

THE EAST AFRICAN COURT OF JUSTICE  
Lodged in The Sub-Registry, Kampala  
24 NOV 2017  
at 3:02 pm sign  
FIRST INSTANCE DIVISION

IN THE EAST AFRICAN COURT OF JUSTICE

FIRST INSTANCE DIVISION

AT ARUSHA

REFERENCE NUMBER .....14..... OF 2017

- 1. HON. WINFRED KIIZA }
- 2. HON. JOHN BAPTIST NAMBESHE }
- 3. HON. GERALD KARUHANGA }
- 4. HON. IBRAHIM SSEMUJU NGANDA }
- 5. HON. BETTY NAMBOOZE }
- 6. HON. JOHN BAPTIST NAMBESHE }
- 7. ALICE ASIANUT ALASO }
- 8. IRENE OVONJI ODIDA }

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}.....APPLICANTS

- Versus -

THE ATTORNEY GENERAL OF UGANDA .....  
RESPONDENT

STATEMENT OF REFERENCE

*(Made under Articles 6(d), 7(2), 8(1)(c), 23, 27(1), 30 and 123(3)(c) of the Treaty for Establishment of the East African Community (Treaty) as amended; Rule 24 of the East African Court of Justice Rules of Procedure, 2013 and all enabling provisions of East African Community Law)* \_\_\_\_\_ 20

1.0 DESCRIPTION OF THE PARTIES

1.1 The 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> Applicants herein are adults of sound mind, and are all Ugandan citizens residing in the

Republic of Uganda, a Partner State of the East African Community (EAC). They are all Members of Parliament of the Republic of Uganda.

The 7<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup>, and 10<sup>th</sup> Applicants are adults of sound mind and all Ugandan citizens residing in the Republic of Uganda, a Partner State of the East African community.

The address of service for the purposes of this reference is in the care of:

- 1) The Pan African Lawyers Union,  
No. 3 Jandu Road, Corridor Area,  
P. O Box 6065,  
Arusha, United Republic of Tanzania
- 2) Victoria Advocates and Legal Consultants  
Plot 3, Dewinton Road  
Republic of Uganda
- 3) Chapter Four Uganda  
Plot 2, Wampewo Close  
Kampala, Republic of Uganda

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1.2 The **ATTORNEY GENERAL OF UGANDA**, the Respondent herein is the legal representative of the Government of Uganda by virtue of Articles 119(4) and 240 of the Constitution of Uganda. He is sued on behalf of the Government of Uganda. Service of this Reference shall be done by the Applicants or their duly appointed agents. The Respondent's address of service for the purpose of this Reference is:

Attorney General's Chambers  
Plot 1 Parliament Avenue  
P. O. BOX 7183  
Kampala, