



LEGAL ANALYSIS

UGANDA'S NATIONAL ID LEGISLATION & its compliance with International Human Rights obligations



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Abstract

The aim of this legal opinion is to analyze a recent legal measure adopted by the government of Uganda whose main purpose was to harmonize and consolidate the law on registrations of persons and to provide for a registration of individuals, in terms of its compliance with the international human rights obligations acquired by Uganda. This paper will revise the legal dispositions of both the Registrations of Persons Act and the Statutory Instruments - by means of which the Act is implemented – and determine if they fulfill the international standards set forth in the International Covenant for Economic, Social and Cultural Rights and other international treaties. In addition, this legal research will present a formal proposal to the government of Uganda, specifically to the Parliament and the National Identification & Registration Authority, which looks to amend a set of sections of the aforementioned legislation, in order to assure that the national digital ID system (*Ndaga Muntu*) becomes a free and inclusive mechanisms for all Ugandan population.

In order to do so, this paper will implement the following structure: (i) the first chapter will start by giving a general contextualization of the national digital ID system in Uganda and will also include a brief summary of the previous research studies that have been carried out on this subject; (ii) the second chapter will continue by giving a general overview of the main criticisms originated in the law governing the *Ndaga Muntu*; (iii) the third chapter will provide a legal analysis on the legislation regulating the *Ndaga Muntu* and its compliance with the international human rights obligations on economic, social and cultural rights and the right to privacy and data protection and (v) the fourth and final chapter will present a proposal to amend the legislation to guarantee that all people living in Uganda can access, in an inclusive, safety and easy way, the national digital ID system.

Summary

The efforts taken by the Government of Uganda to improve the identification and registration of all people living in the country not only have not brought the expected results¹, but have also exacerbated the inequalities of the vulnerable and marginalized groups. Moreover, these efforts have also negatively impacted the privacy of individuals and the way their personal information is being protected.

After carefully analyzing the Registrations of Persons Act, 2015 Act 4 of 2015 (the “Act”) and the Registration of Persons Regulations, 2015 No.67 (the “Statutory Instruments”) and both (the “Secondary Legislation”), one may resolve by realizing that these regulations do not fulfill the international obligations enshrined in the International Covenant for Economic, Social and Cultural Rights (the “Covenant”) and other international treaties. Indeed, with respect to economic, social and cultural rights, both the Act and the Statutory Instruments fail to comply the obligations set forth in Article 2 of the Covenant, and subsequently, also contravened the obligations stated in Article 3, 4, 6, 7, 8, 9, 10, 12 and 13 of the Covenant. This ultimate conclusion was reached after applying the Rapporteur on Extreme Poverty and Human Rights - Philip Alston’s - three-dimension standard of Recognition, Institutionalization and Accountability (RIA)².

First of all, with respect to the dimension of Recognition, although the Constitution of the Republic of Uganda (“the constitution”) recognizes the economic, social and cultural rights of all Ugandans, it is neither extended to non-nationals nor reflected in the Secondary Legislation. Furthermore, the national digital ID system (the “*Ndaga Muntu*” or the “ID system”) established excessive and discriminatory prerequisites and conditionalities such as mandating the access to social and economic services to the registration in the *Ndaga Muntu* requiring in person attendance and obligating applicants to pay onerous fees and fines as seen in Section 5(k) and S. 66 of the Registration of Persons Act. Since the Secondary

1 See the Acceptance Speech of The Executive Director of the National Identification & Registration Authority, where she recognizes that there is a remaining challenge to fully register citizens and issuing ID's to registered persons and registering aliens. available in the following link: <https://www.nira.go.ug/about-nira/edz-message/acceptance-speech-of-the-executive-director>

2. <https://www.ohchr.org/EN/Issues/Poverty/Pages/RIA-ESR-Report.aspx>

Legislation fails to justify, satisfactorily and consistently with the Covenant, the differential treatment towards the most vulnerable people, it fails to comply with both Article 2 and 4 of the Covenant whose aim is to protect the inherent dignity of the equal and inalienable rights of all members of the human family to promote freedom, justice and peace in the world and ensure that rights under the Covenant will be exercised without discrimination of any kind as to race.....and other status yet the mandatory requirement of an ID does not uphold this spirit.

Second, regarding the Institutionalization dimension, both the actions of the Minister of Internal Affairs (the “Minister”) and the National Identification & Registration Authority (the “NIRA” or the “Authority”) lead to further exclusion and poor administration when implementing the *Ndaga Muntu*. The lack of institutional and financial independence of the NIRA, the absence of inclusive standards in the structure, budget and operation of the NIRA and the failure to issue the guidelines set forth in the Statutory Instruments are the main reasons why the Ugandan national institutions fail to accomplish human rights obligations.

In third place, as for the Accountability dimension, the Secondary Legislation fails to provide accountable and transparent mechanisms to protect economic, social and cultural rights. On one hand, the *Ndaga Muntu* fails to provide an accessible, affordable, timely and effective remedy to address serious human rights violations. For that matter, the identification and registration committee referred in the Act and the Statutory Instruments has not been created, 6 years after legal adoption. On the other hand, the NIRA is neither an independent institution – administratively and financially – nor an entity that applies transparent, accountable and good governance policies. Moreover, since the *Ndaga Muntu* legal framework fails to provide transparent procedures when collecting and making use of sensitive data. In the absence of open and transparent reports, it is impossible for civil society to scrutinize and monitor any information – sharing between NIRA and other government entities³. Eventually, there is a need for international accountability to require governments to ensure the dully realization of human rights.

3 <https://chimpreports.com/nira-grants-fia-access-to-citizens-data-to-reinforce-fight-against-financial-crimes/>

The *Ndaga Muntu* not only fails to recognize economic, social and cultural rights, but also fails to fulfill the obligations to respect, protect and guarantee civil and political rights, mainly the right to privacy. Aside from applying the RIA's approach to the ID system, this legal opinion also studies the failure of the Secondary Legislation to comply with the international human rights obligations disposed in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the African Declaration on Internet and Freedoms with regards to the right to privacy. The legal framework governing the *Ndaga Muntu* not only lacks the stipulation of legal measures, safeguards or guidelines on data protection and security of information, but also does not provide any monitoring and transparent mechanisms for persons to track, control and consent to the use and sharing of their personal and sensitive data.

The aim of this research is to provide a legal opinion and proposal on the *Ndaga Muntu* and not to delve into the contextual background of the Ugandan situation with respect to human rights. Nonetheless, since the majority of the observations made in this legal opinion have a socio-economic cause, it is imperative that this document be read in conjunction with previous research reports made by

Normative contextualization and research on the Ndaga Muntu

different academic institutions and NGO's which have deeply looked into these particularities. The following chapter will give the reader a briefly summary of these reports, as well as an explanation of why this legal research.

1. Research on the *Ndaga Muntu*

The *Ndaga Muntu* has been subject of substantial national, international and academic pronunciations. Last June 2021, the Digital Welfare State and the Human Rights Project at the Center for Human Rights and Global Justice (CHR&GJ), jointly with Unwanted Witness and the Initiative for Social and Economic Rights (ISER), consolidated and updated most of these comments into one single document. The document *"Chased Away and Left to Die: How a National Security Approach to Uganda's National Digital ID Has Led to Wholesale Exclusion of Women and Older Persons"* presented evidence collected in a period of 7(seven) months that explained how the *Ndaga Muntu* has failed on its promise to promote social inclusion⁴. Additionally, Unwanted Witness made a previous research⁵ exercise which attempted to review systematic documents in order to evaluate what needs to be done by the NIRA in order to put human rights at the forefront of the ID system.

The document elaborated jointly with the CHR&GJ, Unwanted Witness and ISER reached the evidence based conclusion that Uganda's national digital ID system, the *Ndaga Muntu*, has never brought social inclusion. For instance, as it is highlighted in the report, the results are the worst possible; *"Ndaga Muntu has led to mass exclusion, shutting out as many as one third of Uganda's adult population, and has become a barrier for women and older persons, as well as many other marginalized individuals, to access their human rights."*⁶ Furthermore, these NGOs also note that the ID system has failed to achieve its instrumental purpose and has soaked up

4. CHR&GJ, ISER, Unwanted Witness. "Chased Away and Left to Die: How a National Security Approach to Uganda's National Digital ID Has Led to Wholesale Exclusion of Women and Older Persons." June 8, 2021, page 8

5. Uganda's Digital ID system: a cocktail of Discrimination. <https://www.unwantedwitness.org/download/uploads/UgandaE280995-Digital-ID-System.pdf>

6. Id

a budget that could have been used to improve the welfare of all people. Lastly, within the principal barriers on the ID system identified in the report there were: the *Ndaga Muntu* being conceived as a national security “weapon”; *Ndaga Muntu* leading to severe and wholesale exclusion as opposed to its idea of inclusion; the struggles and failures of the NIRA; the failed digitalization of the *Ndaga Muntu* and the costs versus the benefits of the ID system.⁷

This research concludes by listing some recommendations to the government of Uganda, NIRA and the international community. Here are a few of these recommendations: the *Ndaga Muntu* should no longer be required to access social rights; the implementation of alternative forms of identification; the NIRA should be subject to structural reform; the establishment of accountability mechanisms and call international organizations to encourage the government of Uganda to prevent further exclusion⁸.

Additional research has been made on this respect. For instance, Unwanted Witness also launched an important research whose standpoint was to prove that for identity systems to become more efficient and informed, they must put human rights first⁹¹⁰. Unwanted Witness discovered that the ID system is particularly inefficient; NIRA has received 29.3 million applications, representing 68% of the Ugandan population, however, there is a group of 3.1 million of cards being printed but not issued. Lastly, the report concludes recommending, among other things, that the *Ndaga Muntu* support illiterate people, reduce the formalities required for registration in the ID system including a minimum data collection, establish alternative identification documents, engage in a multi-stakeholder consultation and provide transparency mechanisms.¹¹

7. See the report previously cited to take an in-depth look into the aforementioned barriers

8. Id. 2 at pages 74, 75, 76 and 77.

9. Unwanted Witness. “Uganda’s digital identification systems and processes in a protected crisis: What can be done,” page 2.

