) that this not a deliberate omission in its General Comment on non-discrimination, the CESCR explicitly identified "age" as one of the relevant protected characteristics to be read into Article 2.

30. THAT further, in each of its General Comments addressing the right to social security and the right to health, the CESCR has explicitly identified older persons as a key group with particular needs and challenges, and whose enjoyment of rights warrants a specific approach.

Recognition of the risks of exclusion due to ID in the humanitarian and development community

31. THAT a key driver of digital identity systems has been that they would lead to empowerment and inclusion including social and financial inclusion. But whilst motivated by aspirations for inclusivity and openness, the way digital identity systems have been designed and implemented result in different forms of discrimination and exclusion. This has been also acknowledged by leading proponents of digital identity systems.

32. THAT the document "Principles on Identification for Sustainable Development: Toward the Digital Age" is a set of principles about the development and deployment of ID endorsed by over 20 organisations including the African Development Bank, ID4Africa, the UNHCR, UNDP, United Nations Economic Commission for Africa, and the World Bank Group. The document has recently been revised by these endorsing organisations, from which it can be surmised that it is indicative of the current state of the art thinking amongst the international development and humanitarian community.**(Exhibit TF9, Available at https://documents1.worldbank.org/curated/en/213581486378184357/pdf/Principles-on-Identification-for-Sustainable-Development-Toward-the-Digital-Age.pdf)**

33. THAT the document notes in its preamble, "Vulnerable and marginalized groups are often the least likely to have proof of their identity, but also the most in need of the protection and services linked to identification. People who are unable to obtain or easily use identification are therefore at greater risk of being left behind when strict identification requirements must be met to access services."

34. THAT the Principles also include the Inclusion by Design Principle: "Identification systems should prioritize the needs and address the concerns of marginalized and vulnerable groups who are most at risk of being excluded and who are the most in need of the protections and benefits identification can provide. This requires working with communities to proactively identify legal, procedural, social, and economic barriers faced by particular groups, risks and impacts specific to these groups, and adopting appropriate technologies and mitigation measures to ensure that new or updated identification systems do not reinforce or deepen existing inequalities."

35. THAT it is therefore clear that there is a recognition across the international human rights, development and humanitarian communities that identification systems come with the risk of exclusion.

36. THAT the risks and issues surrounding identity systems were a key concern in the UN Special Rapporteur (UNSR) on Extreme Poverty and Human Rights 2019 report on the digital welfare state. In his report, the UNSR highlighted some key issues associated with identity verification systems including "political backlash to concerns over privacy, security and cybersecurity" as well as equality, non-discrimination and public participation. **(Available at https://www.ohchr.org/en/documents/thematic-reports/digital-welfare-states-and-human-rights-report-special-rapporteur**).

Individuals and communities at risk of exclusion

37. THAT it has been well-documented that there are individuals and communities who are at a higher risk of being excluded. A report by the UN Secretary General highlighted groups commonly vulnerable to exclusion from ID systems, noting the legal and practical obstacles for the poor and disadvantaged, women, older persons, members of some occupational groups, people with disabilities, and people whose name and gender were not properly reflected in the ID system. **(See UN Secretary General, *The role of new technologies for the realization of economic, social and cultural rights*, para. 33.)**

38. THAT furthermore, courts in various jurisdictions including in Jamaica, Kenya and India have explored in their judgements on how identity systems can lead to discrimination between different groups of persons, particularly in the absence of a strong legal framework, they may also disproportionately impact the rights of marginalised and vulnerable people, compounding and multiplying factors of exclusion and they can lead to the perpetuation of pre-existing inequalities and injustices. **(available at https://privacyinternational.org/report/4159/guide-litigating-identity-systems-impact-identity-systems-rights-other-privacy)**

