

THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT MBALE

MISCELLANEOUS CAUSE NO. 024 OF 2020

TSAMA WILLIAM & 47 OTHERS:::APPLICANTS

*VERSUS*

1. ATTORNEY GENERAL
  2. NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY
  3. BUDUDA LOCAL GOVERNMENT COUNCIL
- :::RESPONDENTS

**APPLICANTS’ WRITTEN SUBMISSIONS**

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THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT MBALE  
MISCELLANEOUS CAUSE NO. 024 OF 2020

1. TSAMA WILLIAM
2. WEANGA JOHN
3. NAMEE ESTER
4. NABENDE ALEX MUYONGA
5. NABENDE VINCENT
6. KUTOSI YEFUSA
7. WALIMBWA VICENT
8. WANZONELE JOHN
9. NAMONO JOYCE
10. KUTOSI FRANCIS
11. KIGAI EMMA
12. SHINYALE JULIUS
13. KIBONE ANGELA
14. WEPHUKHULU DAMASCO
15. NABUTITI ZOENA
16. KULOBA BONIFACE
17. WABUYOMBE RICHARD
18. NAMONO ANNET
19. TSEMOI IRENE
20. KHAINZA AIDAH
21. KIBONE SYLVIA
22. TSAMA DAMASCO
23. KUSOLO MOREESE
24. WATSAKULA JOSEPH
25. WAMEYO WILSON
26. KAKALA SIMON
27. BUTSIBA JULIUS
28. WEKESA GRACE
29. NABIANYAKA YEFUSA
30. WABUYOMBE FRED
31. MABONGA MARY
32. WAMBOKA DAVID
33. MATETE SAM
34. WANZONELE PATRICK
35. NANDUTU JENIPHER
36. MANGOBE RICHARD

- 37. SHIRUNDU VINCENT
- 38. NAMASOPO MARIA
- 39. MUTABALI BOSCO
- 40. MUYEKHO FLORETINA
- 41. MUYIMA JOSEPH
- 42. WANYELA PETER
- 43. NAMASOPO BEATRICE
- 44. KALENDA JANE FLORENCE
- 45. WATSAKULA MOSES
- 46. NANDUTU ROBINAH
- 47. NABULO GRACE
- 48. MUNDEYI CASTANT.....: APPLICANTS

*VERSUS*

- 1. ATTORNEY GENERAL
- 2. NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY
- 3. BUDUDA LOCAL GOVERNMENT COUNCIL  
.....:RESPONDENTS

**APPLICANTS’ WRITTEN SUBMISSIONS**

**Summary of the Applicants’ Case**

1. The applicants bring this action under the provisions of *Article 50(1) of the Constitution of Uganda; Sections 3(1), 9(1), 9(2) of The Human Rights (Enforcement) Act, 2019; Sections 3(1), (3), (4) & (5) of the National Environment Act, 2019; and Rule 6(1) of The Judicature (Fundamental and Other Human Rights and Freedoms) (Enforcement Procedure) Rules, 2019.*
2. The facts giving rise to the cause of action are that on 3 December 2019, multiple landslides occurred in Bushika sub-county, Bududa district, displacing the applicants from their homes, killing twenty (20) of the applicants’ relatives, and destroying property and the environment.
3. That Bududa district, in the Mt Elgon region in Eastern Uganda, is an area prone to landslides, and according to several Government documents set out in supporting affidavits, the respondents are fully knowledgeable of the recurring

*landslide problem* in the area. Bududa district has previously been affected by recurring landslides on multiple occasions.

4. The respondents have positive obligations under national and international law to put in place an effective machinery for dealing with landslides in Bududa district.
5. Despite their statutory obligations, the respondents have failed to put in place an effective machinery against landslides in Bududa district.
6. That before the landslide, there was no warning system in place in the affected area, and the applicants did not receive any warning from the Government about the risk of landslides and were not advised to evacuate the area.
7. That after the landslide, there was no immediate rescue or evacuation response provided by the Government, and the applicants did not receive any immediate assistance such as emergency payments, food, water, medical care or temporary housing from the Government.
8. As a result of the respondents' failure to discharge their statutory obligations, the applicants' fundamental rights including the right to life; the right to a clean and healthy environment; the right to property; and the right to physical and mental health were infringed.
9. The infringement of the applicants' fundamental rights which occurred on the 3 December 2019 in Bududa district due to landslides, could have been avoided if the respondents had discharged their respective obligations under the law.
10. Bududa district is likely to suffer from more landslides in future because of the past history of landslides and, due to factors such as changing rainfall patterns and increasing extreme weather events caused by climate change and environmental degradation, and that if the affected people are not urgently relocated and resettled, further loss of life, loss of property and infringement of human rights is likely to occur.

11. The applicants claim several reliefs from court including declarations that their right to life; right to own property; right to physical and mental health; and the right to a clean and healthy environment were infringed when landslides occurred in Bududa district on the 3 December 2019.
12. The applicants further claim for a declaration that the respondents are responsible for the violation and infringement of their fundamental human rights.
13. The applicants further claim a total of UGX 6,800,000,000 (Uganda shillings six billion eight hundred million) in damages and compensation for the loss of life, threats to life, destruction of property and infringement of their other fundamental human rights as well as the costs of resettlement to safer areas.

### **Issues for Trial**

1. Whether the respondents have positive obligations to take appropriate measures to mitigate the risks of landslides in Bududa district.
2. Whether the respondents have failed to fulfil their positive obligations under the law to put in place an effective machinery for dealing with landslides in Bududa district.
3. Whether the respondents' acts and/or omissions in the management of landslides in Bududa district are responsible for the infringement of the applicants' fundamental human rights.
4. Remedies available to the parties.

**Issue No.1: Whether the respondents have positive obligations to take appropriate measures to mitigate the risks of landslides in Bududa district.**

#### ***The doctrine of positive State obligations***

1. The human rights legal regime imposes positive obligations on the State to take legislative and/or other measures to give effect to the enjoyment and fulfilment of human rights.

2. In the case of *Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR)/Nigeria No. 155/96*, African Commission on Human and Peoples' Rights, it was held that:

*“Internationally accepted ideas of the various obligations engendered by human rights indicate that all rights, both civil and political rights and social and economic, generate at least four levels of duties for a State that undertakes to adhere to a rights regime, namely the duty to respect, protect, promote, and fulfil these rights. These obligations universally apply to all rights and entail a combination of negative and positive duties... the State is obliged to **protect** right-holders against other subjects by legislation and provision of effective remedies. This obligation requires the State to take measures to protect beneficiaries of the protected rights against political, economic and social interferences. Protection generally entails the creation and maintenance of an atmosphere or framework by an effective interplay of laws and regulations so that individuals will be able to freely realize their rights and freedoms. This is very much intertwined with the tertiary obligation of the State to **promote** the enjoyment of all human rights. The State should make sure that individuals are able to exercise their rights and freedoms, for example, by promoting tolerance, raising awareness, and even building infrastructures...The...obligation requires the State to fulfil the rights and freedoms it freely undertook under the various human rights regimes. It is more of a positive expectation on the part of the State to move its machinery towards the actual realisation of the rights... Governments have a duty to protect their citizens, not only through appropriate legislation and effective enforcement but also by protecting them from damaging acts... This duty calls for positive action on [the] part of governments in fulfilling their obligation under human rights instruments.”*

3. In the case of *Legal Resources Foundation v. Zambia, Communication No. 211/98*, African Commission on Human and Peoples' Rights, it was held that:

*“[T]he Commission is mindful of the positive obligations incumbent on State Parties to the Charter in terms of Article 1 not only to “recognise” the rights under the Charter but to go on to “undertake to adopt legislative or other measures to give effect to them” The obligation is peremptory, States “shall undertake”[.] Indeed, it is only if the States take their obligations seriously that the rights of citizens can be protected”*

4. In the case of *Hossam Ezzat & Rania Enayet (represented by Egyptian Initiative for Personal Rights & INTERIGHTS) v. The Arab Republic of Egypt*, African Commission on Human and Peoples’ Rights, Communication 355/07, it was held that:

*“Regarding obligations undertaken by the Respondent State under the Charter, Article 1 of the Charter is critical. It provides in the material parts that State Parties to the Charter “shall recognize the rights, duties and freedoms enshrined in the Charter and shall undertake to adopt legislative or other measures to give effect to them.” Article 1 of the Charter embodies the overarching obligations undertaken by State Parties to the Charter. The Commission has expounded that the general obligations under Article 1 of the Charter generate the obligations: to respect, protect, promote and fulfil the rights and freedoms.”*

5. In the case of *Abdel Hadi, Ali Radi & Others v. Republic of Sudan*, Communication 368/09, African Commission on Human and Peoples Rights, it was held that:

*“The Commission considers that if a State Party fails to respect, protect, promote or fulfill any of the rights guaranteed in the Charter, this constitutes a violation of Article 1 of African Charter. [...] The failure to put in place an adequate legislative framework to protect the physical integrity of individuals within its jurisdiction also constitutes a failure on the part of the Respondent State to uphold its obligations under Article 1 of the Charter.”*

6. In the case of *Centre for Health, Human Rights and Development (CEHURD) & Others v. Attorney General, Supreme Court of Uganda, Constitutional Appeal No. 1 of 2013*, the petitioners petitioned the constitutional court to inquire into alleged acts and/or omissions of Government with respect to the delivery of maternal health services in the country. The constitutional court dismissed the petition on grounds of the political question doctrine that prevent court from interfering in the work of other branches of Government – the executive and parliament. On appeal to the supreme court, the decision of the constitutional court was set aside, and the Supreme Court directed the constitutional court to hear the petition on its merits. Court held that the fear that the court will transgress into areas reserved to the other arms of Government was not warranted. **Bart M. Katureebe, CJ (pages 23-24)** observed thus:

*“...when issues of the State failing in its duty to the rights of citizens is brought before court for interpretation the courts will not abdicate from determining such issues relying on the political doctrine question.”*

7. In the case of *Centre for Health, Human Rights and Development (CEHURD) & Others v. Attorney General, Constitutional Court of Uganda, Constitutional Petition No. 16 of 2011*, the petitioners argued that the Government had omitted to adequately provide for basic maternal health care services in public health facilities which amounted to violation of the right to health and life. **Justice Barishaki Cheborian, JCC (pages 34, 57-59)** held that:

*“...the Government’s omission to provide adequate basic maternal health care services in public health facilities violate the right to health in contravention of Articles 8A, 39 and 45 read together with objectives XIV and XX of the constitution.”*

8. In the case of *Centre for Health, Human Rights and Development (CEHURD) & Others v. Attorney General, Constitutional Court of Uganda, (supra)*, **Justice Barishaki Cheborian, JCC (pages 38, 57-59)** agreed with the petitioners that the Government’s acts and/or omissions with respect to the provision for basic maternal health care services in public health facilities was a violation of the right to life in contravention of *Article 22 of the Constitution*.