10. Id

11. Id. at page 3.

2. Why this analysis?

According to government of Uganda, an ID system was introduced as a national security system whose purpose is to fight against terrorism and illegal employment, to creating an inclusive and humanitarian identification system that assures all citizens and non-nationals access to social and basic services without major exclusion or discrimination.

Unfortunately, the system has not meant this promise but instead exacerbating already existing exclusions. Given the growing evidence of exclusion, accessing services/rights does not have to depend on having a single proof of Identification.

The Secondary Legislation that rules the *Ndaga Muntu*

The Act, on one hand, harmonized the legal framework regulating the registrations of persons, created the *Ndaga Muntu* and established the NIRA, among other things¹². The Statutory Instruments, on the other hand, set forth the additional regulations necessary to carry out the purposes and provisions of the Act. Among these regulations there are: the requirements and procedure of registering, correcting and updating the information into the ID system; the steps to carry out for and after registration and the issuance of the national/alien identification card, among other dispositions¹³.

The normative aim of the Act and the Statutory Instruments was to enhance for the national security of Uganda. In fact, the Act was presented in Parliament as a project seeking to distinguish the general population from illegal residence, as well as a way to fight against terrorism, illegal employment and other multiple crimes¹⁴. Hence, and as will be questioned in the next sub-chapter, is this normative approach the most appropriate for guaranteeing that all people living in Uganda have access to the *Ndaga Muntu*?

The Secondary Legislation that rules the *Ndaga Muntu* is a legal measure that goes against what is known to be the essential purpose of the international human rights law; to adopt and recognize the obligations set forth in different international human rights treaties. As will be detailed in the next chapter, there are a series of delicate dispositions that not only exacerbate the existing inequalities in Uganda, but also manifest a poor institutionalization and administration that fails to provide transparent and accountable mechanisms for all citizens to assert their rights against the system.

12. The Registration of Persons Act (2015), which is available in the following link: <http://www.mia.go.ug/sites/default/files/download/The%20Registration%20of%20Persons%2C%20%20Act-2015.pdf>

13. The Statutory Instruments Supplements 2015 No. 67 issued in 20th November, 2015, available here: <http://ugandanlawyer.com/wp-content/uploads/2019/03/Registration-of-persons-regulations-2015.pdf>

14. Id. 2 at page 66.

Indeed, the Act and the Statutory Instruments contain a series of sections that turn on the alarms of both the international and national human rights organizations. These sections are threatening the economic, social and cultural rights, as well as the right to privacy and data protection of all people living in Uganda. On one side, the Secondary Legislation is mandating all applicants to present their national/alien identification cards to access economic and social services, but if for particular socio-economic conditions, certain groups of the population – mainly women, mothers, elder people and irregular migrants – are unable to obtain an ID. This is a special group of people that ought to be protected as envisaged in Article 10.2 of the Covenant, however, they are automatically being excluded from accessing basic services. On the other side, given that the national ID system was introduced as a national security tool, its exempted from compliance to the Data protection and privacy Act, 2019, which enhances the appearance of different type of risks such as misuse of data, lack of legal mechanisms to hold accountable the different public and private bodies involved in managing personal data.

The aforementioned risks are hard to decouple as they are derived from the very structure of the *Ndaga Muntu*. The above makes sense because the first purpose of the ID system and the Secondary Legislation is not – as is evident – to recognize and protect human rights. In fact, the main goal of this legal framework is to set forth an identification and registration system to heighten surveillance over people living in Uganda. As it was highlighted by General Aronda Nyakairim, the former Minister of Foreign Affairs, “this is a way to monitor and know where people are. It is another element to be added on to our arsenal of security weapons.” In this regard, in addition to the recommendations that arise from the following chapter, the first and most important one must be to redefine the purpose the *Ndaga Muntu*, and for the legal framework to reflect that.

Legal analysis of the Ndaga Muntu in light with International Human Rights obligations

This legal analysis and assessment of the Secondary Legislation will be carried out from two perspectives. The first one will focus on evaluating the effectiveness of the law in promoting economic, social and cultural rights, by using the three-dimensional standard of Recognition, Institutionalization and Accountability (RIA) created by the Special Rapporteur on Extreme Poverty and Human Rights – Philip Alston. The second one will focus on assessing whether the Secondary Legislation fulfills the international human rights obligations to respect, protect and guarantee the right to privacy.

1. Economic, social and cultural rights in the Ndaga Muntu

As it was previously stated, the purpose of this research is to elaborate a legal analysis that deeply looks into the sections of the Act and the Statutory Instruments, in order to evaluate if they fulfill the international standards of human rights, particularly the ones set forth in the Covenant. In order to do so, this paper will recommend using an approach proposed by the Special Rapporteur on Extreme Poverty and Human Rights, Philip Alston, which is composed of three elements: Recognition, Institutionalization and Accountability (RIA)¹⁵. The aim of the RIA's approach is, as Alston refers, to conclude if a particular strategy for promoting economic, social and cultural rights is effective¹⁶. However, as he concludes, this framework cannot be understood neither as a unique nor a substitute of other initiatives tending to promote economic and social rights in certain marginalized contexts¹⁷.

As it will be demonstrated throughout this research, based on the lenses of the RIA's approach, the Act and the Statutory Instruments do not fulfill the international obligations of human rights, mainly that of taking steps to the maximum of its available resources, with a view to achieving progressively the full realization of the economic and social rights of the Ugandans, according to the Covenant.

15. ALSTON, Philip. "Beyond Litigation," Human Rights Council, thirty-second edition, April 28, 2016, para. 9.

16. Id.

17. Id.

The following sub-chapters carefully analyze the sections of both the Act and the Statutory Instruments, from the view of the RIA's approach: Recognition, Institutionalization and Accountability. Lastly, the final chapter will conclude with some recommendations aimed at modifying the purpose and wording of some legal dispositions of the Act and the Statutory Instruments.

1.1 Recognition

The first element of the RIA's approach is Recognition, which refers to the State's obligation of recognizing human rights in their national legal frameworks. As mentioned by Alston, the Covenant comprises three different obligations: recognizing each one of the rights, taking steps through all appropriate means - mainly adopting legal measures - and guaranteeing the economic, social and cultural rights without discrimination¹⁸. With respect to developing countries, Article 2(3) of the Covenant recognizes their special condition in achieving these obligations and states that *"due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals."*¹⁹

The Committee on Economic, Social and Cultural Rights (the "Committee"), when giving content to the obligations set forth in Article 2 of the Covenant, observes that adopting legislative measures is *"highly desirable and in some cases ... indispensable."*²⁰ Likewise, Alston also manifests the importance of constitutional recognition to be accompanied by supplemented legislation.²¹ Indeed, the key issue of this element is the recognition of the norm itself and not merely the implementation of measures that address substance of it.²²

18. Id. at para. 22. The referred obligations are contained in Article 2(1) of the International Covenant on Economic, Social and Cultural Rights

19. International Covenant on Economic, Social and Cultural Rights (December 16, 1966), Article 2(2), available in the following link: <https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx>

20. General Comment No. 3 of the Committee on Economic, Social and Cultural Rights titled "The Nature of State Parties' Obligations (Art. 2, Para 1 of the Covenant)," adopted at the Fifth Sessions of the Committee on December 14, 1990.

21. Id. 12 at para. 24.

22. Id. 12 at para. 27.

So as to evaluate if the Uganda's legal framework - in particular the Act and the Statutory Instruments - fulfill the element of Recognition as previously described, this chapter will begin by describing the Ugandan legal framework, starting by the Constitution, the Uganda Citizenship and Immigration Control Act, the Act, the Statutory Instruments and will finalize by mentioning the main human rights treaties ratified by Uganda. To conclude, this section will analyze if the aforementioned legal dispositions comply with recognizing economic, social and cultural rights, as expected by the international standards set forth in the Covenant.

The Ugandan Constitution encompasses important legal dispositions with respect to economic and social rights, which are mainly comprised in the chapter of Social and Economic Objectives. Section XIV of the Constitution mentions that the State shall ensure that all development efforts are directed to guarantee a minimum cultural and social well-being and that all Ugandans have access to education, health, clean water, work, shelter, adequate clothing, food, pension, among other rights²³. Moreover, Section XIV also recognizes the role of women in society, the dignity of persons with disabilities, the protection to family, natural disasters and land. The Constitution also states that constitutional bodies shall ensure gender balance and fair representation of marginalized groups, provision of welfare, and maintenance of the aged. Finally, the national objectives and directive principles X and XII dictate the obligation of the State to take all necessary steps to involve citizens in the implementation of development plans and to bring out balanced development actions between urban and rural and least developed areas.²⁴

With respect to the Registrations of Persons Act, even though the purpose of the Act was to create and implement a national security system to register all individuals living in the country, recent studies show how the Act has also considerable implications on the Ugandans' economic and social rights. For instance, as mentioned in the Act, the data collected in the register will be used for statistical purposes and for providing social, health, education and welfare

23. Constitution of Uganda, Section XIV, available in the following link: <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/44038/90491/F206329993/UGA44038.pdf>

24. Id 20 at Sections X and XII.

services, among other purposes determined by the government.²⁵ Moreover, any government entity is required to demand a person to show a national identification card or unique number in order to receive particular services such as employment, opening bank accounts, purchase, transfer or registration of land, pension and social security transactions, statistical services, among others prescribed by the government.²⁶ One of the reasons of the requirements listed above is that the National Identification Number is *prima facie*, the only evidence of citizenship.²⁷