39. THAT the World Bank's major ID4D-Findex survey of 2017 revealed that, The World Bank's major ID4D-Findex survey of 2017 revealed that, in low income countries those in lower income quartiles are less likely to have an ID. Specifically, 43% of the poorest 20% do not have an ID, as opposed to the 25% of the richest 20%. **(Exhibit TF4, available at https://documents1.worldbank.org/curated/en/ 953621531854471275/pdf/Global-ID-Coverage-Barriers-and-Use-by-the-Numbers-Insights-from-the-ID4D-Findex-Survey.pdf).**

40. Women are particularly affected, with 44% of women in low income countries lacking an ID, as opposed to 28% of men. The World Bank argues that the unequal access to identification limits women's economic opportunities. (**available at https://blogs.worldbank.org/ developmenttalk/importance-womens-equal-access-identification-times-global-crisis)**

41. These systems also affect migrant populations. The way ID systems are deployed around the word means that migrant populations may not be able to register for such documentation and therefore be excluded from accessing the services tied to the provision of this particular form of identity. **(available at https://anthempress.com/legal-identity-race-and-belonging-in-the-dominican-republic-hb; https://privacyinternational.org/long-read/2544/exclusion-and-identity-life-without-id)**

Exclusion of those with ID

42. THAT the issue of exclusion, when it comes to ID, is not only an issue of whether an individual is able to get the necessary ID card or not: an individual can have an ID card but still suffer from exclusion. This could be, for example, when an ID document has inaccurate information, and it is not easily corrected by the individual concerned.

43. THAT an example of groups that may have access to ID documents, but can face major obstacles in making use of these documents, is intersex, non-binary and transgender persons. PI conducted research on trans people, i.e. people who do not identify with the gender marker they were assigned at birth in 2021. As this research on trans people in the Philippines, Argentina and France reveals, this is a group that faces particular issues because their ID documents do not reflect how they present their gender identity. As a result of this, they face difficulties accessing social services, in particular healthcare. **(See exhibit TF7, available at https://privacyinternational.org/long-read/4372/my-id-my-identity-impact-id-systems-transgender-people-argentina-france-and**

Biometrics and Exclusion

44. THAT biometrics is the "measurement of unique and distinctive physical, biological and behavioural characteristics used to confirm the identity of individuals". **(see** Privacy International (2013) *Biometrics: Friend or Foe of Privacy?"* **available at https://privacyinternational.org/sites/default/files/2017-11/Biometrics_Friend_or_foe.pdf, page 5)**

45. THAT modalities can include fingerprints, iris, facial photographs, vein patters, etc. Key features of the physical body are extracted and stored as an electronic template, that is then stored – usually in either a centralised database, or in a smartcard. This template can be used to authenticate the identity of an individual – this is a 1-1 match of the individual against the stored template, to answer the question, "Is this x?" Biometrics can also be used to identify an individual – this is a 1-many match, to answer the question "Who is this?"

46. THAT the issues surrounding biometrics that have been identified as raising serious human rights concerns. In 2018, the United Nations High Commissioner for Human Rights issued a Report on the right to privacy in the digital age which highlights significant human rights concerns with the creation of mass databases of biometric data:

> "Such data is particularly sensitive, as it is by definition inseparably linked to a particular person and that person's life, and has the potential to be gravely abused. For example, identity theft on the basis of biometrics is extremely difficult to remedy and may seriously affect an individual's rights. Moreover, biometric data may be used for different purposes from those for which it was collected, including the unlawful tracking and monitoring of individuals. Given those risks, particular attention should be paid to questions of necessity and proportionality in the collection of biometric data. Against that background, it is worrisome that some States are embarking on vast biometric data-base projects without having adequate legal and procedural safeguards in place." **(Available at https://undocs.org/A/HRC/39/29)**

Biometrics and identity systems

47. THAT identity systems rely on the collection and storage of biometric data for a variety of purposes. They can be used during the registration process for 'dedpuplication', i.e. the attempt to make sure that all the people registered are unique. The data gathered during system registration, to be compared with biometric data collected at the point of a given transaction requiring identity system verification. **(available at https://privacyinternational.org/long-read/3067/have-biometric-id-system-coming-your-way-key-questions-ask-and-arguments-make)**

48. THAT the risks of discrimination and exclusion associated with the use of biometric digital identity systems have been highlighted by courts in various jurisdiction. For example, as recognised by the Kenyan High Court in relation to the potential changing of biometrics over time and authentication failures or the dissenting judgement of the Indian Supreme Court referring to error rates in biometric systems being particularly high for the young, the aged, disabled persons, as well as persons suffering from health problems.

49. THAT another challenge is that biometrics can potentially be used to identify an individual for their entire lifetime. This means that caution has to be shown in the face of changing regimes or political contexts, and also the changes in technology. The technology surrounding biometrics is continually evolving, which places new pressures and risks on biometric systems. For example, it is possible to clone a fingerprint from a photograph, using commercially-available software. **(Available from https://www.bbc.co.uk/news/technology-30623611)**

50. THAT the use of a centralised database for biometrics compounds concerns as noted in the report of the UN High Commissioner for Human Rights quoted in **paragraph 42 above**. In considering the fundamental rights implications of storing biometric data in identity documents and residents cards, the European Union Agency for Fundamental Rights ("FRA") found: "The creation of national dactyloscopic [fingerprint biometric] databases of all identity and residence cards holders would constitute a grave interference with the right to respect for private and family life (Article 7 of the Charter [European Union Charter of Fundamental Rights]) and with the right to protection of personal data (Article 8 of the Charter)." **(See *Fundamental rights implications of storing biometric data in identity documents and residence cards:* page 14. Available from https://fra.europa.eu/sites/default/files/fra_uploads/fra-2018-opinion-biometric-data-id-cards- 03-2018_en.pdf).**

51. THAT the FRA also found: "The establishment of a central national database would also increase the risk of abuse for using the data for other purposes than those originally intended. Due to its scale and the sensitive nature of the data which would be stored, the consequences of any data breach could seriously harm a potentially very large number of individuals. If such information ever falls into the wrong hands, the database could become a dangerous tool against fundamental rights." **(See European Union Agency for Fundamental Rights (2018) *Fundamental rights implications of storing biometric data in identity documents and residence cards:* page 14. Available from https://fra.europa.eu/sites/default/files/fra_uploads/fra-2018-opinion-biometric-data-id-cards- 03-2018_en.pdf).**

52. THAT these broader human rights concerns, beyond the issues surrounding exclusion, are important to consider when understanding the issues surrounding biometrics and exclusion. The concerns and fears of individuals towards these systems are genuine.

53. THAT an issue is that biometrics are essentially probabilistic. Other means of authenticating the individual are deterministic: for example, when a PIN is entered, there is either a match with the stored PIN or there is not. However, biometrics are different. As the UK's National Cyber Security Centre puts it, "[…] no two captures of biometric data will produce truly 'identical' results. So, a biometric system must make an estimation as to whether two biometric samples come from the same individual." Thus, a biometric system is not making a definitive decision on whether an individual is who he or she claims to be, but rather a probabilistic one. This means that some are going to be excluded from what they are entitled to, or falsely accepted as somebody they are not, as a result.

Biometric failures

54. THAT one of the most common forms of biometrics are fingerprints, but this raises issues. As the Secretary General noted above, "Older persons and members of some occupational groups performing mostly manual labour may have difficulties providing fingerprints that are clear enough for the purposes of the identify systems." (**see paragraph 19 above).**

55. THAT as adults age, the quality of the fingerprint declines. Research for the European Commission found that, after the age of 70, "The quality degradation of the fingerprints for this part of the population is quite significant." Fingerprint quality declines linearly from the ages of 65-90. Similarly, manual labourers can have worn fingerprints. **(See European Commission (2016)** ***Evaluation of the implementation of Regulation (EC) No 767/2008 of the European Parliament and Council:*** **page 105. Available from: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52016SC0328&from=EN%20page%20207)**

56. THAT in the book *When Biometrics Fail,* there are many examples presented of people unable to make use of biometrics because of disabilities, age, or other causes of biometric failure. The author concludes: "these technologies do not operate with the mechanical objectivity claimed for them."