9. The respondents have obligations under the following provisions of the law to put in place an effective machinery for dealing with landslides in Bududa district.

***Positive State obligations before the Bududa landslide in December 2019***

10. *Article 8A(1) of the Constitution of Uganda, 1995* requires the 1<sup>st</sup> respondent to adhere to governance principles of national interest and common good enshrined in the national objectives and directive principles of state policy, in providing the various services, for which it is responsible.
11. *State Policy No. XXIII of the National Objectives and Directive Principles of the Constitution of Uganda, 1995* requires the 1<sup>st</sup> respondent to:

*“...institute an effective machinery for dealing with any hazard or disaster arising out of natural calamities or any situation resulting in general displacement of people or serious disruption of their normal life.”*
12. In enumerating the duties of the 1<sup>st</sup> respondent, *Article 189(1) of the Constitution of Uganda, 1995* and the *6<sup>th</sup> Schedule to the Constitution*, oblige the Government to control and manage epidemics and disaster.
13. *Article 249 (1) of the Constitution of Uganda, 1995* requires the 1<sup>st</sup> respondent to establish a Disaster Preparedness and Management Commission for Uganda to deal with both natural and man-made disasters.
14. *Section 56(1) of the National Environment Act, 2019* requires the 2<sup>nd</sup> respondent to identify and map out hilly and mountainous areas at risk from environmental degradation, natural processes or natural disasters, and under *Section 56(2) of the National Environment Act, 2019*, a hilly or mountainous area is at risk from environmental degradation, natural processes or natural disasters, if landslides have occurred in the area.
15. *Section 58(1) of the National Environment Act, 2019* requires the 2<sup>nd</sup> respondent to issue guidelines and prescribe measures for the sustainable use of hilly and

mountainous areas, and under *Section 58(2) of the National Environment Act, 2019*, the measures and guidelines to be prescribed shall include control of soil erosion, soil creep and landslides; and disaster preparedness in areas prone to landslides.

16. *Regulation 4(2) of the National Environment (Hilly and Mountainous Area Management) Regulations, 2000* require the 3<sup>rd</sup> respondent to regulate activities in mountainous areas, including through land use zoning; restricting and controlling activities which are inconsistent with good land husbandry practices; and making guidelines for the management of areas prone to disasters such as landslides, floods, avalanches, and falling rocks.
17. *Regulations 5(3), 5(4) & 5(5) of the National Environment (Hilly and Mountainous Area Management) Regulations, 2000* require the 3<sup>rd</sup> respondent to advise on the best practicable ways of conserving soil in mountainous and hilly areas in relation to specific landowners or occupiers, to put such advice in writing, and to take out conservation orders for service on specified landowners and occupiers in relation to the sustainable management of land in hilly and mountainous areas.
18. *Regulations 6(1), 6(2), 6(3) & 6(4) of the National Environment (Hilly and Mountainous Area Management) Regulations, 2000* require the 3<sup>rd</sup> respondent to make by-laws identifying mountainous and hilly areas which are at risk from environmental degradation, including those areas where landslides and mud flows have occurred. The regulations require the 3<sup>rd</sup> respondent to notify the 2<sup>nd</sup> respondent, of mountainous and hilly areas, identified as being at risk from environmental degradation.
19. *Regulation 12 of the National Environment (Hilly and Mountainous Area Management) Regulations*, require the 3<sup>rd</sup> respondent to carry out land use mapping in all mountainous and hilly areas, showing their characteristics, status, and use.
20. *Regulation 15 of the National Environment (Hilly and Mountainous Area Management) Regulations* require the 3<sup>rd</sup> respondent by statutory instrument to

declare a mountainous or hilly area, closed to all or any activity for a period of time if the area is at risk of being degraded and prohibit the carrying out of any activity in the area; or to have an open season, permitting specified activities in the area subject to such conditions as it may deem necessary.

21. In the case of *Uganda v. Thomas Kwoyelo Constitutional Appeal No.1 of 2012*, it was held that Uganda is subject to obligations under international treaties (*per Bart M. Katureebe, JSC, at pages 35-36*) – he observes thus:

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

22. The respondents have obligations under international law to put in place an effective machinery for dealing with landslides:
- (a) According to *Article 19(c)* of the *Sendai Framework for Disaster Risk Reduction 2015–2030 (69/283)* adopted by *United Nations General Assembly on the 3 June 2015*, the aim of the State’s actions in disaster risk reduction should be the protection of human rights. *Article 19(c)* provides as follows:

*“Managing the risk of disasters is aimed at protecting persons and their property, health, livelihoods and productive assets, as well as cultural and environmental assets, while promoting and protecting all human rights, including the right to development...”*

- (b) *Section 30 of the Sendai Framework Disaster (supra) requires the respondents, to allocate the necessary financial resources and logistics at all levels of administration for the development and the implementation of disaster risk reduction strategies, policies, plans, laws and regulations.*
- (c) *Article 17 of the Universal Declaration of Human Rights, 1948 protects the applicants’ right to own property, and provides that no one shall be arbitrarily deprived of his property.*
- (d) *Article 6(1) of the International Covenant on Civil and Political Rights, 1966 protects the applicants’ right to life.*
- (e) *Article 14 of the African Charter of Human and Peoples’ Rights (ACHPR), 1981 protects the applicants’ right to property.*
- (f) *Article 4 of the African Charter of Human and Peoples’ Rights (ACHPR), 1981 protects the applicants’ right to life.*
- (g) *Article 24 of the African Charter of Human and Peoples’ Rights (ACHPR), 1981 protects the applicants’ right to a clean and healthy environment.*
- (h) *Article 16 of the African Charter of Human and Peoples’ Rights (ACHPR), 1981 protects the applicants’ right to physical and mental health.*
- (i) *Article XII (3) of the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala*

*Convention*), 2009 provides that the 1<sup>st</sup> respondent shall be liable to make reparation to internally displaced persons for damage when there is failure by the Government from protecting and assisting internally displaced persons in the event of natural disasters.

- (j) *Paragraph 41 of General Comment No. 3 on The African Charter on Human and Peoples' Rights: The Right to Life (Article 4)* provides that:

*“...The State has a positive duty to protect individuals and groups from real and immediate risks to their lives caused either by actions or inactions of third parties...Such actions include, inter alia, preventive steps to preserve and protect the natural environment and humanitarian responses to natural disasters, famines, outbreaks of infectious diseases, or other emergencies.”*

- (k) *Principle 3 of the UN Guiding Principles on Internal Displacement, 2004* provides that the respondents have the primary duty and responsibility to provide protection and humanitarian assistance to internally displaced persons, and those persons have the right to request and to receive protection and humanitarian assistance from the respondents and shall not be persecuted or punished for making such a request.
- (l) *Part III para 26 of the UN Human Rights Committee General Comment No. 36* provides that the 1<sup>st</sup> respondent shall develop contingency plans and disaster management plans designed to increase preparedness and address natural and man-made disasters, which may adversely affect enjoyment of the right to life.
- (m) Under *Article 4(1) of the United Nations Convention on Climate Change (UNFCCC)*, the 1<sup>st</sup> respondent has the following obligations relevant to climate change adaptation:

- i. Promotion of sustainable management, conservation and enhancement of sinks and reservoirs of greenhouse gases; including forests;
  - ii. Cooperate in preparing for adaptation to the impacts of climate change;
  - iii. Take climate change considerations into account in relevant social, economic and environmental policies and actions;
  - iv. Promote and cooperate in scientific, technological, technical, socio-economic and other research, and systematic observation;
  - v. Promote and cooperate in the full, open and prompt exchange of relevant scientific, technological, technical, socio-economic and legal information related to the climate system and climate change, and to the economic and social consequences of various response strategies; and
  - vi. Promote and cooperate in education, training and public awareness related to climate change.
- (n) *Article 5* of the *UNFCCC* provides for the commitment of the 1<sup>st</sup> respondent in relation to research and systematic observation.
- (o) *Article 6* of the *UNFCCC* sets out the commitments of the parties in relation to education, training and public awareness.
- (p) *Article 4(2)* of the *Paris Agreement, 2015* requires the 1<sup>st</sup> respondent to prepare, communicate and maintain successive nationally determined contributions that it intends to achieve; and Parties are required to pursue domestic climate change mitigation and adaptation measures.
- (q) *Article 5(1)* of the *Paris Agreement* provides that the 1<sup>st</sup> respondent should take action to conserve and enhance sinks and reservoirs of greenhouse gases including forests.

- (r) Under *Article 7(1)* of the *Paris Agreement*, the 1<sup>st</sup> respondent commits to work with the global community to establish the global goal on adaptation of enhancing adaptive capacity, strengthening resilience and reducing vulnerability to climate change, with a view to contributing to sustainable development and ensuring an adequate adaptation response.
- (s) Under *Article 7(9)* of the *Paris Agreement*, the 1<sup>st</sup> respondent shall:

*“...engage in adaptation planning processes and the implementation of actions, including the development or enhancement of relevant plans, policies and/or contributions, which may include: (a) the implementation of adaptation actions ... (c) the assessment of climate change impacts and vulnerability, with a view to formulating nationally determined prioritized actions, taking into account vulnerable people, places and ecosystems ...”*

***Positive State obligations immediately before and after the Bududa landslide in December 2019***

- 23. *State Policy No. XXIII of the National Objectives and Directive Principles of the Constitution of Uganda, 1995* requires the respondents to institute an effective machinery for dealing with natural disasters, including the obligation to provide advance warning of an impending natural disaster, to undertake emergency evacuation, and to provide emergency relief.
- 24. *Article 110 (1) (b)* of the *Constitution of Uganda, 1995* requires the 1<sup>st</sup> respondent, through the President to declare a state of emergency in any part of Uganda that is threatened by a natural disaster.
- 25. *Article 209 (b)* of the *Constitution of Uganda, 1995* requires the 1<sup>st</sup> respondent acting through the Uganda Peoples’ Defence Forces, to cooperate with civilian authority in emergency situations and in cases of natural disasters.

26. *Section 95(1) and (2) of the National Environment Act, 2019* requires the 1<sup>st</sup> respondent through the Office of the Prime Minister, in consultation with the 2<sup>nd</sup> respondent, to declare an incident, occurrence or event as an environmental emergency or disaster, and the 1<sup>st</sup> respondent through the “...Office of the Prime Minister shall, by regulations establish a coordination mechanism for national responses to environmental emergencies and disasters.”