With respect to non-nationals, the Act requires one to provide a valid passport to be registered in the *Ndaga Muntu*²⁸, as well as the aliens identification card of both parents when registering a birth of a child.²⁹ The Act also mentions that the information obtained in the register will be used for issuing passports and for immigration and passport control.³⁰ Furthermore, without the issuance of an aliens identification card, the alien is also forbidden to access social services, such as employment, financial services, among others.³¹

With the aim of implementing the legal dispositions encompassed in the Act, the Ugandan government issued the Statutory Instruments.³² The Statutory Instruments detailed the requirements and obligations referred in the Act, as well as described the registration and operational procedures necessary to implement the *Ndaga Muntu*. Within these procedures, the Statutory Instruments set forth certain rules that require the person to present themselves before the NIRA to collect identification cards³³, making changes in the register³⁴, update photographs³⁵, among other requirements. Additionally, it also states that a person wanting to register before the NIRA must appear in person at a designated registration center.³⁶ Conclusively, as a reinforcement of the aforementioned

25. Id. 9 at Section 65.

26. Id. 9 at Section 66

27. Id. 9 at Section 68.

28. Id. 9 at Section 55.3 (b).

29. Id. 9 at Section 32.2 (b and c).

30. Id. 9 at Section 65 (b and c).

31. Id. 9.

32. Id. 10

33. Id. 10 at Section 21.1.

34. Id. 10 at Section 4.3.

35. Id. 10 at Section 23.4.

36. Id. 10 at Section 11.

requirement of requiring a national/alien identification card as a condition to access certain services, Section 66 (2) of the Statutory Instrument sets forth the mandatory prerequisite of having an identification number issued by the government of Uganda to enjoy the following services: issuance of a passport or a driver license, opening bank accounts, purchase, transfer and registration of land, transactions pertaining pensions and health insurance and application for public government services.³⁷

In both the Act and the Statutory Instruments, the forms to fill out to apply for a national/alien identification card require the applicant to present detailed information of their stay in the country. For instance, Form 4 of the Act establishes that within the information requested, the applicant must provide: a residential address, occupation, profession, details of employer, level of education, passport number, date and issuing authority, immigration file, among others.³⁸

Moreover, these regulations also demand the payment of fines and fees for the provision of certain services. On one hand, in Sections 39 and 64.5, the Act sets forth the requirement to pay a prescribed fee to request the issuance of a certificate of birth and another fine in case any person misses to notify the NIRA of any change or error in the information recorded in the register.³⁹ On the other hand, Sections 5.2, 23.3 and 23.5, 24.3 and 24.25 of the Statutory Instruments also prescribe fees in case a person requires to notify of any error in the information provided in the register, apply for a renewal of the national identification card and in case of any default on renewal and to ask for a replacement of a national/alien's identification card, even if it was lost, damaged or defaced.⁴⁰

The aforementioned sections are not exhaustive. In general, the *Ndaga Muntu* legal framework provides a set of fees and fines applicable to Ugandans and non-nationals, whose normative assumptions seem to have to do with the formalities in the procedure, issuance, correction and update of the national identification card. Bearing this in mind, when discussing the exclusion sub-chapter, a more in-

37. Id. 10 at Section 66.2

38. Id. 10 at Form 4.

39. Id. 9 at Sections 39 and 64.5.

40. Id. 10 at Sections 5.2, 23.3 and 23.5), 24.3 and 25.

depth analysis will be provided with respect to these fines and fees.

After analyzing the Uganda's legal framework with the lenses of the Recognition Institutionalization and Accountability (RIA)'s approach, it is feasible to conclude that it does not fulfill the standards of the Recognition dimension and therefore, the obligations set forth in Article 2 of the Covenant. First, because both the Act and the Statutory Instruments contain several sections that exclude vulnerable groups such as non-nationals, women and elder population not only from accessing social and economic services, but also from being included in statistical analysis developed by the government. Second, although the Constitution, as well as the Secondary Legislation provide important legal measures that protect economic, social and cultural rights, they lack guarantees for non-nationals. On that basis, the sub-chapters that are presented below will address each one of the aforementioned points.

a. Exclusion of vulnerable groups – women and elder population

One of the main reasons why the Ugandan legal framework, in particular the Act and the Statutory Instruments, do not fulfill the recognition obligations stated in the Covenant is because they exacerbate the exclusion of vulnerable groups from the *Ndaga Muntu*. According to Article 2.2 of the Covenant, State Parties *"undertake to guarantee that the rights ... will be exercised without discrimination of any kind as to race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."*⁴¹ As will be explained below, the duty of States to avoid adopting discriminatory legal measures goes beyond the normative itself.

As highlighted by the Committee, when a legal disposition or policy appears to have a neutral purpose but in practice leads to a negative and discriminate impact, it is also prohibited by international human rights law.⁴² In the General Comment No. 20, the Committee delineates two types of discrimination: direct and indirect discrimination. First, the direct discrimination occurs when a person

41. Id. 16

42. Committee on Economic, Social and Cultural Rights. General Comment No. 20 "Non-Discrimination in Economic, Social and Cultural Rights" art. 2, para 2) UN. Doc. E/C.12/GC/20" (2009), para. 11 (b).

is treated less favorable than another person in similar situations.⁴³ Second, indirect discrimination refers to laws, policies or practices which appear neutral at first sight but have an unequal impact on the exercise of economic, social and cultural rights. For instance, the Committee highlights as an example of indirect discrimination requiring birth certificates to ethnic minorities or non-nationals who, because of their particular situations, do not possess them.⁴⁴

Furthermore, the Committee has been emphatic in highlighting some important factors as sources of discrimination, such as race and color, sex, national or social origin, among others. For instance, in the General Comment No. 20, the Committee listed these factors as forms of substantive discrimination that affect a wide range of rights, including civil and political rights and economic, social and cultural rights.⁴⁵ Certainly, the Committee has elaborated a series of pronouncements about equal rights of men and women,⁴⁶ the rights of persons with disabilities⁴⁷ and older persons,⁴⁸ inter alia. In relation to this, the Committee has mentioned that the principle of non-discrimination is an *"immediate and cross-cutting obligation in the Covenant"* and that a differential treatment will only be permissible if the justification is reasonable, objective, legitimate, proportionate between the aim and the measure/omission taken and compatible with the Covenant.⁴⁹ In this regard, the Committee concludes that a lack of resources is not a legitimate justification for maintaining a differential treatment.⁵⁰

To end with the pronouncements of the Committee, the General Comment No. 14 also clarifies that the Covenant's limitations are primarily anticipated to protect individuals' rights, rather than States. On the basis of Article 4 of the Covenant, States may subject economic, social and cultural rights only to the limitations established by law, in a way compatible with the nature of rights and with the

43. Id. at para. 10 (a).

44. Id. at para. 10 (b).

45. Id.

46. Committee on Economic, Social and Cultural Rights, General Comment No 16 (2005) "The equal right of men and women to the enjoyment of all economic, social and cultural rights (art. 3 of the International Covenant on Economic, Social and Cultural Rights."

47. Committee on Economic, Social and Cultural Rights, General Comment No 5 (1994/1995) "Persons with Disabilities."

48. Committee on Economic, Social and Cultural Rights, General Comment No 6 (1995/1996) "The Economic, Social and Cultural Rights of Older Persons."

49. Id. 46 at para. 7.

50. Id. 46 at para. 13.

unique purpose of pursuing the general welfare and democracy.⁵¹ Ultimately, the Committee mentions that *“such restrictions must be in accordance with the law, including international human rights standards, compatible with the nature of the rights protected by the Covenant [and] in the interest of legitimate aims pursued.”*⁵²

Indeed, the Act and the Statutory Instruments are discriminatory in effect because they state excessive requirements that even though at first sight these requirements appear to apply equally for all, in practice they turn out to be indirectly discriminatory. Because these requirements place inordinate requirements on vulnerable populations, such as women and the elderly, they are excluded from benefiting from certain services and benefits, including but not limited to: employment, financial services, transfer and registration of land, statistical analysis, and in general those that are necessary for human well-being. As will be explained below, among these social services and benefits there are: employment, financial services, transfer and registration of land, statistical analysis, and in general those that are necessary for human well-being. We will examine the effects of each of the exclusive requirements identified.

Women, elder populations and youths are considered to be the most affected by the creation and implementation of the *Ndaga Muntu*. As noted by the Digital Welfare State and the Human Rights Project at the Center for Human Rights and Global Justice, jointly with Unwanted Witness and the Initiative for Social and Economic Rights, the *Ndaga Muntu* *“has led to mass exclusion, shutting out as many as one third of Uganda’s adult.”*⁵³ In this research, the stories of two citizens - Rebecca and Okye - demonstrate the severe barrier that some individuals are facing to accessing health services. Rebecca, a young woman visibly pregnant was unable to obtain medical assistance because she did not have a national identification card. Also, Okye, an 88-year-old man was unable to travel to correct some information of his *Ndaga Muntu* because of his social and physical condition.⁵⁴

Unfortunately, the stories of Rebecca and Okye are not only very common but are also the representation of a systemic exclusion happening in Uganda and that is

51. Committee on Economic, Social and Cultural Rights, General Comment No. 14 (2000) “The right to the highest attainable standard of health (article 12 of the International Covenant on Economic, Social and Cultural Rights),” para 28.

52. Id.

53. Id. 2.

54. Id. 2 at page 10.

exacerbated by the *Ndaga Muntu*. The Act and the Statutory Instruments establish a series of requirements that become access barriers such as: (i) stating that the national identification card is *prima facie*, the only proof of citizenship; (ii) requiring to show the national identification card as a condition for accessing certain social services and (iii) the charges linked to ID replacement (iv) demanding excessive and bureaucratic requirements to access the *Ndaga Muntu*. The aforementioned requirements will be detailed in greater depth below.

i. National Identification Card as evidence of citizenship

In first place, the Act provides that the national identification card is *prima facie*, the only evidence of citizenship.⁵⁵ Therefore, in case a person is unable to obtain it, the person is *prima facie*, excluded from the benefits inherent to citizenship. This renders other government issued documents such as passports, driving licenses or even a birth certificate inferior.

As a matter of fact, Article 68.2 of the Act interprets an identity document as a certificate of acquired citizenship.⁵⁶ Nonetheless, the Act also mentions that for purposes of section 68.2, “*expiry of a National Identification Card does not amount to expiry of citizenship of a person.*”⁵⁷ In light of this, it is unclear as to what extent - in the absence of a national identification card - individuals are deprived of their citizens’ rights and what happens in scenarios other than when an identification card expires, among other questions that arise from the vagueness of the Act.

ii. National/alien identification card as a condition for accessing services

In second place, the Ugandan legislation also links obtaining a national/alien identification card with accessing certain social and economic services. As it was described above, the Act mentions that the information obtained in the register will be used for, among other reasons, providing social services including social, education, health and welfare services.⁵⁸ Moreover, the government authorities

55. Id. 9 at Section 68.2.

56. Id. 9 at Part 1.3 (i).

57. Id. 9 at Section 69.6.

58. Id. 9 at Section 65.1 (e and j).

are obliged to demand that citizens and non-nationals present a national/alien identification card to access a set of services including employment, voting, opening bank accounts, purchase, transfer and registration of land, registration and statistical services, among others.⁵⁹ This coupled with the pain associated with enrollment delays of as long as 4 years subjecting communities to exclusion⁶⁰.

Undoubtedly, the major exclusion being exacerbated by the *Ndaga Muntu* is that people are being pushed away from accessing basic services because they are put in a disadvantageous social and/or economic situation. Ugandan citizens and/or non-nationals, especially women, elder population and irregular migrants, who due to their location, lack of access to public or private transport, with some type of disability or undocumented, among other social and/or economic conditions, are more likely to face additional barriers when registering in the *Ndaga Muntu*, as they may be unable to physically attend one of the NIRA offices as is required by law. While the law does not set out to make some individuals worse off, the reality is that it indirectly does by applying the requirement to physically attend a NIRA office in a blanket manner, without allowing for exceptions or alternatives.

This in essence contravenes the rights of a person since it is contrary to Articles 1, 2, 3, 21, 22, 23 and 25 of the Universal Declaration on Human Rights which emphasize that human beings are born free and equal in dignity and rights which spirit the laws in place regarding the registration of persons has failed to acknowledge and implement.

iii. Administrative bureaucratic requirements

Additionally, the Ugandan legislation also demands citizens and non-nationals to comply with certain additional bureaucratic requirements that for vulnerable communities, such as women, elder populations and irregular migrants, are especially demanding to fulfill. For instance, obliging a pregnant woman living in a remote area or an older adult with a disability to present himself before the Authority to register in the *Ndaga Muntu* and/or to update their personal

59. Id. 9 at Section 66.2.

60. <https://www.independent.co.ug/mps-decry-delays-in-issuance-of-national-ids/>

information, to pay excessive and disproportionate fines and fees or to provide personal data they do not possess, is evidently discriminatory. Even though these requirements are not de jure directly discriminatory, de facto they are.

The Statutory Instruments requires Ugandans and non-nationals to present themselves before the Authority as a prerequisite to comply with most of the legal obligations stated in the law. First of all, the Statutory instruments notes that the Authority may require a person to present themselves for the purpose of being registered⁶¹ and before requiring a change in the data registered in the ID system.⁶²

The aforementioned conditionality fees and administrative fines reinforce the statement that the *Ndaga Muntu* excludes vulnerable and marginalized groups. The limitations set forth in the Act and the Statutory Instruments do not state a clear, legitimate and objective purpose, as required by the Committee. In fact, Unwanted Witness reported that there is a high contradiction in the cost for replacing a national/alien identification card (\$14.2) and the real one (\$4.0).⁶³ Furthermore, the NGO underlines that even though the *Ndaga Muntu* is free, it is compulsory. Therefore, anyone who fails to register with the ID system or to register a birth or death, is compelled to pay a fine of \$685 and \$33 respectively. Since the average monthly cash income in Uganda for 2017 was equivalent to \$113, and the offense for failing to register in the *Ndaga Muntu* is six times higher, then these limitations are obviously disproportionate.⁶⁴ Undoubtedly, women and elder people who, due to their economic and social conditions and not because they are unwilling to register themselves in the ID system, fail to comply with the law, they are automatically compelled to pay abusive amounts of money that they do not have.

Finally, the information required in the application for obtaining a national/alien identification card is unreasonable for vulnerable groups. For instance, both Form 4 and Form F require specific personal data that for example migrant or people

61. Id. 10 at Section 11.2.

62. Id. 10 at Section 4.3.

63. Id. 6.

64. Id. 6 at page 10.

living in poverty do not have, like residential address, details of employer, level of education, profession, passport information, among other requirements. The above, mainly because they either do not have access to that particular data or simply because they do not fulfill it, such as having a level of education, having a job, among others.

b. *Discrimination against non-nationals*

The *Ndaga Muntu* also discriminates non-nationals. This is a matter of some importance since Uganda is the largest refugee-hosting country in Africa, receiving over a million of refugees.⁶⁵ As most of these migrants arrive in the country fleeing from conflicts and natural disasters,⁶⁶ it is reasonable to believe that they also face economic and social challenges. As it was mentioned above, the Covenant condemns governments that fail to comply with the international obligation relied in Article 2.2, which dispose that States Parties are obliged to guarantee that rights are exercised without discrimination of any kind, including as of political or other opinion or national or social origin.

With respect to a differential treatment based exclusively on nationality or legal status, the Office of the High Commissioner of Human Rights has emphasized that a *“national origin is expressly included among the prohibited grounds of discrimination”*⁶⁷ in almost all human rights instruments.⁶⁸ Although there are recent flexible approaches on this matter, the Committee still considers that the Covenant rights also apply to *“refugees, asylum seekers, stateless persons, migrant workers and victims of international trafficking, regardless of legal status and documentation.”*⁶⁹ Moreover, the Committee on the Elimination of Racial Discrimination has also stated that a difference of treatment based on citizenship or immigration status is considered as discrimination if it does not pursue a

65. See MOMODU, Sulaiman. “Uganda stands out in refugees hospitality,” United Nations, December 2018 – March 2019, available here: <https://www.un.org/africarenewal/magazine/december-2018-march-2019/uganda-stands-out-refugees-hospitality>

66. Id.

67. Office of the High Commissioner of Human Rights, *“The Economic, Social and Cultural Rights of Migrants in an Irregular Situation.”* New York and General, 2014, page 27.

68. Except in the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of Persons with Disabilities, as mentioned by the Office of the High Commissioner of Human Rights in the aforementioned citation.

69. Id. 46 at para. 30.

legitimate aim or is not proportionate to its purpose.⁷⁰ Lastly, the Committee on Migrant Workers has concluded that States shall avoid discrimination by ensuring that not only their legal dispositions do not discriminate against migrant workers and their families, but also adopting positive measures to diminish the causes that exacerbate de facto discrimination.⁷¹

Accordingly, even though Uganda can primarily invoke the exception set forth in Article 2.3 of the Covenant, none of the Ugandan national legislation, that being the Constitution, the Uganda Citizenship and Immigration Control Act, the Act, and the Statutory Instruments, clearly stipulate a legitimate reason to justify the difference of treatment towards non-nationals. This discriminatory behavior not only excludes migrant workers, refugees, asylum seekers, stateless persons, among others, but also their families from benefiting from the constitutional protection of their economic, social and cultural rights and from registering into the *Ndaga Muntu*.

The Ugandan Constitution does not specify anything about neither civil and political rights, nor economic, social and cultural rights of non-nationals. Even though there are few examples of Constitutions that have been successful in protecting economic, social and cultural rights for non-nationals, like the Colombian Constitution,⁷² the reality is that the majority of the political charts worldwide do not stablish these types of guarantees. This is a major problem considering that if there is no explicit protection given from the highest normative source of a country - such as the Constitution - non-nationals, in particular those in irregular conditions, are undoubtedly going to face further normative obstacles, those coming from secondary legislation, that is precisely what is happening with the *Ndaga Muntu*. Indeed, the lack of constitutional protection given to non-nationals' rights, is being replicated by the Immigration Control Act and the Secondary Legislation.

70. Committee on the Elimination of Racial Discrimination, "General Recommendation No. XXX on discrimination against non-citizens," Sixty-fifth session (2005), para. 4.

71. Committee on Migrant Workers, "General Comment No. 2 on rights of migrant workers in an irregular situation and members of their families," August 28, 2013, para. 19

72. See the Colombian Constitution of 1999, Article 100, available in the following link: <https://www.constitucioncolombia.com/indice.php> (Spanish version) or here: https://www.constituteproject.org/constitution/Colombia_2005.pdf (English version).

c. *Conclusion*

In conclusion, after deeply looking into the Act and the Statutory Instruments, one may resolve by realizing that the Secondary Legislation do not fulfill the standard of Recognition, and therefore, neither the international obligations enshrined in the Covenant. Pursuant to Article 2 of the Covenant, State Parties must recognize the Covenant rights, take steps through all appropriate means and adopt legal measures to guarantee economic, social and cultural rights without discrimination. To give content to these obligations, the Committee on Economic, Social and Cultural Rights has made important comments to determine the scope and meaning of these obligations. Relying on this, the following paragraphs will detail in what way the Secondary Legislation violate the above-named obligations.