57. THAT the recognition of these risks has prompted calls for the regulation of the use of biometric identity systems such as those issued by the UN Human Rights Council which has called upon States "to take appropriate measures to ensure that digital or biometric identity programmes are designed, implemented and operated with appropriate legal and technical safeguards in place and in full compliance with human rights law".

Concerns specific to the healthcare setting

58. THAT in guidance provided by the United Nations Development Program (UNDP) on the use of digital technologies in the healthcare setting, they note: "For people without an officially recognized legal identity (ID) document, accessing basic services, including HIV and health service, can be a major barrier." In particular, the risk of exclusion is present for groups that are already marginalised. *"they also pose the risk of excluding already marginalized populations, such as people living with HIV and key populations in criminalized settings, if proper safeguards are not in place to mitigate these risks."*

(Exhibit TF 10 Available from https://www.undp.org/sites/g/files/zskgke326/files/2021-07/UNDP-Guidance-on-the-rights-based-and-ethical-use-of-digital-technologies-in-HIV-and-health-programmes-2-EN.pdf).

Exposing individual and groups

59. THAT a notion of the long-term benefits of digital ID often brings in an idea of "visibility", and whilst some see 'visibility' as an unquestioned good, the benefits must be contextualised and the harms and dangers of being 'visible' must be recognised. In the case of access to healthcare, the use of biometrics to authenticate the identities of people in the healthcare system can bring about its own exclusions. According to the UNDP, "The use of biometrics, however, can pose significant rights-related risks, since it facilitates the identification of individuals, potentially exposing them to rights violations, especially when individuals belong to stigmatized, marginalized or criminalized groups." (Available from **https://www.undp.org/sites/g/files/zskgke326/files/2021-07/UNDP-Guidance-on-the-rights-based-and-ethical-use-of-digital-technologies-in-HIV-and-health-programmes-2-EN.pdf**)

60. THAT in Kenya in 2015-2017, the health authorities - alongside the Global Fund to Fight AIDS, TB and Malaria, and with the support of UNAIDS - planned to conduct a study of those with HIV and key populations. This study made use of biometrics in this research. However, the presence of the biometrics for this study prompted an outcry from people with HIV and key population. The concern was multifaceted: firstly, there was a fear of function creep, i.e. that the biometric data collected from this study would be used for other purposes, such as by the police to facilitate arrests. Secondly, there was a fear that data breaches could expose stigmatising information. In the face of protests and objections from the affected population, the planned use of biometrics was dropped. (Available from **https://www.kelinkenya.org/wp-content/uploads/2018/07/"Everyone-said-no".pdf**)

61. THAT when health care provision is linked to a biometric system, it raises the fear of stigmatisation and discrimination, particularly for those who have stigmatising conditions. There have been press reports that people in India with HIV/AIDS have not sought treatment because of the fear of linking this treatment to their Aadhaar card.

62. THAT these examples demonstrate that it is essential that the use identification systems, including biometric data, in healthcare be treated with the appropriate caution.

Global examples of ID systems

63. THAT in examining examples of ID systems around the world, particular consideration should be given to the very different contexts in which they exist. The nature of the ID systems, rates of birth registration, and in particular what other forms of ID other than a national ID might be available to people, vary greatly.

64. THAT the following selected examples show that exclusion is a persistent area of concern with the deployment of ID systems around the world, with people having difficulty accessing essential government services due to not having the required identity documents.