***Case law on positive State obligations in the context of natural disasters***

27. The case of *Budayeva & Others v. Russia (Applications nos. 15339/02, 21166/02, 20058/02, 11673/02 and 15343/02)*, *European Court of Human Rights*, provides guidance on situations when the State has positive obligations to protect citizens’ human rights in the context of a recurring natural disaster.
28. The case of *Budayeva & Others v. Russia (supra)* concerned the town of Tyrnauz in Russia that was affected by mudslide in the year 2000 leading to loss of life and widespread destruction of property. The town is located in an area prone to landslides, a fact that was well within the knowledge of the Russian Government. The aggrieved civilians initially filed a civil action in domestic Russian courts, but their claim was dismissed, and they filed a claim in the European Court of Human Rights, which held that the Russian Government had positive obligations to protect the human rights of the claimants in circumstances of a recurring natural disaster.
29. In the case of *Budayeva & Others v. Russia (supra)* (at page 27), court observed thus:

*“In the sphere of emergency relief, where the State is directly involved in the protection of human lives through the mitigation of natural hazards, these considerations should apply in so far as the circumstances of a particular case point to the imminence of a natural hazard that had been clearly identifiable, and especially where it concerned a recurring calamity affecting a distinct area developed for human habitation or use... [emphasis mine]”*



30. In the case of *Budayeva & Others v. Russia (supra)* (at pages 25-32), court set out the following further general principles of law applicable in determining whether the State has a positive obligation to protect human rights in respect of a recurring natural disaster:

- (i) The State has a positive obligation to take appropriate steps to safeguard the lives of those within their jurisdiction.
- (ii) This positive obligation entails above all a primary duty on the State to put in place a legislative and administrative framework designed to provide effective deterrence against threats to the right to life.
- (iii) This positive obligation of the State must be construed as applying in the context of any activity, whether public or not, in which the right to life may be at stake.
- (iv) The obligation on the part of the State to safeguard the lives of those within its jurisdiction has been interpreted so as to include both substantive and procedural aspects, notably a positive obligation to take regulatory measures and to adequately inform the public about any life-threatening emergency.
- (v) The State is required to take positive measures to protect the right to life, and the choice of means is in principle a matter that falls within the State's margin of appreciation.
- (vi) The scope of the positive obligations imputable to the State in the particular circumstances would depend on the origin of the threat and the extent to which one or the other risk is susceptible to mitigation.

### ***Conclusion on Issue No.1***

31. On the basis of the above authorities, we pray that court makes a finding that the respondents have positive obligations under the law to design and implement an effective machinery to deal with landslides in Bududa district.

### **Issue No.2: Whether the respondents have failed to fulfil their positive obligations under the law to put in place an effective machinery for dealing with landslides in Bududa district.**

#### ***The knowledge of the Respondents of the threat to the rights of the applicants by landslides***

1. In paragraph 2 of his affidavit, YIGA VINCENT states that:

*“...on 3 December 2019, multiple landslides occurred in Bushika sub-county, Bududa district.”*

2. The fact of the occurrence of landslides was confirmed by a Statement dated 5 December 2019 issued by MUSA ECWERU, Minister of State for Relief, Disaster Preparedness and Refugees. The Statement is attached to the affidavit of YIGA VINCENT and is marked “**Annexure 2**”. In paragraphs 1.1 and 1.2 of his Statement, the Minister states as follows:

*“1.1 On Monday 2<sup>nd</sup> December rains began falling in the Mt Elgon subregion and several parts of the country at about 11.00 pm and continued up to 3.00 pm (15 hrs of rainfall) on Tuesday 3<sup>rd</sup> December. This heavy unusual rainfall followed a near daily rainfall for the past three Months of November, September and August.*

*1.2 It caused multiple landslides in the villages of Namasa, Naposhi and shukururu in Bushika subcounty of Bududa district killing 4 people, injuring 5 and displacing over 6,000 people... Review of villages households registers is ongoing to establish number and names of missing persons. Assessment of the number of hectares of houses, plantations, crop and livestock destroyed is also on-going.”*

3. In relation to the landslide that occurred on the 3 December 2019, the government’s meteorology agency, the **Uganda National Meteorology Authority** published a seasonal rainfall outlook for the period September to December 2019 in which it warned about potential landslides occurring in the Mt Elgon region where Bududa district is located. The affidavit of YIGA VINCENT attaches the seasonal rainfall outlook issued by **Uganda National Meteorology Authority (Annexure 8)**. At page 9, section 3.1 of the seasonal rainfall outlook, it is stated as follows:

*“Potential landslides and mudslides*

*These are expected in the regions of mountain Elgon[...]*”

4. Specific advisories for the Disaster Risk Management Sector are set out in Section 3.2 of the seasonal rainfall outlook issued by **Uganda National Meteorology Authority (Annexure 8** to the affidavit of YIGA VINCENT) in which it is stated as follows:

*“Landslides and mudslides may occur in the mountainous areas of [... ]Elgon[... ]Review disaster contingency plans... Map out designated centres in case of extremes[... ]Activate and or establish disaster management committees at the local levels[... ]Monitor signs of landslides like cracks, saturated soils, leaning trees[... ]Relocate to safer areas[... ]Emergency rescue teams should carry out surveillance[... ]NB. District authorities are advised to update their contingency plans for better coordination in case of any weather and climate disaster that might occur during this season. Community education and awareness should be conducted.”*

5. In paragraph 3 of his affidavit, YIGA VINCENT states that Bududa district in Eastern Uganda, is an area prone to landslides, and he annexes several Government documents to prove the existence of **recurring landslides** in the region, and the fact that Government is fully knowledgeable of the problem. The following Government documents are annexed to the affidavit of YIGA VINCENT:

- (i) Relevant pages of the National Policy for Disaster Preparedness and Management (2011) (“*Annexure 3*”);
- (ii) Relevant pages of the National Climate Change Policy (2015) (“*Annexure 4*”);
- (iii) Relevant pages of the National Development Plan II (“*Annexure 5*”);
- (iv) A copy of the Statement to Parliament on the landslide disaster in Bududa by the Minister of Relief, Disaster Preparedness and Refugees dated 21 November 2018 (“*Annexure 6*”).
- (v) Report on Oversight Visits to Bududa and Bulambuli districts by the Office of the Leader of Opposition dated May 2020 (*Annexure “7”*).
- (vi) A Report made by the Committee on Presidential Affairs to Parliament, dated November 2018 (without annexures) (*Annexure “9”*).

6. In paragraph 4 of his affidavit, YIGA VINCENT states:

*“That the Mt Elgon region where Bududa district is located has a known history of recurring landslides following heavy rains, making the Government fully aware of the threat of landslides to human life. That over the last 10 years, about 400 landslides have occurred in the Mt Elgon region resulting in loss of life and property...”*

7. In paragraph 4 of his affidavit, YIGA VINCENT annexes a copy of the Statement to Parliament on the landslide disaster in Bududa by ENG. HILARY ONEK, the Minister of Relief, Disaster Preparedness and Refugees dated 21 November 2018 (*Annexure “6”*). At page 9 of the Statement, the Minister states as follows:

*“12.0 Colleagues, over the past 10 years, over 400 landslides have occurred on Mt. Elgon with varying numbers of injuries and fatalities.*

*Mt. Elgon hosts six districts on Bugisu side and three Districts on the Sebei Side.*

*13.0 In the recent years, the frequency of occurrence of landslides has increased because of a number of factors including (i) Climate Change, (ii) degradation of the forest cover and (iii) Population growth resulting in shortage of farmland in the safer areas.”*

8. In paragraph 5 of the affidavit of YIGA VINCENT, the witness gives details of the landslides that have previously occurred in the Mt Elgon including Bududa district quoting from paragraph 2.0, page 4 of the Report on Oversight Visits to Bududa and Bulambuli districts by the Office of the Leader of Opposition dated May 2020 (“**Annexure 7**”). The witness states as follows:

*“That the following are some of the landslides that have previously occurred in Mt Elgon region: (i) That on the 11<sup>th</sup> October 2018, a landslide occurred in Bukalasa sub-county, Bududa district and the said landslide caused the death of about 54 persons and led to the displacement of 1,116 persons and affected 12,000 people in 13 villages (paragraph 5.0 on page 4 of annexure “6” above). (ii) On 1 March 2010, a landslide occurred in Bulambuli district claiming the lives of over 150 people and displacing over 5,000 people (paragraph 1.32, page 5 of the Government Statement on the Floods, Landslides and Windstorms Disaster Situation in the country Minister of State for Relief, Disaster Preparedness and Refugees dated 5 December 2019 [annexure “2” above]). (iii) Between the years 1997 to 2018, multiple landslides occurred in Bududa district as follows: In 1997, 40 people died when landslides occurred in Nametsi parish, Bukalasi sib-county, Bududa district. In 2010, 100 died when landslides occurred in Namirumba parish, Bushiyi sub-county, Bududa district. In 2012, 450 people died when landslides occurred in Bunakasula-Namaga parish, Bumulakani sub-county, Bududa district. In 2018, 42 died when landslides occurred in Suume parish, Bukalasi sub-county, Bududa district.”.*

9. In paragraph 15 of the affidavit of YIGA VINCENT the witness annexes a research paper entitled “*The Challenges of Managing Increasing Landslides Vulnerability in Mount Elgon ecosystem, Uganda: A Case of Human Interactions with its Environment on the verge of collapsing.*” authored by Kato Stonewall and Mutonyi Rose, 2011 (“**Annexure 10**”). In section 3.1 of the research paper on page 10, the authors observe as follows:

*“The study found out that the steep slopes of Mount Elgon on Uganda's side are prone to landslides. The landslides that usually occur in densely populated areas have been reported since the beginning of the twentieth century (emphasis mine). The numerous fatalities and the damage done during the extreme rainfall events from 1997 to 2010 drew attention of this phenomenon.”*

10. On page 16 of the research paper authored by Kato Stonewall and Mutonyi Rose, 2011 (*supra*), the authors describe Government response to the threat of the landslide problem in the Mt Elgon as significantly inadequate. The authors state as follows:

*“Implementation has remained significantly inadequate (emphasis mine). For instance, Government of Uganda, through the Prime Minister's Office ought to resettle inhabitants of landslide prone areas on Mount Elgon to safer areas elsewhere in the country systematically over the years as incidents intensified. But this was not the case, even when the Nametsi landslide occurred; only 500 households out of the 2000 were yet resettled in Kirandongo district, some 480 Kms away in north western Uganda and it occurred 6 months after the incident (UWA, 2010). Kirandongo resettlement was the first government landslide-induced resettlement in Uganda over years. At Bulucheke camp, the Nametsi flood victims were mainly being supported by donations from well-wishers... The survey revealed weak and uncoordinated environmental regulatory mechanisms on Mount Elgon and the country at large. Terracing which causes water stagnation, increased filtration, leading to increased pore water pressure and therefore a landslide risk, is still being encouraged by Uganda National*

*Environment Regulations for Mountainous and Hilly Areas Management (Kajura, 2001). Unfortunately, in the encroachment areas terracing as a technique was rare. Other stricter regulations that inhibit cultivation of slopes steeper than 15% or close to rivers and streams are not known by the local population and certainly not being followed in any of the villages surveyed [...] Funds to support landslide related mitigation measures are inadequate and many local leaders and technical people simply lack skills and capacity to manage such disaster.*

11. On pages 15-16 of the research paper authored by *Kato Stonewall and Mutonyi Rose, 2011 (supra)*, the authors state that some of the earliest landslides in the area can be traced as early as 1933. The authors further describe some of the devastating impacts of the landslides on the local population:

*“Landslides impact causes disastrous impact on the livelihood of the inhabitants on the steep and unstable slopes of Mount Elgon. Through interviews of the local people, from 1933 to 2010, landslides have caused fatalities to more than 550 people with the worse recorded in 1933, 1964, 1970 and 2010. A very serious event was the heavy rains of 1997-1999 that displaced a large amount of material down slope and destroyed crops worth millions of Uganda shillings as well as dwellings of more than 3000 people also disappeared. The Nametsi landslide of 2010, in Bududa district, displaced more than 2000 households and destroyed farmland and infrastructures such as dispensary, school roads and shopping centers in the whole village. It is not surprising that in the 1930s was when serious deforestation started on Mount Elgon and continued till to date (Scott, 1998). It was also found that mass movements also reduce and alter arable land boundaries leading to land conflicts. This is compounded by the fact that land shortage and high population related problems are already acute in this area. The overall effect is food shortage and poverty that are exceptionally higher in the study area. During long rains and after landslides both water quality and quantity are affected by debris, rocks, soil that is swept*

*along water sources sometimes blocking water channels. Communities often suffer from water related diseases.”*

12. It is our submission that the evidence on record proves that the landslide problem in Bududa district is fully known to the respondents, **is recurring** and **has been going on since the beginning of the 20<sup>th</sup> century** resulting in significant loss of lives, destruction of property, infrastructure, and the environment, and devastating impact on the lives of the inhabitants.
13. As acknowledged by ENG. HILARY ONEK, the Minister of Relief, Disaster Preparedness and Refugees, in his Statement to Parliament dated 21 November 2018 on the landslide disaster in Bududa district (***Annexure “6”***), the landslides problem in the region is projected to get worse due to factors such as climate change, degradation of the forest cover, and population growth.
14. Following the landslide that occurred in Bududa district on 1 March 2010 that claimed the lives of over 150 people, the Government sought to implement a plan to prevent further loss of life. The affidavit of YIGA VINCENT attaches the Statement of ENG. HILARY ONEK, the Minister of Relief, Disaster Preparedness and Refugees dated 21 November 2018 as ***Annexure 6***. At page 11 of the said Statement, the Minister states as follows:

*“20.0 You will recall on 1st March 2010 a landslide disaster in the same Bududa District claimed the lives of over 150 people and displaced over 5,000.*

*21.0 Following that calamity and many others, Cabinet then directed two solutions (1) resettlement of the survivors in part of the Refugee Settlement land in Kiryandongo and (2) long term solution for those at risk of future landslides.”*

15. When the Minister gave the above Statement to Parliament, he had been prompted by another landslide that had occurred on 11<sup>th</sup> October 2018. At pages 2-3 of his Statement, the Minister states as follows:



*“1.0 This information paper seeks to appraise Parliament on, (i) the landslide disaster which occurred in Bukalasi Subcounty Bududa District on the 11<sup>th</sup> October 2018, (ii) response interventions by Government and (iii) progress so far made in the resettlement of persons at risk of landslides following that mass casualty disaster and several other landslides that have occurred in the recent past in Bugisu subregion.*

*2.0 Rt. Hon Speaker, on Thursday 11<sup>th</sup> October 2018 at about 2.30 pm a landslide occurred inside Mt. Elgon Forest triggering rock boulders to roll into river Tsuume which carried them down (10kms) to Bukalasi Trading Center. The swift falling boulders were stopped by a bridge at Bukalasi Trading Centre causing a blockage of the river channel which resulted in the river bursting its banks and sweeping through the Trading Center killing, injuring and displacing people...The resultant flash floods accompanied by huge rock boulders smashed 186 houses and washed away gardens, trees etc, in 13 villages downstream...*

*5.0 The search team rescued 33 injured persons, recovered 54 bodies, registered 1,116 displaced persons, 186 houses destroyed, and 12,000 people affected in 13 villages. The displaced persons (IDPs) are now living in host homes of friends and relatives in safe locations and are receiving continuous supply of relief food and non-food commodities from the Office of The Prime Minister...”*

### ***The law on State failure to protect human rights in the context of natural disasters***

16. The question on the failure of the State to protect human rights of citizens in the context of natural disasters has been a subject of litigation in a number of cases.
17. In the case of *Budayeva & Others v. Russia (supra)* (pages 29-30), court made the following important observations on the failure by the Russian Government to protect the right to life in circumstances of a recurring natural disaster:

*“The Court, first, observes that the town of Tyrnauz is situated in an area prone to mudslides. The regular occurrence of this calamity in the summer season and the prior existence of defence schemes designed to*

*protect the area indicate that the authorities and the population reasonably assumed that a mudslide was likely in the summer of 2000... The Court notes that in the year immediately preceding the mudslide of August 2000 the authorities...received a number of warnings that should have made them aware of the increasing risks. The first warning, issued [on] 30 August 1999 by the competent surveillance agency, the Mountain Institute, informed the Minister for Disaster Relief...about the need to repair the mud-protection dam, damaged by a strong mudslide, and calling for the setting-up of an early warning system that would allow the timely evacuation of civilians in the event of a mudslide. The second warning from the same agency was sent on 17 January 2000 to the Prime Minister of...It stated that even if restoration of the dam was not feasible, it was indispensable to set up observation posts to ensure the functioning of the warning system in the summer of 2000. The next warning was sent by the Head of the Elbrus District Administration to the Prime Minister... on 7 March 2000. This warning restated the previous ones and, moreover, referred to possible record losses and casualties in the event of a failure to take the indicated measures. Finally, on 7 July 2000 the Mountain Institute sent another warning to the Minister for Disaster Relief of the KBR calling for urgent installation of the observation posts...It follows that the authorities...at various levels were aware that any mudslide, regardless of its scale, was capable of causing devastating consequences in Tyrnauz because of the state of disrepair in which the defence infrastructure had been left after the previous mudslide. It is also clear that there was no ambiguity about the scope or the timing of the work that needed to be performed. However, the Government gave no reasons why no such steps were taken... It follows from the Government's observations that such funds were only made available after the 2000 disaster. In the absence of any explanation on the part of the Government the Court cannot but conclude that the demands for the restoration of the defence infrastructure after the 1999 mudslide were not given proper consideration by the decision-making and budgetary bodies prior to the hazardous season of 2000... Moreover, it does not appear that at the material time the authorities were*

*implementing any alternative land-planning policies in the area that would dispense with the concept of the mud-defence facilities or suspend their maintenance...”*

18. In the case of *Budayeva & Others v. Russia (supra)*, court held that:

*“...the Court sees no justification for the authorities' failure to prepare the defence infrastructure for the forthcoming hazardous season in 2000...In such circumstances the authorities could reasonably be expected to acknowledge the increased risk of accidents in the event of a mudslide that year and to show all possible diligence in informing the civilians and making advance arrangements for the emergency evacuation. In any event, informing the public about inherent risks was one of the essential practical measures needed to ensure effective protection of the citizens concerned...The applicants consistently maintained that they had not received any warning until the mudslide actually arrived in the town... The Court further notes that, in order to be able to inform the neighbourhood of the mudslide hazard, the authorities would need to set up temporary observation posts in the mountains. However, the persistent requests of the specialised surveillance agency indicating that such posts were indispensable for ensuring the residents' safety were simply ignored. By the beginning of the mudslide season the authorities thus found themselves short of means to estimate the time, force or probable duration of the mudslide. Accordingly, they were unable to give advance warning to the residents or to efficiently implement the evacuation order.”*

19. In the case of *Propshaft Master (PTY) Ltd & Others v. Ekurhuleni Municipality & Others, High Court of South Africa, Gauteng Local Division, Johannesburg Case No 33788/17* flooding from the river caused extensive flooding and loss of life. The affected area was declared a disaster area. The applicants sued alleging failure by the respondents to repair and rehabilitate the river to prevent flooding. The applicants alleged that they live in “constant terror” that even the slightest rain floods their property and equipment due to the poor state of the riverbed and associated infrastructure such as bridges and culverts. The court

agreed with the applicants and directed the respondents (at pages 31-33) to immediately and in future take all reasonable steps to remediate the river including rehabilitating the riverbed and its walls and cleaning the bridge.

20. In the case of *The Cape Metropolitan Council v. Noel Raymond Graham Supreme Court of Appeal of South Africa, Case No 157/99*, the respondent was severely injured while driving on the road when his vehicle was struck by a landslide. The accident occurred during a particularly wet period, and the appellant, being a local government body was responsible for management and maintenance of the road. The respondent sued the appellant for damages. The area where the landslide occurred had a history of landslides occurring. The court noted that slope failures in the same area had occurred in August 1977, July 1987, March 1989, July 1993, and August 1993. The respondent (landslide victim) alleged a number of failures on the part of the appellant (metropolitan council), including failure to warn users of the road of the risk of harm from falling earth and rock, and failure to close the road temporarily prior to the accident. The court held that the appellant was negligent in failing to close the road prior to the accident to prevent harm to motorists including the respondent. At pages 14-16 of the Judgment, the court made the following observations:

*“...the appellant, in my view, was negligent in failing to appoint an appropriately qualified person to consider the information available and to consider the question whether the risk of a major slope failure had increased to such an extent as to justify the closure of the road... the month of June 1994 was particularly wet. Records kept at the Hout Bay weather station show that by 8 am on Friday 24 June 1994 no less than 221 mm of rain had fallen since the beginning of the month. Of that, 156 mm had fallen in the course of the immediately preceding week. If regard is had to these figures, which were available, it must have been obvious to anyone in the employ of the appellant, who was familiar with the problems associated with Chapman’s Peak Drive, that by then the risk of rockfalls, and in particular a major rockfall or landslide, had greatly increased... heavy rainfalls were forecast for the weekend. In the event, by Monday 27 June a further 87.4 mm of rain*

*had fallen. The accident occurred on a stretch of the road which was known to have a high risk of slope failure. On 9 July the previous year, viz 1993, a major rock fall had occurred at virtually the same point during or after a rainstorm resulting in a lengthy closure of the road... Having regard to the cumulative effect of the foregoing, there can, I think, be no doubt that at least by the morning of Sunday 26 June 1994 the risk of slope failures on Chapman's Peak Drive had greatly increased and that this would have been known or ought to have been known to the appellant through its officials having knowledge of the particular problems associated with the road..."*

***Failure to discharge State obligations before the landslide***

21. The respondents have failed to fulfil their obligations under national law to put in place an effective machinery for dealing with landslides in Bududa district contrary to *Article 8A(1) of the Constitution of Uganda, 1995* and *State Policy No. XXIII of the National Objectives and Directive Principles of the Constitution of Uganda, 1995* including the following:

- (a) The 1<sup>st</sup> respondent has failed to declare a state of emergency in Bududa district despite recurring landslides in the district contrary to *Article 209 (b) of the Constitution of Uganda, 1995*.
- (b) The 1<sup>st</sup> respondent has failed to establish a Disaster Preparedness and Management Commission to deal with natural and man-made disasters including landslides in Bududa district contrary to *Article 249 (1) of the Constitution of Uganda, 1995*.
- (c) The 1<sup>st</sup> respondent has failed to establish an effective coordination mechanism for the management of landslides in Bududa district contrary to *Section 95(1) and (2) of the National Environment Act, 2019*.
- (d) The 1<sup>st</sup> respondent has failed to resettle and relocate people from areas prone to recurring landslides in Bududa district contrary to Government's own policy (see Statement of ENG. HILARY ONEK, the Minister of Relief, Disaster Preparedness and Refugees dated 21 November 2018 –

Annexure 6 (page 11) to the affidavit of YIGA VINCENT – following the 1st March 2010 Bududa landslide disaster, a Cabinet directive sought to implement a plan to prevent further loss of life by resettling survivors in part of the Refugee Settlement land in Kiryandongo).

- (e) The 2<sup>nd</sup> respondent has failed to identify and map out hilly and mountainous areas in Bududa district at risk of landslides, and to implement measures to prevent loss of life, destruction of property and the environment contrary to *Section 56(1) of the National Environment Act, 2019*.
- (f) The 2<sup>nd</sup> respondent has failed to issue guidelines and prescribe measures for the sustainable use of hilly and mountainous (control of soil erosion, soil creep and landslides; and disaster preparedness in areas prone to landslides) contrary to *Section 58(1) of the National Environment Act, 2019*.
- (g) The 3<sup>rd</sup> respondent has failed to regulate activities in mountainous areas, including through land use zoning; restricting and controlling activities which are inconsistent with good land husbandry practices; and making guidelines for the management of areas prone to landslides, floods, avalanches, and falling rocks contrary to *Regulation 4(2) the National Environment (Hilly and Mountainous Area Management) Regulations, 2000*.
- (h) The 3<sup>rd</sup> respondent has failed to provide advice on the best practicable ways of conserving soil in mountainous and hilly areas in relation to specific landowners or occupiers, to put such advice in writing, and to take out conservation orders for service on specified landowners and occupiers in relation to the sustainable management of land in hilly and mountainous areas, contrary to *Regulations 5(3), 5(4) & 5(5) of the National Environment (Hilly and Mountainous Area Management) Regulations, 2000*.

- (i) The 3<sup>rd</sup> respondent has failed to make by-laws identifying mountainous and hilly areas which are at risk from environmental degradation, including those areas where landslides and mud flows have occurred, and to notify the 2<sup>nd</sup> respondent, of mountainous and hilly areas, identified as being at risk from environmental degradation, contrary to *Regulations 6(1), 6(2), 6(3) & 6(4) of the National Environment (Hilly and Mountainous Area Management) Regulations, 2000.*
  - (j) The 3<sup>rd</sup> respondent has failed to carry out land use mapping in all mountainous and hilly areas, showing their characteristics, status, and use contrary to *Regulation 12 of the National Environment (Hilly and Mountainous Area Management) Regulations.*
  - (k) The 3<sup>rd</sup> respondent has failed to declare, by statutory instrument, a mountainous or hilly area, closed to all or any activity for a period of time if the area is at risk of being degraded and to prohibit the carrying out of any activity in the area; or to have an open season, permitting specified activities in the area subject to such conditions as it may deem necessary, contrary to *Regulation 15 of the National Environment (Hilly and Mountainous Area Management) Regulations.*
  - (l) The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents have failed to enforce and implement laws and regulations for the sustainable use of mountainous and hilly areas in Bududa district contrary to the *National Environment (Hilly and Mountainous Area Management) Regulations, 2000.*
22. The respondents have failed to fulfil obligations under international law to put in place an effective machinery for dealing with landslides contrary to the State's obligations under international law including, *Sendai Framework for Disaster Risk Reduction 2015–2030; Universal Declaration of Human Rights, 1948; International Covenant on Civil and Political Rights, 1966; African Charter of Human and Peoples' Rights (ACHPR), 1981; African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa; UN Guiding Principles on Internal Displacement, 2004; United*

***Failure to discharge State obligations immediately before and after the landslide***

23. The respondents failed to fulfil their obligations under national law to put in place an effective machinery for dealing with landslides in Bududa district, immediately before and after the landslide contrary to *Article 8A(1)* of the *Constitution of Uganda, 1995* and *State Policy No. XXIII* of the National Objectives and Directive Principles of the *Constitution of Uganda, 1995* including the following the following omissions:

- (a) The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents failed to make an advance warning to residents of Bududa district about the impending landslides for the period September to December 2019 contrary to the Government's own policy (see Statement of ENG. HILARY ONEK, the Minister of Relief, Disaster Preparedness and Refugees dated 21 November 2018 – ***Annexure 6*** (page 11) to the affidavit of YIGA VINCENT), despite knowing about the impending landslide disaster as contained in the seasonal rainfall outlook issued by the Uganda National Meteorological Authority.
- (b) The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents failed to carry out emergency evacuation of residents from landslide prone areas in Bududa district despite a clear warning from the Uganda National Meteorological Authority, the Government agency responsible for climate forecasting, about potential landslides occurring in the Mt Elgon region in the period September to December 2019 contrary to the Government's own policy (see Statement of ENG. HILARY ONEK, the Minister of Relief, Disaster Preparedness and Refugees dated 21 November 2018 – ***Annexure 6*** (page 11) to the affidavit of YIGA VINCENT).
- (c) The respondents failed to provide emergency relief immediately after the landslide in December 2019, including failure to provide emergency medical care, water, food, emergency financial assistance, temporary



housing and shelter contrary to the Government's own policy (see Statement of ENG. HILARY ONEK, the Minister of Relief, Disaster Preparedness and Refugees dated 21 November 2018 – *Annexure 6* (page 11) to the affidavit of YIGA VINCENT).

***Evidence of failure to discharge State obligations before, immediately before, and after the landslide***

24. Paragraph 12 of the affidavit of YIGA VINCENT states that the respondents failed to implement the various measures to mitigate the threat of landslides in Bududa district. The expert witness annexes a Report made by the Committee on Presidential Affairs to Parliament ("*Annexure 9*"), regarding the resettlement of Bududa landslide victims dated November 2018 that shows appalling inaction by the respondents on the threat posed by landslides in Bududa district. In section 4, page 3 of the said Report, it is stated that UGX 12 Billion appropriated by Parliament for resettlement of landslide survivors was diverted to other activities. The Report states as follows:

*"The Committee observed that Ushs. 8.0 bn appropriated by Parliament in FY 2013/ 14 to cater for resettlement activities was diverted to address the famine problem in Karamoja Sub-Region at that time. In FY 2014/ 15, the Ushs. 8.0 bn appropriated was used to implement resettlement activities in Bulambuli District.*

*The Committee further observed that of the Ushs. 8.0 bn appropriated in the FY 2015/16, only Ushs. 4.0 bn was actually released and diverted to facilitate evacuation of the Ugandans trapped in South Sudan at the peak of the crisis then."*

25. According to the Report made by the Committee on Presidential Affairs to Parliament November 2018 ("*Annexure 9*" to the affidavit of YIGA VINCENT), whereas Cabinet approved a strategy for resettlement of landslide victims in Bududa district and other areas on the 31 October 2012, the resettlement exercise has encountered significant bottlenecks including botched land procurement transactions, failure by government to appropriate UGX 8

billion annually for resettlement activities as directed by Cabinet, and other irregularities. Relevant parts of the Report are set out below:

(i) At page 2 of the Report, it is stated that:

*Consequently, Cabinet approved a strategy under Cabinet Minute No. 383 (CT 2012) of 31<sup>st</sup> October 2012 to continuously allocate UGX 8.0 billion to facilitate the "Resettlement activities of Bududa Landslide Survivors and resettlement of over 100,000 People at Risk of Landslides in the Elgon, Rwenzori and Kigezi Sub-Regions and many others living in higher risky areas within the medium term. Therefore, Parliament appropriated Ush. 8.0 bn in FY 2013/ 14, Ushs. 8.0 bn in FY 2014/ 15 and Ushs. 8.0 bn in FY 2015/ 16.*

(ii) At pages 3-4 of the Report, it is stated that:

*"Resettlement of landslide victims in the Elgon Sub - Region became a matter of public concern several times on the floor of Parliament and the Committee on Presidential Affairs was tasked to interest itself in the concern of the Members.*

*In its oversight role, the Committee observed that the said achievements in as far as Resettlement activities of Bududa Landslide Survivors and resettlement of over 100,000 People at Risk of Landslides in the Elgon Sub-Region have not been realized and the decision by Government to resettle Bududa Landslide Survivors, 100,000 People at Risk of Landslides in the Elgon, Rwenzori and Kigezi Sub-Regions still faced numerous challenges.*

*The resettlement activities had stalled because of the encumbrances created by the third party claimants on the said purchased land and lack of funding, yet the Ushs. 8.0 bn allocation was envisaged to be continuous in the medium term. It was the finding of the Committee that Office of the Prime Minister required Ushs. 10.6 million to resettle each household which translates to Ushs. 17.2 billion to resettle 11,200 households on the 2,876 acres.*

*The Committee therefore interested itself to investigate the numerous challenges constraining the resettlement activities and now wishes to report its findings.”*

(iii) At pages 11-12 of the Report, it is stated that:

*“The Committee observed that quiet possession of the land purchased by the Office of the Prime Minister is not realized despite availability of transaction documents and title deeds for the said land. Consequently, the envisaged objective to resettle Bududa Landslide Survivors and over 100,000 People at Risk of Landslides in the Elgon Sub-Region has not been realized.*

*The Committee held meetings with several stakeholders, reviewed several documents in addition to the field visit undertaken in which it noted that the resettlement exercise was characterized by numerous challenges; including but not limited to ignoring rightful owners and dealing with wrong elements, failure or refusal to carry out full and proper due diligence, misleading information, conflict of ownership and doubtful documentation...”*

(iv) At page 15 of the Report, it is stated that:

*“The Committee now observes that Officials from Office of the Prime Minister and Simu Oil Company Ltd caused a financial loss to Government of Uganda amounting to Ushs. 4.220 bn due to negligence.”*

(v) At page 18 of the Report, it is stated that:

*“The Committee now observes that Officials from Office of the Prime Minister caused a financial loss to Government of Uganda amounting to Ushs. 2. 754 bn due to negligence.”*

(vi) At page 21 of the Report, it is stated that:

*“The Committee now observes that Officials from Office of the Prime Minister caused a financial loss to Government of Uganda amounting to Ushs. 1.026 bn due to negligence.”*

(vii) At page 23 of the Report, it is stated that:

*“... Office of the Prime Minister contends that stopping the appropriation of the Ushs. 8.0 bn in the medium term to resettlement activities tantamount to condemning over 90,000 people in areas prone to landslides and other disasters.”*

(viii) At page 25 of the Report, it is stated that:

*“The Committee observed that it is the distribution mode related to the bureaucratic procedures of Government interventions that are a bottleneck to restoring the plight of the affected persons. The landslide survivors actually applauded the interventions of **Non-State actors led by the Catholic Relief Services** (emphasis mine).”*

(ix) At pages 27-28 of the Report, it is stated that:

*“The Committee observes that the political leadership in Office Prime Minister did not help Government to get a good deal out of this procurement and have value for taxpayer's money. The Committee therefore recommends that the Political leadership, including the Minister of State and Cabinet in Office of Prime Minister related to the subject matter take responsibility for causing a financial loss of Ushs. 8.0 bn to Government.”*

26. The above irregularities in the Government resettlement programme demonstrate shocking failure by the respondents to decisively deal with **recurring landslides** in Bududa district and other areas contrary to the *Constitution of Uganda, 1995*, the supreme law of the land.

27. As shown in the following paragraphs, there is overwhelming evidence from the families of the landslide survivors to prove that the Government failed to institute an effective machinery for dealing with landslides in Bududa district despite undertaking do so following the landslide disaster of March 2010 in the very same district.

28. In paragraph 12 of the affidavit of the expert witness, YIGA VINCENT he states that:

*“That the respondents failed to implement the various measures to mitigate the threat of landslides.”*

29. Many of the victims of the landslides on the 3 December 2019 have come out to testify that Government did not implement the measures that they themselves announced to deal with the threat of landslides. For example, paragraph 8 of the affidavit of TSAMA WILLIAM (the 1<sup>st</sup> applicant) states that:

*“...before the landslide, there was no warning system in place in the area, and we did not receive any warning from the Government about the risk of landslides, and we were not advised to evacuate the area.”*

30. Paragraph 9 of the affidavit of TSAMA WILLIAM (the 1<sup>st</sup> applicant) states that:

*“...after the landslide, there was no immediate rescue or evacuation response provided by the Government, and I did not receive any immediate assistance such as emergency payments, food, water, medical care or temporary housing from the Government.”*

31. The affidavit of WANZONELE JOHN (8<sup>th</sup> applicant) describes how Government promised to relocate him and his family but when he showed up at the evacuation centre, he was left behind due to lack of space. In paragraph 5 of his affidavit, the witness states as follows:

*“Government offered to resettle me and even gave me a resettlement card. When I reached the vehicle that was evacuating people, I was told that there was so space for me and my family.”*

32. The affidavit of WEPHUKHULU DAMASCO (14<sup>th</sup> applicant) describes how a survivor of recurring landslides in Bududa is desperately in need of resettlement to a safer location but the 1<sup>st</sup> respondent has failed to come his aid. In paragraph 5 of his affidavit, the witness states as follows:

*“That Namasa village, Bufutsa parish, Bushika sub-county, Manjiya county, Bududa district where I live, is dangerous for human habitation and I am urgently in need of resettlement to a safer place but I lack the means to resettle to a safer place. The Government offered to resettle me and even gave me a resettlement card. When I reached the vehicle that was evacuating people, I was told that there was so space for me and my family.”*

33. The affidavits of the 2<sup>nd</sup> to the 48<sup>th</sup> applicants, all have similar testimonies about the respondents’ failure to implement an effective resettlement scheme; provide immediate rescue or evacuation response; and emergency assistance to the victims of recurring landslides in Bududa district.

***Can the respondents put up the defence of an Act of God?***

34. The contention that the Bududa landslides are a result of an extreme natural event beyond the control of the respondents (*Act of God*) is not a viable defence. For an *Act of God* to be viable as a defence to the suit, the respondents have the burden to prove three essential elements:

- (i) the landslides were so unusual or extraordinary that they were not foreseeable;
- (ii) the landslides were the sole cause of the injury, with no human intervention;

(iii) the respondents' exercise of reasonable care would not have prevented the injury.

35. In the case of *Caledonian Railway Company v Greenock Corporation [1917] AC 556*, Caledonian Railway Company sued Greenock to recover compensation for damage done to their property by flooding due to the operations of Greenock that interfered with the natural course of a stream. Greenock pleaded an Act of God in their defence to the action. The First Division court found that Greenock was liable to pay compensation. Greenock appealed to the House of Lords, who dismissed the appeal and held that Greenock had failed to establish an Act of God as a defence to the action. **Lord Chancellor** observed thus:

*“In my opinion the appellants have entirely failed to establish any defence on this ground. It is true that the flood was of extraordinary violence, but floods of extraordinary violence must be anticipated as likely to take place from time to time.”*

36. In the case of *Kerr v Earl of Orkney, Scotland, Court of Session (Inner House - Second Division), No. 61, 1857*, Kerr who owned a grain mill sued the Earl of Orkney for compensation, alleging that he erected a large dam and that water in the dam broke out and damaged his grain mill. The defence to the action was that the dam had been most carefully and skilfully constructed but rainfall of a most unprecedented character had occurred and caused water in the dam to escape and damage property in the neighbourhood. The defendant put up the defence of Act of God. Dismissing the defence, **Lord Justice-Clerk Hope** observed thus:

*“An extraordinary fall of rain is a matter which, in our climate, cannot be called a damnum fatale (act of God)...And the experience of the last fifteen years has shown that the increased drainage of the country brings down in heavy rains the whole water in a very short space of time, and therefore in floods of a weight, and power, and force of water quite unknown in former times.”*

37. Applying the test in *Caledonian Railway Company and Kerr v Earl of Orkney (supra)*, for assessing the viability of the defence of *Act of God*, we submit as follows:

**(a) *Were the landslides so unusual or extraordinary that they were not foreseeable?*** The evidence on record proves that the threats/risks of landslides to the people of Bududa district have been in existence for a long time and the respondents are fully knowledgeable of the recurring threats/risks.

**(b) *Were the landslides the sole cause of the injury, with no human intervention?*** The evidence on record proves that if the respondents had implemented the various measures set out in these submissions to mitigate the threat/risk of landslides, the people of Bududa would not have been impacted in the same way. In this respect, the respondents' failure to institute an effective machinery to deal with landslides was responsible for the devastation caused to the people of Bududa.

**(c) *Did the respondents exercise reasonable care to prevent injury to Bududa residents?*** The evidence on record proves that not only did the respondents fail to institute an effective machinery to deal with the threat of landslides in Bududa, as directed by the *Constitution of Uganda, 1995* but they also failed to carry out emergency evacuations of people from vulnerable areas despite knowing the existence of an impending landslide disaster, and also failed to provide emergency relief and care after the occurrence of the landslide.

38. It is our submission that in an era where climate change is causing extreme weather events that, in combination with environmental degradation, increase the intensity of natural disasters, landslides cannot be classified as unpredictable "Acts of God".



## ***Conclusion on Issue No.2***

39. In the circumstances of ***recurring landslides*** in Bududa district that Government is fully aware of, it is our submission that the respondents have fallen short of discharging their constitutional obligation to “...*institute an effective machinery for dealing with any hazard or disaster arising out of natural calamities or any situation resulting in general displacement of people or serious disruption of their normal life...*” as directed by *State Policy No. XXIII* of the National Objectives and Directive Principles of the *Constitution of Uganda, 1995*.
40. Accordingly, we pray that this honourable court answers ***Issue No.2*** in the affirmative and hold that the respondents have failed to fulfil their positive obligations under the law to put in place an effective machinery for dealing with landslides in Bududa district in respect of disaster risk management ***before, during*** and ***after*** landslide disasters.

## **Issue No. 3: Whether the respondents’ acts and/or omissions in the management of landslides in Bududa district are responsible for the infringement of the applicants’ fundamental human rights.**

### ***The Law: State failure and the violation of the applicants’ human rights***

1. When it is alleged that the acts and/or omissions of the Government have caused the infringement and/or threats of fundamental human rights, the court has a duty to inquire to the alleged acts and/or omissions, and the possible infringement of human rights.
2. In the instant case, it is contended that Government’s failure to institute an effective machinery for the management of landslides in Bududa district contrary to the dictates of the *Constitution of Uganda, 1995* has occasioned the infringement of human rights of the applicants.
3. It is our contention that the applicants’ fundamental human rights as set out below have been infringed and/or threatened with infringement as a result of the

landslides that occurred in Bududa district on the 3 December 2019 due to respondents' failure to implement their obligations under the law:

- (a) the right to life, guaranteed under *Article 22(1) of the Constitution of Uganda, 1995; Article 4 of the African Charter of Human and Peoples' Rights (ACHPR), 1981; and Article 6(1) of the International Covenant on Civil and Political Rights, 1966.*
- (b) the right to own property guaranteed under *Article 26 of the Constitution of Uganda, 1995; Article 17 of the Universal Declaration of Human Rights, 1948 and Article 14 of the African Charter of Human and Peoples' Rights (ACHPR), 1981.*
- (c) the right to a clean and healthy environment, guaranteed under *Article 39 of the Constitution of Uganda, 1995 and Article 24 of the African Charter of Human and Peoples' Rights (ACHPR), 1981.*
- (d) right to physical and mental health, guaranteed under *Article 16 of the African Charter of Human and Peoples' Rights (ACHPR), 1981.*

4. *Article 20 (1) & (2) of the Constitution of Uganda, 1995* provides as follows:

*“(1) Fundamental rights and freedoms of the individual are inherent and not granted by the State.”*

*“(2) The rights and freedoms of the individual and groups enshrined in this Chapter shall be respected, upheld and promoted by all organs and agencies of Government and by all persons.”*

- 5. The duty of court in cases of alleged infringement of human rights has been the subject of litigation of a number of cases.
- 6. In the case of *Budayeva & Others v. Russia (supra)*, the court held that the Russian Government had failed to discharge their positive obligations under the law to mitigate the mudslide from harming civilians and were accordingly

responsible for the violation of the right to life under *Article 2* of the *European Convention on Human Rights*. The court held that:

*“The authorities have thus failed to discharge the positive obligation to establish a legislative and administrative framework designed to provide effective deterrence against threats to the right to life as required by Article 2 of the Convention...Accordingly, there has been a violation of Article 2 of the Convention in its substantive aspect.”*

7. In the case of *Ashgar Leghari v. Federation of Pakistan, Lahore High Court, Pakistan, Case No W.P. No. 25501/2015*, a Pakistan farmer alleged inaction, delay, and lack of seriousness on the part of the Pakistan Government to address the challenges and to meet the vulnerabilities associated with climate change. The petitioner argued that Government had failed to implement the National Climate Change Policy, 2012; and the Framework for Implementation of Climate Change Policy (2014-2030). The petitioner alleged that climate change is a serious threat to water, food and energy security of Pakistan which offends the fundamental right to life under article 9 of the Pakistan Constitution. The court held that “the delay and lethargy of the State” in implementing climate change policies “offends the fundamental rights of the citizens”. The court further held that the environment and its protection has taken a centre stage in the protection of fundamental rights like the right to life; the right to a healthy and clean environment; and the right to human dignity. The court issued a number of reliefs to the petitioner including a directive to establish a Climate Change Commission to monitor progress on implementing actions to address climate change in Pakistan.
8. In the case of *Ashgar Leghari (supra)* court observed thus:

*“Adaptation, as a strategy engages many stakeholders, which hitherto were not part of the environmental dialogue. [...] [Climate Justice] has to embrace multiple new dimensions like Health Security, Food Security, Energy Security, Water Security, Human Displacement, Human Trafficking and Disasters Management within its fold. Climate Justice covers agriculture, health, food, building approvals, industrial*

*licenses, technology, infrastructural work, human resource, human and climate trafficking, disaster preparedness, health, etc.”*

9. In the case of *Asiimwe Davis Barigye & 2 Ors v. Leaf Tobacco & Commodities (U) Ltd & Anor (Misc. Cause No. 43 of 2013) High Court of Uganda*, the Applicants filed an application under Article 50(1) of the *Constitution* and sought orders/declarations that their right to a clean and health environment was being violated by the respondents, the continuous air pollution by emission of tobacco smoke, dust and smell to the environment by the respondent was a violation of the public’s right to a healthy and clean environment; the granting of a license by 1<sup>st</sup> respondent National Environment Management Authority (NEMA) to the 1<sup>st</sup> Respondent to process tobacco in a residential area contravened *Article 39* of the *Constitution* and *Sections 3(1)* of the *National Environment Act*. Court held that the 1<sup>st</sup> respondent’s activities were in violation of the right to a clean and healthy environment, and that the 2<sup>nd</sup> respondent (NEMA) had failed to execute its obligations by granting a licence for the operation of a tobacco factory in a residential area.
  
10. In the case of *Andrea Lozano Barragán et al. v. Presidencia de la República et al., STC4360-2018 (Supreme Court of Colombia, 2018)*, twenty-five young plaintiffs aged 7 to 25 filed a suit alleging that the increase in deforestation of the Colombian Amazon violates their fundamental rights, and the fundamental rights of other future generations, to a life with dignity, health, food and water, and a healthy environment. The Court found a violation of individual rights stemming from a violation of collective rights in this case, stating that individuals’ fundamental rights are intrinsically connected to the collective health of the ecosystem as a whole:

*“[T]he fundamental rights to life, health, basic necessities, freedom, and human dignity are significantly connected and determined by the environment and the ecosystem. Without a healthy environment, the subjects of rights and sentient beings in general will not be able to survive, much less protect those rights for our children or future generations. Nor will we be able to guarantee the existence of the family, society, or the State itself. The*

*increasing deterioration of the environment is a serious attack on existing and future life as well as all fundamental rights[.]”*

***The evidence to prove that State failure is responsible for rights violation***

11. The infringement of the applicants’ fundamental human rights, the loss of life, and destruction of property that occurred on the 3 December 2019 in Bududa district due to landslides, could have been avoided if the respondents had discharged their respective obligations under the law.
  
12. In ***Issue No.2*** above, we have adduced evidence to prove that;
  - (i) landslides are a threat to the lives of the applicants, and that there was an imminent threat of life to the applicants before the December 2019 landslides;
  
  - (ii) that the respondents are fully knowledgeable that landslides pose a threat to the lives of the applicants, and that Bududa region is prone to landslides; and
  
  - (iii) that respondents failed to implement its obligations as required under the law to deal with the threat of landslides.
  
13. In ***Issue No.3***, we adduce further evidence below to prove that if the respondents had implemented their obligations under the law to deal with the threat of landslides, loss of life would have been avoided. Furthermore, we adduce evidence to prove the extent of infringement of the applicants’ human rights as a result of the landslides that occurred in Bududa district in December 2019.
  
14. Paragraph 11 of the affidavit of the expert witness, YIGA VINCENT, states that:

*“...as an expert on landslides, I know that if the respondents had implemented the measures described in this affidavit, loss of human life and destruction of property due to landslides would have been minimised.”*

15. In the following paragraphs, we adduce evidence to prove the loss suffered by the applicants as a result of the respondents' failure to discharge their statutory obligations.
16. Paragraph 2 of the affidavit of TSAMA WILLIAM (1<sup>st</sup> applicant) states that his house was destroyed, and seven (7) of his family members were killed by the Bududa landslides that occurred on 3 December 2019. In paragraph 3 of the affidavit of the same witness, he mentions the names of the family members that were killed as a result of the landslides. The witness further states that he is stressed, traumatised and lives under a constant fear of landslides.
17. In paragraphs 2, 3, 4, & 5 of the affidavit of WEANGA JOHN (2<sup>nd</sup> applicant), the witness states that four of his family members were killed as a result of the Bududa landslides that occurred on 3 December 2019. He also states that he lost several properties as a result of the landslides, including 3 pieces of land; 2 heads of cattle; and 3 goats. One of his sons was injured in the leg by the landslides. The witness further states that he is stressed, traumatised and lives under a constant fear of landslides.
18. In paragraphs 2, 3, & 4 of the affidavit of NAMEE ESTER (3<sup>rd</sup> applicant), the witness states that three of his family members died as a result of the Bududa landslides that occurred on 3 December 2019. He also lost several properties as a result of the landslides, including household items, 2 heads of cattle; 10 Chickens; a coffee plantation; and a banana plantation. The witness further states that he is stressed, traumatised and lives under a constant fear of landslides.
19. In paragraphs 2, 3, & 4 of the affidavit of NABENDE ALEX MUYONGA (4<sup>th</sup> applicant), the witness states that five of his family members died as a result of the Bududa landslides that occurred on 3 December 2019. He also lost several properties as a result of the landslides including a house; 2 heads of cattle; and household items. The witness further states that he is stressed, traumatised and lives under a constant fear of landslides.

20. In paragraphs 2, 3, & 4 of the affidavit of NABENDE VINCENT (5<sup>th</sup> applicant), the witness states that his wife died as a result of the Bududa landslides that occurred on 3 December 2019, and he lost several properties as a result of the landslides including a house; household items; a shop with stock of about UGX 1,500,000; 1 cow; 100 kgs of beans; 200 kgs of maize; and 20 chickens. The witness further states that he is stressed, traumatised and lives under a constant fear of landslides.

21. The affidavit of MUYEKHO FLORETINA (40<sup>th</sup> applicant) describes how the landslide carried her from the top of the mountain to the valley but miraculously survived. In paragraphs 2 and 4 of the affidavit, the witness states as follows:

*“That on the 3 December 2019, it rained heavily in the village where my home is located and the whole area became flooded. The landslide lifted me from the top of the cliff to the valley at about 2:00pm but I somehow survived.”*

*“That I became unconscious, sustained injuries and my eyes were damaged by the mud.”*

22. The affidavit of NANDUTU ROBINAH (46<sup>th</sup> applicant) describes how she was carried by the landslide to the valley, lost consciousness, only regaining it while admitted in hospital. In paragraph 2 of the affidavit, the witness states as follows:

*“That on the 3 December 2019, a landslide occurred in the neighbouring village, and I moved there to see what had happened. All of a sudden, the landslide lifted me and carried me down to the valley. I became unconscious and by the time I regained my consciousness, I was at Bushika Health Centre III.”*

23. The rest of the applicants not mentioned herein, have all sworn affidavits in support of the application, and they state variously that they lost several properties as a result of the Bududa landslides that occurred on 3 December

2019, have suffered both physical and emotional injuries, and they are stressed, traumatised and live under a constant fear of recurring landslides.

### ***Conclusion on Issue No.3***

24. On the basis of the law and evidence, we pray that this honourable court answers ***Issue No.3*** in the affirmative and makes a finding that the respondents' failure to institute an effective machinery for dealing with landslides in Bududa district contrary to *Article 8A(1)* and *State Policy No. XXIII* of the National Objectives and Directive Principles of the *Constitution of Uganda, 1995* is responsible for the violation and/or threatened violation of the applicants' right to life; right to property; right to a clean and healthy environment; and the right to physical and mental health.

### **Issue No. 4: Remedies available to the parties.**

1. The applicants have prayed for the following remedies:
  - (a) A declaration that the right to life, guaranteed under *Article 22(1)* of the *Constitution of Uganda, 1995* of twenty (20) persons resident in Bududa district, whose particulars are set out in the supporting affidavits of TSAMA WILLIAM, WEANGA JOHN, NAMAYE ESTHER, NABENDE ALEX MUYONGA, and NABENDE VINCENT attached hereto, was infringed when landslides occurred in Bushika sub-county, Bududa district and killed them on the 3 December 2019.
  - (b) A declaration that the right to own property of the applicants, guaranteed under *Article 26* of the *Constitution of Uganda, 1995* was infringed when landslides occurred in Bushika sub-county, Bududa district on the 3 December 2019 resulting into loss of property belonging to the applicants, the particulars whereof, are described in the supporting affidavits.
  - (c) A declaration that the right to life, guaranteed under *Article 22(1)* of the *Constitution of Uganda* of the applicants who are resident in Bududa district, whose particulars are set out in the supporting affidavits of the applicants attached hereto, has been threatened due to repeated landslides



in Bududa district, the most recent of which occurred in Bushika sub-county, Bududa district on the 3 December 2019.