To begin with, the Act and the Statutory Instruments do not recognize *de facto* the Covenant rights. Although the Constitution recognizes the economic and social rights of all Ugandans, this constitutional recognition neither covers non-nationals entering the country nor is it reflected in the Secondary Legislation. Whereas the Uganda Citizenship and Immigration Control Act provide legal dispositions to confer certain economic and social rights to non-nationals, these are limited to aliens able to provide a valid passport lawfully issued by another State. Without this evidence, aliens are not able to obtain a certificate of permanence or any other identification document that entitles them to access social and economic services. Similarly, even though the Act and the Statutory Instruments permit non-nationals to register for an alien identification card, the requirements to do so are highly bureaucratic and excessive, which exclude mainly irregular migrants from accessing the *Ndaga Muntu*.

Accordingly, it is evident that Uganda cannot invoke the exception stated in Article 2.3. to refrain from complying with the international obligations specified in the Covenant. If a State Party is unable to demonstrate that the exception for not recognizing the economic, social and cultural rights to non-nationals is spelled out and consistent with the Covenant, it cannot benefit from it. This is precisely the case; since Uganda cannot explain why the differential treatment of the *Ndaga Muntu* towards non-nationals pursues a legitimate aim and is proportional to its goal, it continues to contradict the Convention.

Although the Ugandan legal framework initially recognizes economic, social and cultural rights to citizens, it lacks to take steps through all appropriate means to do guarantee them without discrimination. While it is true that the Act and the Statutory Instruments do not directly discriminate marginalized groups, they do establish excessive prerequisites and conditionalities such as: limiting the national identification card as the only single source for proof of citizenship; conditioning the access to social and economic services to the registration in the ID system; requiring an in person attendance to fulfill the requirements of the *Ndaga Muntu* and placing excessive fees for ID replacement. These legal requisites are indirectly discriminatory because they generate an unequal impact on the exercise of the economic, social and cultural rights. Indeed, the Committee itself has recognized that requiring birth certificates to ethnic minorities or non-nationals who do not possess them is, in fact, discriminatory. Hence, the legal dispositions stated in the Act and the Secondary Instruments do not fulfill the obligations established in Article 2 of the Covenant.

Additionally, the Act and the Statutory Instruments violate Article 4 of the Covenant because they fail to justify the differential treatment in the terms required in the Covenant and explained by the Committee. The main reason of this failure is that the aim of the Act and the Statutory Instruments is not, per se, recognizing economic, social and cultural rights but to implement a national security system whose priority is to fight against terrorism, organized crimes. and illegal employment. In fact, the legal dispositions contained in the aforementioned regulation are not looking to protect the individuals' rights and their general welfare in a democratic society, but rather to reinforce a government security policy. In this case, it is not that the limitations stated in the law are disproportionate to the aim of protecting human rights, but that these limitations are alien and contrary to this purpose.

As a consequence of the failure to fulfill the obligations described in Articles 2 and 4 of the Covenant, the Secondary Legislation also does not sufficiently realize the rights enshrined in Article 3 (equal right of men and women); Articles 6, 7; Article 9 (social security); Article 10 (assistance and protection to family, mothers and children) and Article 12 (right of physical and mental health) among others.

1.2 Institutionalization

According to Alston, the Institutionalization dimension of the RIA refers to the role of two crucial actors, government agencies and national human rights institutions. With respect to government agencies, they are expected to take the lead in different matters, such as education, health, social and labor protection, among other fields.⁷³ Concerning national human rights institutions, even though these institutions have been working on promoting economic and social rights, they are recently required to take a more active role.⁷⁴ The Committee has clearly stated that the obligation set forth in Article 2 of the Covenant, the one that refers to take important steps, is being carried out by national institutions seeking to protect human rights. According to the Committee, these institutions can vary from Ombudsman offices, human rights “advocates” and institutions established by the government.⁷⁵ Accordingly, the paragraphs that follow will detail as to what extent the Ugandan government entities and the local human rights institutions are implementing the Secondary Legislation and, in general terms, the economic, social and cultural rights in the country.

a. Government entities:

First of all, this chapter will start by giving a general background of the government entities behind the *Ndaga Muntu*. First, the Act mentions that there will be a National Identification & Registration Authority (NIRA) whose principal functions are, among others, manage, maintain and operate the ID system.⁷⁶ Additionally, the NIRA shall cooperate with other government entities, such as ministries and departments, to assure a dully implementation of the Act⁷⁷ and promote partnerships with different players.⁷⁸

The Act also details on the structure and composition of the NIRA. The NIRA has a governing board comprised of representatives of the Ministry of Internal Affairs, the Electoral Commission, the Directorate of Citizenship and Immigration Control, the Uganda Registration Services Bureau, the Ugandan National Information Technology

73. Id. 12 at para. 37.

74. Id. 12 at para. 38.

75. General Comment No. 10 of the Committee on Economic, Social and Cultural Rights titled “The role of national human rights institutions in the protection of economic, social and cultural rights” (December 1, 1998), para. 1 and 2.

76. Id. 9 at Sections 4 and 5.

77. Id. 9 at Section 6.

78. Id. 9 at Section 7.

Authority, the Ugandan Bureau of Statistics and two persons representing the general public. The board is responsible for the general direction and supervision of the NIRA.⁷⁹ Finally, the Minister is entitled to appoint the board's chairperson and the two persons representing the citizens among people with knowledge in law, information and communications technology, public administration, immigration and national security, among other fields. Ultimately, the Minister shall, when appointing the members of the board, ensure a balance of skills and gender.⁸⁰

The Executive Director is in charge of performing the daily activities of the NIRA. Among these activities there are: the proper management of the budget; the development of an operating plan and an economic, efficient and cost-effective internal management structure, the provision of advice on all matters under the NIRA's responsibility and ensure that the policies are implemented in accordance with the agreed standards and objectives. Finally, the budget is composed, among others, by the fees charged, the civil fines and penalties and any other fund recovered and/or received by the NIRA.⁸¹ The NIRA shall consider sound financial principles when performing the functions detailed in the Act.⁸²

Second, and besides the NIRA, the Act also refers to the Minister of Internal Affairs, as the public actor responsible to give directions to the NIRA. According to the Act, the Minister shall give guidelines to the NIRA regarding the development of policies, which are mandatory for the NIRA.⁸³ As it was previously mentioned, the Minister is part of the board, is called to appoint both the chairperson and two persons from the civil society and is also claimed to guarantee balance skills and a gender quota. In conclusion, the Minister holds, by virtue of the Act, a series of administrative powers related to the operation of the NIRA, the board and in general, the *Ndaga Muntu*.⁸⁴ The Minister holds the powers of decision making and the Board has the function of giving advice, guidance and review of business to the Minister and the Executive Director who is in turn answerable to the Minister who appoints him/her. This creates impartiality and total lack of independence of the registration of persons thereby overshadowing the role of the Board which is the governing body of NIRA under S. 9

79. Id. 9 at Section 13.

80. Id. 9 at Section 9.

81. Id. 9 at Section 21.

82. Id. 9 at Section 22.

83. Id. 9 at Section 8.

84. Id. 9 at Section 9.

of the secondary legislation.

Finally, pursuant to the Statutory Instruments, the NIRA is tasked with developing guidelines that are necessary for the implementation of the *Ndaga Muntu*. As a matter of fact, the law mentions that the Authority shall develop guidelines to regulate the use and access to information and databases⁸⁵ and to facilitate the registration of persons incapacitated by illness, old age or other reason.⁸⁶

This conclusion stems from the following reasons: (i) the lack of institutional and financial independence of the NIRA; (ii) the absence of inclusive standards in the structure, budget and operation of the NIRA and (iii) the failure to issue the guidelines set forth in the Statutory Instruments. Because the above-named reasons have a direct impact on the fulfillment of the international human rights obligations acquired by Uganda - mainly the ones disposed in the Covenant - the next paragraphs are detailing each one of these.

First, the NIRA's independence can be reasonably questioned due to its intrinsic relation with the Minister and other government entities. As it was highlighted previously, the board of the NIRA is headed by the Minister and other national government entities who have direct and indirect interests in the *Ndaga Muntu*. This becomes a problem because the Executive Director – the person in charge of managing the budget and operating the ID system - receives direct orders from the Board, who in turn receives orders from the Minister. Compliance with these orders is mandatory. Therefore, the economic and administrative independence of the NIRA is being compromised as to the extent of generating an interference between the political interests of the Ugandan government and the duties of the NIRA. Indeed, as it was noted by Unwanted Witness, *"the entity is not autonomous to run its activities and this translates into poor administration."*⁸⁷

Additionally, the Minister has the power to appoint seats within the Board. For instance, as disposed in Section 9 of the Act, the Minister is called to appoint both the chairperson and two persons from civil society, which are required to fulfill some technical criteria. In connection with the aforementioned argument, the excessive powers held by the Minister put in question the integrity and independence of the NIRA, and consequently, the *Ndaga Muntu*.

85. Id. 10 at Section 6 (2).

86. Id. 10 at Section 13 (3).

87. Id. 6 at page 11.

In practice, the two problematics aforementioned translate into obstacles to ensuring the effectiveness and efficiency of the ID system. For instance, if in compliance with the national security purposes, the Minister requests the board to expel all illegal workers from the country, although the Authority may consider this measure as excessive, its power to mitigate it is nil. The same happens with the budget; in case the NIRA refuses to designate a budget item to the fulfillment of a particular aim, the Authority is toolless to debate it. These situations not only generate precarious administration, but also hamper the urgency for the *Ndaga Muntu* to put human rights on the forefront.

Second, the structure and operation of the NIRA has failed in contemplating inclusive standards that protect the most vulnerable. Without prejudice to the duty of the Minister to consider a gender quota in the appointment of the members of the Board, the Act fails to consider other social categories, such as religion, ethnicity, age, national status, sexual orientation, among others. Moreover, when appointing members of the Board, the Minister only requires that candidates have knowledge in some areas such as law, information and communications technology, public administration and immigration. The lack of representation of those affected by the *Ndaga Muntu* and/or those able to represent their interests within the composition NIRA, means that such issues will not be considered in how NIRA undertakes its mandate.

The poor data protection standards are reflected in the Act itself, in as much as S.81 provides that a registration officer who without authority discloses information from the register to any other person commits an offence and is liable to a fine not exceed seventy-two (72) currency points amounting to UGX. 1,440,000/= (Uganda Shillings One Million Four Hundred Forty Thousand only), a lenient penalty considering very sensitive information which can jeopardize the lives of both citizens and aliens will have already been taken by persons who are not allowed to access such information.

On the other hand, the NIRA is also demanded to consider sound financial principles when managing the budget, however, the Secondary Legislation does not specify the content of those principles. If there are no clear guidelines that define the basis

for using the budget, there is no guarantee that the NIRA will not misuse the budget, to the detriment of the nation and contrary to the interests of all citizens, including the most vulnerable. As a matter of fact, even though the Secondary Legislation details the different items integrating the *Ndaga Muntu's* budget, the law abstains from establishing the specific destination of these items. Hence, there is no way of knowing if the resources obtained by virtue of the fees and fines collected due to the operation of the *Ndaga Muntu*, will be used to keep the system running, to solve administrative failures, to re-design the application process to assure the inclusion of all people or none of the above. Eventually, if the Authority considers issuing guidelines to guide the use and destination of the budget, a portion of the profits could be allocated to social programs.

Ultimately, the NIRA is also facing some operation struggles that are related to the lack of efficiency and optimization in the processes carried on in the *Ndaga Muntu*⁸⁸ For instance, as noted by Unwanted Witness, even though the NIRA has promised to decentralize its services from its headquarters to regional offices, this promise has not been carried out, since the regional centers are not connected to the center backbone infrastructure. Due to the lack of connection between the different edges of the system, there is neither independence nor way to evidence the operation in real time.⁸⁹ Bearing in mind that these operational struggles are not directly linked to the Ugandan legal framework, i.e. the Secondary Legislation, they will not be covered in detail in this legal opinion.

1.3 Accountability

The last element of the RIA approach is the Accountability dimension, which resides in the ultimate goal of the international human rights law: make governments be accountable for human rights violations. In particular, for the context of making accountable economic, social and cultural rights, the Committee has illustrated that the right to an effective remedy cannot be interpreted as requiring judicial remedies exclusively. In fact, the Committee has recognized that administrative remedies may also be considered as adequate and effective to repair serious human rights

88. <https://www.independent.co.ug/nira-decries-old-equipment-low-staffing/>

89. Id. 6 at page 8.

violations. Indeed, these administrative remedies should be “accessible, affordable, timely and effective.” Nevertheless, in case there are no administrative remedies available for recognizing economic, social or cultural rights, then judicial remedies are mandatory.⁹⁰

Accordingly, this chapter will analyze if the Ugandan legal framework provides accessible accountability mechanisms – either judicial or administrative – for all individuals to ensure that their economic, social and cultural rights are being adequately repaired due to violations caused by the *Ndaga Muntu*. Thus, one may start by analyzing the judicial mechanisms available in the Ugandan Constitution, and subsequently, the administrative mechanisms disposed in the Secondary Legislation, to ultimately conclude whether these mechanisms fulfill the international standards required by the Committee. Ultimately, this chapter will conclude by referring to the international monitoring of economic, social and cultural rights.

To begin with, the Constitution of Uganda establishes that the Court of Appeal, sitting as a Constitutional Court, is called to answer any question associated with the Constitution,⁹¹ including questions related to human rights. Hence, as referred in Article 137 of the Constitution, any act or omission that is inconsistent with or contravenes with the Constitution can be revised by the Constitutional Court “for a declaration to that effect, and for redress where appropriate.” For this purpose, the Constitutional Court may grant an order of redress or ask the High Court⁹² to determine the appropriate redress.⁹³ Besides, the Court of Appeal is compelled to hear any petition related to the interpretation of the Constitution as soon as possible and may suspend any other matter pending before it.⁹⁴ Moreover, the Constitution also mentions that any person is entitled to claim an infringement of a human right or freedom and apply to a competent court for redress and, if applicable, for a compensation.⁹⁵ The Uganda Human Rights Commission, created by virtue of the Constitution, is called to investigate all complains made regarding a human right

90. See the General Comment No. 9 on the Domestic Application of the Covenant of the Committee on Economic, Social and Cultural Rights, Nineteenth session, Geneva, December 3, 1998, para. 9, available in the following link: <https://www.refworld.org/docid/47a7079d6.html>

91. Id 20 at Article 137.1.

92. See Article 138 of the Constitution to look at the composition of the High Court.

93. Id 20 at Article 137.4 (a)

94. Id 20 at Article 137.7

95. Id 20 at Article 50.

violation and conducting research and education programs.⁹⁶

The Human Rights Enforcement Act was issued in 2019 to give effect to Article 50.4 of the Constitution, by providing the procedure for enforcing human rights. According to Article 4, the High Court shall hear any claim relating to the violation of non derogable rights and freedoms mentioned in Article 44 of the Constitution.⁹⁷ Since these non derogable rights are exclusively the freedom from torture, cruel, inhuman or degrading treatment or punishment, the freedom from slavery or servitude, the right to fair hearing and to habeas corpus, it is reasonable to deduce that economic, social and cultural rights cannot be claimed as justiciable under this law.

The enforceability of economic, social and cultural rights in Uganda is incipient. Undoubtedly, the first warning of this shortcoming rests on the fact that there is no Constitutional Court – but rather a Court of Appeal sitting as a Constitutional Court – and that the justiciable mechanisms that are available are exclusive to certain civil and political rights. Another reason why Uganda lacks to accountable economic and social rights is that it has not yet ratified the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, which allows individuals to submit complains to the Committee and to initiate an inquiry if it finds realistic information indicating serious human rights violations.⁹⁸

Having regard to the above, very few cases concerning economic, social and cultural rights have been litigated before national courts and those that were, they have left a lot to be desired.⁹⁹ Unlike the Ugandan courts, the Uganda Human Rights Commission is more assertive in the enforceability of economic, social and cultural rights.¹⁰⁰ Nonetheless, the Commission is limited to investigating and conducting education and research programs; it has neither judicial powers nor the competence to enforce adequate redress mechanisms.

That said, this analysis will continue by examining the administrative mechanisms outlined in the Secondary Legislation. Both the Act and the Statutory Instruments dispose of mechanisms for an applicant to appeal a decision regarding the registration

96. Id 20 at Article 51 and 52.

97. See the Human Rights Enforceable Act issued in April 10, 2019, Article 4.

98. See the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights here: <https://www.ohchr.org/en/professionalinterest/pages/opcescr.aspx>

99. MUBANGIZI, John Cantius. "The Constitutional Protection of Socio-Economic Rights in Selected African Countries: A Comparative Evaluation," *African Journal of Legal Studies* (2006), page 13.

100. Id at page 15.

in the *Ndaga Muntu*. For one thing, the Act indicates that a person aggravated by a decision of a delegate appointed under Article 16, may appeal to the Board. Additionally, Section 83 of the Act mentions that there will be an identification and registration committee “to adjudicate over matters arising and or related to registration under [the] Act.”¹⁰¹ Subject to the establishment of the committee, the offenses that arise under the Act shall be tried before the High Court.¹⁰² Furthermore, the prosecution of an offence will be instituted by a registration officer and the proceedings conducted by the Director of Public Prosecutions.¹⁰³

The Statutory Instruments also refers to certain appeal mechanisms that are, at first sight, accessible to all. Article 4 establishes that a person dissatisfied with a decision of the NIRA is entitled to apply for review before the identification and registration committee.¹⁰⁴ In addition, in case the person is dissatisfied with the decision of the committee, may appeal to the High Court.¹⁰⁵ Nonetheless, and as it was previously underlined in previous research, “at the time of writing this report we have not been able to ascertain whether this committee has ever been set up, whether it has published general rules or guidelines, or whether it has dealt with any complaints or questions.” Hence this day there is no entity in charge of receiving and hearing appeals, individuals do not have an effective mechanism to enforce their economic, social and cultural rights as it relates to the *Ndaga Muntu*.

It is also relevant to note that under Schedule 2, the Board that is supposed to regulate the affairs of NIRA only sits once every 3 months yet they have many crucial matters to handle regarding cases pertaining to the registration of persons and related disputes. However, the Act does not provide for alternative ways of handling urgent disputes that cannot wait for the Board to sit together.

As it was previously mentioned in the Institutionalization dimension, the independence of the NIRA can be called into question because of its intrinsic relation with the Minister and other national institutions. Since the seats of the NIRA's board are integrated by distinct national institutions, and the legal framework does not set out effective and appropriate mechanisms to recognize economic, social and cultural rights, there is no mechanism to account and monitor that the decisions of

101. Id. 9 at Section 83.1 (a).

102. Id. 9 at Section 83.3.

103. Id. 9 at Section 83.4 and 83.5.

104. Id. 10 at Section 4.10, Section 16.2 and Section 17.6.

105. Id. 10 at Section 4.11, Section 16.3 and Section 17.7

the Board are directed to fulfill the international obligations acquired by Uganda.

Moreover, the Act does not set good governance and transparency policies. On one hand, even though the Act mentions that the board shall publish the general rules to be followed by the identification and registration committee, these guidelines have not yet been issued and it has been close to 6 years since *Ndaga Muntu* was deployed. On the other hand, neither the Act nor the Statutory Instruments dispose of good governance and transparency dispositions that allow individuals to hold NIRA accountable for its decisions. Furthermore, information of the Board members is not easily available to individuals. For instance, at first sight, the resumes of the Board members are not published on the NIRA's official website. While some information can be found by navigating through Internet, this information is piecemeal, potentially unreliable and outdated, and most importantly, it does not come from an official government source.