Argentina

65. THAT research in Argentina by Chudnovsky and Peeters into the Argentina's National Identity Document (Documento Nacional de Identidad, or "DNI") reveals the challenges and administrative burdens in place for many in obtaining this essential ID document. These are classed as learning costs (a lack of information, or misinformation, about the application procedure); psychological costs (for example, issues of shame and inadequacy around working with bureaucrats); and compliance costs (the costs of time and money, for example, in travelling to get the necessary documents). **(Exhibit TF2, Available from https://journals.sagepub.com/doi/abs/10.1177/0020852320984541)**

66. THAT exclusion from the DNI creates, in the words of Chudnovsky and Peeters, a "cascade of exclusion", as the exclusion from the ID system also leads to exclusion from social security and benefits. In particular, they highlight the case of the Universal Child Allowance (Asignacion Universal por Hijo (AUH)), a payment given to people who are not in formal employment and have a child under 18 resident in Argentina, for which both the eligible parent and child are required to hold a DNI. In this case, exclusion from the national ID scheme also involves exclusion from social protection.

Chile

67. THAT exclusion can impact individuals who are entitled to but not able to get an identification card or number. PI conducted research in Chile, where a single identity number is used for a very broad range of purposes in the public and private spheres. It is required to access state health care, to sign some contracts, and is used as a 'loyalty card' in some shops. PI conducted research, in particular with migrants who were entitled to but not able to get a card, often – as they saw it – because of the pressure that the bureaucracy was under. The research found that as a result these individuals experienced difficulties in accessing state healthcare, change jobs, move house, or even getting married. (See "Privacy International (2018) Exclusion and identity: Life without ID (**Exhibit TF3, available from: https://privacyinternational.org/feature/2544/exclusion-and-identity-life-without-id**)

Pakistan

68. THAT in Pakistan, the national ID – the Computerised National Identity Card (CNIC) – was held, in 2017, by 96 million out of a population of 210 million citizens. Holding a CNIC is a requirement to access Pakistan's largest social security scheme, the Benazir Income Support Programme (BISP). One of the largest social security schemes in the world, this provides cash transfers to around 4.7 million households in Pakistan. Alongside the eligibility criteria, receiving these funds requires a Computerised National Identity Card (CNIC), Pakistan's national ID card. **(Available from https://www.opml.co.uk/files/Publications/A2241-maintains/making-bisp-shock-responsive-14062021.pdf?noredirect=1 page 10)**

69. THAT the challenges of instituting ID as a compulsory requirement to receive benefits were highlighted in research conducted for the UK's Department for International

Development. The researchers found: "Possession of a CNIC is required to verify IDs and is essential. It is, however, also an access barrier to the most vulnerable who are more likely not to have a CNIC". Particularly when considering the use of BISP in the case of responses to shock or disaster relief, the research found: "CNIC possession is likely to remain a core eligibility criterion to access any type of disaster relief but, at least at the moment, this criterion is likely to exclude those who need support the most…The biggest hurdle to rapidly accessing relief is the CNIC."

Republic of Ireland

70. THAT in the Republic of Ireland, the Public Services Card (PSC) is a biometric identity document that is needed for people to claim social benefits in Ireland.

71. THAT in June 2020, the Special Rapporteur on Extreme Poverty and Human Rights wrote to the Irish government about the PSC. He argued that "I am concerned that this unwieldy process, spread out over more than two decades, and of the lack of flexibility and consultation that has been one of its hallmarks, is that low income individuals and otherwise marginalised communities, must now contend with formidable barriers to accessing their human right to social protection in Ireland." **(Exhibit TF8, Available from https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=25176)**

Examples where risk of exclusion mitigated

72. THAT rather than accepting only a national ID card as proof of identity, a broader range of documentary evidence can be accepted, including other forms of state-issued ID, non-state ID from educational institutions, and letters and other documentation from central and local government, educational institutions, and the private sector. Crucially, a system of vouching is often a key way of reaching those who lack these documents, in which another trusted individual can vouch for the identity of someone that they know.

United Kingdom

73. THAT the United Kingdom does not have a single National Identity Card or similar system. There was an attempt by government to introduce such a system in the mid-2000s, but in 2010 the biometric database was deleted and the project scrapped. In order to facilitate people accessing services online (a requirement for social protection), the government took a federated approach to identity, under the name Verify. Verify is underpinned by a set of Identity Assurance Principles. **(Exhibit TF11).**

74. THAT while not having a national ID card, the UK has two main forms of government-issued photo ID, the passport and the driving licence. However, it is clear that these alone are not sufficient to allow everybody to prove their identity. The 2011 census revealed that 17% of the population of England and Wales did not have either a UK or a non-UK passport. Another possible form of identification is the driving license. According to the National Travel Survey, in 2020 80% of the population aged above 17 in England had a

full driving licence. But within that there is a range: for example, 92% of men aged 50-59 have a full driving licence, whereas only 68% of women aged over 70 have the document.

75. THAT therefore relying only on these two forms of ID would exclude a significant number of people. An approach was taken that would allow a wider variety of ways in which people can assure their identity.

76. THAT crucial concept here is Levels of Assurance. This is the degree of confidence that the person is who they claim to be. Depending on what service the individual is looking to access, the required Level of Assurance can vary. To meet the required level of assurance of the individual's identity claim, the individual submits two or more pieces of identity evidence. The types of documents that constitute identity evidence is very broad. A full list is available in Appendix A of GPG 45. This is a broad range of potential pieces of identity evidence, from a variety of sources including local and national government, financial organisations, utility providers, and educational institutions. **(Exhibit TF5)**.

77. THAT the Verify system is to be replaced with two current government initiatives: a trust framework for businesses looking to verify identities, and a Single-Sign on for Government to verify the identity of those accessing government services. While still under development, I have been consulted on the developments in my role in PCAG and PIAF, and those building the systems are certainly avoiding the development of any centralised database and maintain the same ethos of inclusivity as present under Verify.

Canada

78. THAT another example of alternative forms of ID being accepted in interactions with the government comes from Canada.

79. THAT in Canadian federal elections, voters at the polling station have to prove their identity and address. This can be through a government-issued ID document containing the voter's name, address and photograph; or through two additional methods. First, the voter can provide two pieces of evidence from a long list of sources than include various proofs of identity government, private sector, financial sector, utilities and educational institutions. Many of these do not have a photograph, but must include the voters' name. Finally, a vouching system is in place, where another person who knows the voter can vouch in writing for their identity. **(See exhibit TF6)**

80. THAT I now attach and mark the following documents that I refer to and rely on in my foregoing expert evidence:

TF1: Secretary General of the United Nations, *Question of the realization of economic, social and cultural rights in all countries: the role of new technologies for the realization of economic, social and cultural rights,*Feb-Mar 2020
TF2: Chudnovsky, M and Peeters, R *A cascade of exclusion: administrative burdens and access to citizenship in the case of Argentina's National Identity Document* 2021
TF3: Privacy International *Exclusion and identity: life without ID* 2018
TF4: ID4D, *Global ID Coverage, Barriers, and Use by the Numbers: Insights from the ID4D-Findex Survey*

TF5: GDS, *Good Practice Guide 45: Identity Proofing and Verification of an Individual* 2017
TF6: Elections Canada *ID to Vote*
TF7: Privacy International, *My ID, my identity? The impact of ID systems on transgender people in Argentina, France and the Philippines* 2021
TF8: The Special Rapporteur on extreme poverty and human rights, *Report on the Digital Welfare State,* 2019
TF9: World Bank, *Principles on Identification for Sustainable Development* 2021
TF10: UNDP, *Guidance on the rights-based and ethical use of digital technologies in HIV and health programmes,* 2021
TF11: Whitley, E. *Trusted digital identity provision: GOV.UK Verify's federated approach* 2018

81. THAT I make this affidavit truthfully to provide the foregoing expert evidence in relation to the Petition by the Initiative for Social and Economic Rights and Unwanted Witness, and for no other or improper purpose.

82. THAT whatever I have stated herein is true to the best of my knowledge and belief.

SWORN at _____ this _____ day of _____ 2022.

by the said **Dr. Thomas Fisher**

_____

DEPONENT

BEFORE ME

_____

A NOTARY PUBLIC