- (d) A declaration that the right to a clean and healthy environment of the applicants, guaranteed under *Article 39 of the Constitution of Uganda, 1995* was infringed when landslides occurred in Bushika sub-county, Bududa district on the 3 December 2019 resulting into loss of property, loss of life, loss economic livelihoods, loss of safe and healthy living conditions, loss of home, loss of security, psychological and physical injuries, the particulars whereof, are described in the supporting affidavits.
  - (e) A declaration that the respondents are responsible for the violation and infringement of the applicants' human rights.
  - (f) An order for compensation against the 1<sup>st</sup> respondent for the families of twenty (20) persons that were killed by landslides in Bushika sub-county, Bududa district on the 3 December 2019.
  - (g) An order for payment of compensation and general damages against the 1<sup>st</sup> respondent for violation of rights of the applicants, namely, the right to life, the right to own property, and the right to a clean and healthy environment, due to repeated landslides in Bududa district.
  - (h) An order for payment of the costs of resettlement of the applicants and their families to a place that is safer from the landslides against the 1<sup>st</sup> respondent.
  - (i) An order that the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents put in place an effective machinery for dealing with landslides in Bududa district to prevent further loss of life, destruction of property, and the destruction of the environment.
  - (j) An order for payment of costs of the suit against the 1<sup>st</sup> respondent.
2. The applicants are entitled under the law to enforce their fundamental human rights if they have been infringed or threatened, and to seek for effective redress.
  3. *Article 50(1) of the Constitution of Uganda, 1995* provides that:

*“(1) Any person who claims that a fundamental or other right or freedom guaranteed under this Constitution has been infringed or threatened, is entitled to apply to a competent court for redress which may include compensation.*

*(2) Any person or organisation may bring an action against the violation of another person's or group's human rights.”*

4. Section 3(1) of *The Human Rights (Enforcement) Act, 2019* provides that:

*“In accordance with article 50 of the Constitution, a person or organisation who claims that a fundamental or other right or freedom guaranteed under the Constitution has been infringed or threatened may, without prejudice to any other action with respect to the same matter that is lawfully available, apply for redress to a competent court in accordance with this Act.”*

5. Section 9(1) of *The Human Rights (Enforcement) Act, 2019* provides that:

*“Where the competent court determines that a fundamental right or freedom has been violated, unlawfully denied or should be enforced, the competent court shall issue orders it considers appropriate, including an order for compensation.”*

6. Under Section 9(2) of *The Human Rights (Enforcement) Act, 2019* where court finds that fundamental human rights have been violated, it may order additional remedies including the rehabilitation of the victim including the provision of medical and psychological care; measures aimed at the cessation of the continuing violation of human rights; and guarantees of non-repetition.

7. Section 3(3) of the *National Environment Act, 2019* provides that:

*“A person may, where the right referred to in subsection (1) is threatened as a result of an act or omission by any person which has or is likely to cause harm to human health or the environment or in enforcement of the duty referred to in subsection (2), file a civil suit*

*against the person whose act or omission has or is likely to cause harm to human health or the environment.”*

8. Under *Section 3(5)(i)* of the *National Environment Act, 2019*, court may award compensation in connection with the violation of the right to a clean and healthy environment.
9. Under the law, where the Government is bound to a statutory duty, and fails to comply with it, it is subject to liabilities in tort. *Section 3(2)* of the *Government Proceedings Act (Cap. 77)* provides that:

*“Where the Government is bound by a statutory duty which is binding also upon persons other than the Government and its officers, then, subject to this Act and section 4 of the Law Reform (Miscellaneous Provisions) Act, the Government shall, in respect of a failure to comply with that duty, be subject to all those liabilities in tort, if any, to which it would be so subject if it were a private person of full age and capacity.”*

10. In the case of *Hon. Okupa Ellijah & 2020 Others v. Attorney General, Moroto District Council, Kotido District Council & Nakapiripirit District Council Misc. Cause No. 14 of 2005 (Arising from Misc. Cause No.163 of 2002 at Mbale)*, the applicants filed a claim for damages and compensation against respondents pursuant to *Article 50* of the *Constitution of Uganda*. The applicants alleged that the Government allowed Karimojong tribesmen to illegally acquire and own firearms that led to the infringement of the applicants’ fundamental human rights, including loss of life. ***Justice Batema N.D.A*** held that the applicants had proved to the satisfaction of court that their fundamental human rights guaranteed under the Constitution were infringed by the respondents and as such they are entitled to redress under *Article 50(1)* of the *Constitution*.
11. We pray that this honourable court makes a finding that the respondents are responsible for the violation and infringement of the applicants’ fundamental human rights under the national and international law as elaborated above. The authority for this submission is *Budayeva & Others v. Russia (supra)*, *Centre*

*for Health, Human Rights and Development (CEHURD) & Others v. Attorney General (Supreme Court) (supra), Centre for Health, Human Rights and Development (CEHURD) & Others v. Attorney General (Constitutional Court) (supra), and Hon. Okupa Ellijah & 2020 Others v. Attorney General (supra).*

12. We pray that this honourable court makes an order for compensation against the 1<sup>st</sup> respondent for the families of twenty (20) persons that were killed by landslides in Bushika sub-county, Bududa district on the 3 December 2019. The particulars of the persons killed, and the amount of compensation claimed are set out in affidavits of TSAMA WILLIAM, WEANGA JOHN, NAMAYE ESTHER, NABENDE ALEX MUYONGA, and NABENDE VINCENT in support of the notice of motion. **The total amount claimed for the 20 persons killed by the Bududa landslides is UGX 2,000,000,000 (Uganda shillings two billion)** (i.e., UGX 100,000,000 for each person that died as a result of the landslides).
13. **The 48 applicants further claim a total of UGX 2,400,000,000 (Uganda shillings two billion four hundred million) being compensation and general damages** for violation of their fundamental human rights under the *Constitution of Uganda, 1995* as set out above (i.e., UGX 50,000,000 for each applicant).
14. **The 48 applicants further claim a total of UGX 2,400,000,000 (Uganda shillings two billion four hundred million) being the cost of resettlement** of their families to safer places away from the continuing threat of landslides.
15. **The total amount of compensation under the different heads claimed by the applicants is UGX 6,800,000,000 (Uganda shillings six billion eight hundred million only).**
16. In the case of *Centre for Health, Human Rights and Development (CEHURD) & Others v. Attorney General (Constitutional Court) (supra)* where court held that the Government's acts and/or omissions in relation to the provision for basic maternal health care services in public health facilities were responsible for the loss of life, court awarded UGX 70,000,000 for each person that died.

17. *In the case of Hon. Okupa Ellijah & 2020 Others v. Attorney General (supra)* that concerned the violation of the right to life, court awarded UGX 100,000,000 per lost life.
18. In the case of *Budayeva & Others v. Russia (supra)* that concerned violation of the right to life, court awarded between Euro 10,000 (UGX 43,500,000) to Euro 30,000 (UGX 130,500,000) for each of the applicants.
19. *In the case of Hon. Okupa Ellijah & 2020 Others v. Attorney General (supra)*, court awarded UGX 50,000,000 to **each parent/guardian** of each child killed for the pain and suffering.
20. Paragraph 5 of the affidavit of YIGA VINCENT in support of the application refers to *Annexure 7* (Report on Oversight Visits to Bududa and Bulambuli districts by the Office of the Leader of Opposition). According to paragraph 2.2 at page 6 of *Annexure 7*, the cost of constructing each resettlement home is estimated at UGX 30,000,000. However, this estimate does not take into account the cost of purchasing land for resettlement. Therefore, we pray that this honourable court finds that the amount claimed of UGX 50,000,000 for each of the applicant for constructing a resettlement home is fair and reasonable, and that the court be pleased to award the same.
25. In paragraph 13 of his affidavit, the expert witness, YIGA VINCENT, sets out measures that the respondents should implement to safeguard the lives of the civilians in the affected areas. The expert witness states that:

*“That the respondents can mitigate further potential loss and damage from landslides in the region by implementing the following measures:*

- a) Putting in place an early warning system for the landslides to enable people evacuate before the occurrence of the disaster;*
- b) Resettlement of households at risk of landslides to safer locations;*

- c) *Identifying and mapping hot spots prone to landslides in Bududa district;*
- d) *Enforcing regulations that encourage sustainable utilization of land and the environment, and discourage activities such as excavation, terracing of slopes, and contracting structures that concentrate water to vulnerable zones (see **Annexure 10** on page 18);*
- e) *Carrying out reforestation of degraded areas and deep-rooted tree planting by communities (see **Annexure 10** on page 18).*
- f) *Formation of local disaster risk reduction (DRR) committees to support disaster risk assessment and planning for disaster management.*
- g) *Carrying out mass sensitization and awareness of the affected communities.”*

21. We pray that this honourable court directs the respondents to institute an effective machinery to dealing with landslides in the country as required by *Directive No. XXIII of the National Objectives and Directive Principles of State Policy* by undertaking the following measures:

- (a) To establish a Disaster Preparedness and Management Commission for Uganda to deal with both natural and man-made disasters as required by *Article 249 (1) of the Constitution of Uganda, 1995.*
- (b) To implement legal and administrative measures to minimise the disruption of human life by landslides by enforcing the legal framework including the *National Environment Act, 2019*, and *National Environment (Hilly and Mountainous Area Management) Regulations, 2000.*
- (c) Establish an early warning system for the landslides to enable people evacuate before the occurrence of landslides;

- (d) Resettlement of households at risk of landslides to safer locations;
- (e) Identifying and mapping hot spots prone to landslides in Bududa district and other areas prone to landslides;
- (f) Enforcing regulations that encourage sustainable utilization of land and the environment, and discourage activities such as excavation, terracing of slopes, and contracting structures that concentrate water to vulnerable zones (see *Annexure 10* on page 18);
- (g) Carrying out reforestation of degraded areas and deep-rooted tree planting by communities (see *Annexure 10* on page 18).
- (h) Formation of local disaster risk reduction (DRR) committees to support disaster risk assessment and planning for disaster management.
- (i) carrying out mass sensitization and awareness of the affected communities in Bududa district and other areas prone to landslides.

***Conclusion on Issue No.4***

22. We pray that this honourable court finds that the applicants’ fundamental human rights were infringed by the respondents and the applicants are entitled to all the remedies sought in the notice of motion.

DATED this 3<sup>rd</sup> day of May 2021

.....  
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