Finally, making reference to the international monitoring of economic, social and cultural rights, Alston has noted that even though the role of some international organizations and treaty bodies in the recognition of economic, social and cultural rights is less clear than in the case of civil and political rights, there is an important role played by the universal periodic review process and the work done by the Committee on Economic, Social and Cultural Rights.¹⁰⁶ In fact, the Uganda's 2016 Universal Periodic Review recommended, among other things, to domesticate all international legal instruments and ratify the Optional Protocol.¹⁰⁷ With respect to the Committee's recommendations, the majority are directed to ensure the applicability of the Covenant in the domestic legal order, raise awareness of the justiciability of rights and the issuance of legislation to ensure compliance with the obligations of the Covenant.¹⁰⁸

106. Id.12 at para. 49.

107. Id. 111 at page 5.

108. Id.12 at para. 55.

a. *Conclusion*

The Secondary Legislation does not comply with the Accountability dimension of the RIA approach. First of all, the legal framework of the *Ndaga Muntu* fails to provide an accessible, affordable, timely and effective remedy that repairs serious human rights violations. With respect to economic, social and cultural rights, the Constitution does not provide a legal remedy intended to enforce these rights before a national court. This is a major problem because the individuals who are excluded from registering in the *Ndaga Muntu* and therefore from accessing social services – specially the marginalized ones – do not have judicial or administrative remedies at their disposal to assert their rights. The few cases that get to be heard by a court, will be decided by a general Court of Appeal with little or no knowledge of constitutional law and human rights. Ultimately, since Uganda has not yet ratified the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, the individuals harmed by the decisions of the NIRA will be left without a crucial final resort, which is to submit complaints to the Committee reporting a serious human right violation. Second, even though the Secondary Legislation has established an identification and registration committee who is responsible for listening to complaints that seek to review a decision of the NIRA, this committee has not yet been formed. Hence, since there is no entity in charge of receiving and hearing these complaints, individuals do not have an effective mechanism to enforce their rights associated with the *Ndaga Muntu*

Furthermore, based on the earlier assessment under the Institutionalization dimension, NIRA is not considered neither an independent institution - administratively and financially - nor a transparent entity. Due to the intrinsic relation between the NIRA and the Minister, NIRA can easily be captured by political interests that could cloud its decisions. Indeed, it is deductible that the Minister will intend to prioritize the national security of the country over, for example, the recognition of labor rights to irregular migrants. Therefore, the rights of the vulnerable population will not be considered into the Authority's decision-making process, at least not as a priority.

Also, the NIRA has failed to incorporate good governance and transparency policies into the *Ndaga Muntu*. The lack of these policies means that individuals are prevented from demanding due accountability from the government. As mentioned by Unwanted Witness, *“the absence of an inclusive and transparent feedback mechanism leaves no space to review, assess and amend shortcomings within the ID system during implementation.”*¹⁰⁹ This situation has an adverse effect on the protection of human rights, especially the ones of marginalized communities, who in addition to being excluded from the ID system, are also unable to demand scrutiny and oversight from the government.¹¹⁰

2. Right to privacy in the *Ndaga Muntu*

The issue of privacy is of major importance when analyzing and suggesting the amendment of the legal framework governing the *Ndaga Muntu*. Therefore, this last chapter will analyze the ID system with the lenses of the international human rights obligations to respect, protect and guarantee the right to privacy. This section will ultimately conclude that, as already noted by the previous research made on the field, the Secondary Legislation fails to provide data protection and security safeguards to protect the personal data of all people registering in the *Ndaga Muntu*. Although this study can be seen as a matter of recognition, and therefore, as part of the analysis of the RIA's first dimension, since this is a civil and political right, it will be considered separately. The above, since the Special Rapporteur on Extreme poverty established this approach mainly to evaluate the way economic, social and cultural rights can be treated as human rights. Bearing this in mind, this chapter will start by analyzing the Ugandan legal framework with regard to the right to privacy, to finally determine if it fulfills the respective international obligations.

The international legal framework sets forth relevant international obligations to respect the right to privacy. For instance, the Universal Declaration of Human Rights states that *“no one shall be subject to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation.”*¹¹¹ Also, the International Covenant on Civil and Political Rights mentions that individuals

109. Id. 6 at page 2.

110. Id. 12 at para. 24.

111. Universal Declaration of Human Rights, Article 12, available here: <https://www.un.org/en/about-us/universal-declaration-of-human-rights>

must be protected from arbitrary interference with his privacy, family, home and correspondence and that everyone has the right to be protected by the law.¹¹² Finally, the African Declaration on Internet and Freedoms mention that everyone has the right to control their personal data in the Internet, which should not be subject to any restriction.¹¹³ In order to limit the right to privacy, “*the restrictions [must lay] down in law and that a due notice is taken of the principles of necessity and proportionality.*”¹¹⁴ Ultimately, there is a general consensus that the right to privacy must be also guaranteed in the digital environment.¹¹⁵

2.1 *The right to privacy’s legal framework*

The Constitution disposes that no person shall be subjected to unlawful search of the person, home or other property.¹¹⁶ Likewise, the Data Protection and Privacy Act (2019) aims to protect the privacy and personal data of individuals, by stating a set of principles of data protection, security and data measures, the right to access personal information, among other legal dispositions.¹¹⁷ This act applies to any person, institution or public body that collects, process, holds or uses personal data in Uganda.¹¹⁸

Furthermore, the Secondary Legislation contains a series of dispositions that regulate and make reference to the personal information collected by the *Ndaga Muntu*. As for the Registration of Persons Act, stipulates a blanket prohibition for registration officers or for any person processing data on behalf of the authority to disclose information and directs them to treat personal information as confidential.¹¹⁹ Further, a registration officer who discloses submits or transfers data without authorization is obliged to pay a fine or imprisonment.¹²⁰ Also, the Act lists a series of definitions for data, electronic database, fingerprints, identify data, and information.¹²¹

112. International Covenant on Civil and Political Rights, Article 17, available in the following link: <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

113. African Declaration of on Internet rights and freedoms, Article 8, available in the following link: <https://africaninternetrightrights.org/>

114. Unwanted Witness, “Analysed Cyber Laws of Uganda” (2016), page 22.

115. Id.

116. Id. 20 at Article 27.

117. The Data Protection and Privacy Act (2019), available in the following link: <https://ict.go.ug/wp-content/uploads/2019/03/Data-Protection-and-Privacy-Act-2019.pdf>

118. Id. 139 at Section 1.

119. Id. 9 at Section 61

120. Id. 9 at Section 81.

121. Id. 9 at Section 3.

A key functions of the NIRA is to ensure the preservation, protection and security of data collected and stored in the register.¹²² For instance, the legal framework disposes that the NIRA shall take all the steps to secure the integrity of data, establish and maintain appropriate safeguards, observe general security practices, and sign confidentiality agreements for the purposes of safeguarding the information.¹²³

Additional to the Act and the Statutory Instruments, Uganda has issued a set of cyber law provisions that constitute the Ugandan Cyber Legislation. Within these regulations there are: The Anti-Terrorism Act (2002); The National Information Technology Authority, Uganda Act (2009); The Regulation of Interception of Communications Act (2010); The Electronic Signatures Act (2011); The Computer Misuse Act (2011); The Electronic Transactions Act (2011); The Uganda Communications Act (2013) and The Anti-Pornography Act (2014).

2.2 *Concerns associated to the right to privacy by the Ndaga Muntu*

The Ndaga Muntu not only fails to take steps to the maximum of its available resources to recognize economic, social and cultural rights, but also fails to uphold Uganda's international obligations to respect, protect and guarantee the right to privacy referred in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the African Declaration on Internet and Freedoms, to name a few. The Secondary Legislation does not dispose of any legal disposition, safeguard or standard that assures data protection and security of information. This is a major problem in the context of the ID system since, as emphasized by Unwanted Witness, there are *"high chances on data misuse, bribery and data hacking."*¹²⁴ This concern does not exist in a vacuum, and is shared by multiple segments of the population. Actually, of the people interviewed by Unwanted Witness those above 50 and below 30 years old were the most concerned about data insecurity and mistrust.¹²⁵

As it was described above, even though the Constitution and the Secondary Legislation refer to the right to privacy in general, the NIRA has not yet issued

122. Id. 9 at Section 5 (j).

123. Id. 10 at Section 7.

124. Unwanted Witness, "Preliminary Report: Uganda's Digital ID System: A cocktail of Discrimination.", page 5.

125. Id.

the specific guidelines, safeguards or standards that determine – in specific – the rules to guarantee the privacy and protection of personal data. Indeed, while the Act demands the NIRA to establish and maintain appropriate safeguards, observe general security practices and issue guidelines for access to information, the content of these policies is still unknown. Until the NIRA issues the necessary regulations to secure data protection, the procedures implemented by the Authority will lack to be transparency and legitimacy. As stated by Unwanted Witness, *“NIRA continues to share citizens’ data ... without transparent reports to the public.”*¹²⁶

Furthermore, although the *Ndaga Muntu* requires that the treatment of personal data be confidential, the law fails to set forth requirements for personal consent and monitoring mechanisms that allow individuals to track and control the use of their personal information. With this in mind, the applicants are unprotected from the different uses that the government entities – which are many - give to their personal information. Since the data required to register for a national/alien identification card is generally sensitive information – education, occupation, home address, photographs, fingerprints, among others - even if there are no transparency and traceability mechanisms, applicants are obliged to provide it. This situation enhances the risks of misuse of information and fraud, putting at risk the personal identity of the applicants. As highlighted by Unwanted Witness, the NIRA *“rarely seek consent from the owners of the data (citizens)”*.¹²⁷ This gets worse bearing in mind that while the Act defines the term “information”, it refrains from providing a definition of personal and/or sensitive data. The above generates uncertainty about what type of information should be classified as confidential by the registration officers and which not.

Additionally, since personal data is being shared without their consent, they are deprived from monitoring if their data is being protected by a confidential agreement or to the contrary, it is being misused by different public and private entities. Indeed, even after the issuance of the Data Privacy and Protection Act in 2019, the people’s data continues to be shared without their consent.¹²⁸ If people are not being asked for consent when and told why public or private agencies are using their personal information, they are not only unable to know if their personal information is being

126. Id. 6 at page 2.

127. Id.

128. Id. 6 at page 4.

illegally used but it also prevents them from exercising their right to request the deletion, updating or correction of it.

Finally, since the ID system creates a unique identifier, the power of individuals to control how different entities link it to multiple sources of data is being drastically reduced, as well as their need to obtain multiplicity of identifiers. In order to assure a full recognition of human rights, citizens must be able to have a multiplicity of identities in a flexible and scalable ID system that meets the needs of all.¹²⁹

2.3 Conclusion

The Ugandan legal framework regulating the *Ndaga Muntu* fails to fulfill the obligations to respect, protect and guarantee the right to privacy stated in different human rights treaties. Although some legal dispositions vaguely protect the right to privacy, this is not enough. Unquestionably, there are still some risks and concerns that are not fully being covered by the current legislation. For instance, the NIRA continues without issuing the specific privacy and security guidelines and the Secondary Legislation fails to require freely given, specific and informed consent, provide monitoring and transparent mechanisms for the authorities to be accountable for data sharing and misuse and to define personal and/or sensitive information, among others.

Moreover, there are other cybersecurity regulations that raise some additional risks to the right to privacy that can be replicated in the Secondary Legislation. Certainly, in the absence of specific regulation governing the privacy and data protection in the ID system, there is a risk that the data being collected, shared and used in the *Ndaga Muntu* may be subject to the legal requirements stated in this cybersecurity legal framework.

In conclusion, considering the arguments described, the legal framework that governs the *Ndaga Muntu* do not fulfill the obligations to respect, protect and guarantee the right to privacy set forth in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the African Declaration

¹²⁹ Id. 6 at page 6.

on Internet and Freedoms. Certainly, the government of Uganda is currently failing to fulfill its international human rights obligations disposed in these international and regional treaties as it does not provide a dully protection and guaranty to the right to privacy of all individuals– in particular by regulating effective processing of personal data that is being used in digital environments.

Recommendations

A proposal to amend the *Ndaga Muntu*

There is a general agreement that despite the governments' efforts to acknowledge some of the problems already identified, the *Ndaga Muntu* must be amended in order to guarantee the human rights of all people forced to register in it. Bearing this in mind – and based on the aforementioned conclusions - this final chapter will present a set of recommendations destined to amend the sections of the Secondary Legislation that are related to the concerns explained above. These recommendations are not exhaustive and must be implemented harmoniously and consistently throughout the whole Ugandan legal framework. Although it will be desirable to create a greater impact in breaking down the gaps of exclusion in Uganda – probably by means of constitutional reforms - this legal opinion will focus on proposing modifications exclusively to the Secondary Legislation. The above, since this legal framework is the one creating the *Ndaga Muntu* and from which the corresponding human rights violations are derived directly.

As it will be illustrated below, the recommendations are written following the same structure of the legal opinion, in order to maintain a harmonious order throughout the entire document. But first, and as a general recommendation to consider when looking into amending the Secondary Legislation, it is suggested that the law envisages a new approach; a new and more human rights-based and humanitarian approach that becomes part of a broader and greater development agenda. In fact, and as was disposed in the national objectives and directive principles X and XII of the Constitution, the Ugandan government is called to take all necessary steps to bring out development plans that involve all people.

1. **Economic, social and cultural rights in the *Ndaga Muntu*:**

With respect to economic and social rights, the Secondary Legislation must eliminate all requirements obstructing the effective enjoyment of the individuals' economic, social and cultural rights. In this regard, the following subsections will detail the recommendations that arise from each one of the dimensions of the RIA's approach.

1.1 *Recommendations related to the dimension of Recognition:*

- a. Alternative ways to prove citizenship: the *Ndaga Muntu* must set forth that national identification cards are only an optional way to prove citizenship. As a consequence, the law must state other alternative ways for citizens to prove citizenship and be able to use them to register in the ID system, such as birth or death certificates and other identification documents. The Secondary Legislation must also clarify that the expiration of the national/alien identification card does not amount the expiry of citizenship, neither the termination of access to social services. In order to do so, Section 66.2, 68 and 69.6 of the Act and Form 4 of the Statutory Instruments must be amended.
- b. Accessing economic and social services without conditionalities: the legal framework must avoid linking the issuance of a national/alien identification card or number to accessing social services. The Secondary Legislation may include other alternative ways as prerequisites, like the afore-named alternatives ways and/or the constancy that the applicant initiated the registration process and refraining from requiring the card as such. Accordingly, Sections 65.1 (j) and 66.2. of the Act and Section 28 of the Statutory Instrument must be revised.
- c. Avoid requiring in person attendance: the law should not obligate applicants to attend personally before the Authority to fulfil the requirements set forth in the *Ndaga Muntu*. Alternative mechanisms must be considered to replace this requirement, for instance, through a free digital system available in all urban and rural areas. Thus, Sections 4.3, 11.2, 21.2 and 23.4 of the Statutory Instruments shall be modified. In fact, the exceptions set forth in Section 12.2 must be extended to other groups of people, such as women and elder population.
- d. Review the payment of fees and fines: Majority Ugandans live below a dollar per day and so can not afford ID replacement fees and fines as imposed by the law. Therefore, the Statutory Instruments must not require as a condition for replacing a national identification card and/or for fulfilling the requirements of the law, the payment of fees and fines. Moreover, the future fines imposed by the government must be reasonable and in accordance with the Covenant. Thus, Sections 36.3, 37.2, 39.1, 48.1, 50.1, 52, 64.5, 76 (a) and 85 (i and k) and

Sections 4.2, 5.2, 23.3, 23.5, 24.3 and 25.2 of the Statutory Instruments should be revised and amended. Moreover, the Statutory Instruments must detail the destination of the fines and fees collected, which may consider a social and inclusive purpose.

- e. Evade needing excessive personal data: both the Act and the Statutory Instruments shall avoid requesting excessive personal data to applicants. Sensitive data such as the level of education, occupation, employment and valid passport can be categorized as optional. As a consequence, Section 32.2 (b and c) and Form 3 of the Act and Sections 3.6, 3.7, Form 3, 4, 5, 6, 9, 10 and 11 of the Statutory Instruments shall be modified.
- f. Refrain from requiring a valid passport to irregular migrants: the Act shall clarify that the requirement of presenting a valid passport to register to the Ndaga Muntu and to access economic and social services does not apply to irregular migrants. Thus, irregular migrants may be able to present other alternative ways of identification, specially, if they are requiring the issuance of a valid passport. Thus, Sections 55.3 (b) and 66.2 (c) of the Act should be revised. For instance, a solution could be to homogenize the language of both the Act and the Statutory Instruments and include the words “if any/if applicable” when requiring a valid passport.
- g. Issuance of missing guidelines: the NIRA must comply with its obligation disposed in Section 13.3 of the Statutory Instrument and issue the missing guidelines to facilitate the registration of persons incapacitated by illness, old age, among other related issues.

1.2 Recommendations concerning the dimension of Institutionalization:

- a. Constitute an independent institutionality: the Ndaga Muntu shall be governed by independent institutions - both financially and administratively. Thus, the NIRA and the board must consider make the structure, budget and operation of the ID system independent from the Minister.
- b. Consider other knowledge categories when electing board members: the Secondary Legislation must consider – when electing the chairperson and the two individuals representing the public – other categories such as knowledge on constitutional and human rights law.

- c. Issuance of financial principles that include social aims: the ID system must issue additional financial guidelines that consider not only the sustainability of the Ndaga Muntu, but also the execution of social plans that enhance the inclusion of all Ugandans and the effective enjoyment of their economic, social and cultural rights.

1.3 *Recommendations with respect to the Accountability dimension:*

- a. Creation of an effective mechanism to enforce human rights: the Ndaga Muntu must contemplate an accessible, affordable, timely and effective redress mechanism that repairs serious human rights violations, especially economic, social and cultural rights ones. This administrative and/or judicial mechanism must fit the individual needs, such as language, social and economic conditions, among other particular needs. The first step to achieve this recommendation is to fulfill the obligation mention in Section 83 of the Act and issue the guidelines and general rules of the identification and registration committee.
- b. Provide good governance and transparency policies: the Secondary Legislation must include transparency mechanisms and reports to allow public scrutiny of the decisions and actions of the NIRA. Moreover, the law governing the Ndaga Muntu shall consider issuing good governance and transparency policies such as making available the resumes of the board members and issue the pending guidelines for access to information.

2. **The right to privacy:**

The following recommendations below are made in respect to privacy:

- a. Set forth transparent and surveillance mechanisms for data protection: the legal framework regulating the Ndaga Muntu is obliged to provide transparent mechanisms that allow individuals to control, access, track, modify and remove their personal data from the ID system. These mechanisms may consider: (i) setting forth procedures that enforce public and private entities to require personal consent before collecting personal data; (ii) providing

monitoring mechanisms that allow individuals to track and control the use of their personal data; (iii) enabling open reports to the public which detail the number of actors requesting information from the Ndaga Muntu database and the collection use and purpose; (iv) developing a policy to mandate the disclosure and liability of any data breaches; (v) adopting anonymization mechanisms to protect personal data; (vi) issue the pending guidelines about access to information and (vii) establishing unambiguous mechanisms that regulate the right to privacy in digital environments,

- b. Detail on the use of sensitive data: the Secondary Legislation must not only define what is considered as sensitive and personal data but also require only the processing of personal and sensitive data which is necessary and proportionate, in compliance of data minimization.
- c. The use of biometrics and multiplicity of identities: the law regulating the ID system must consider alternative mechanisms for biometric failures and enable the system that operates the Ndaga Muntu to contemplate a multiplicity of identities to meet the needs of all people living in Uganda.

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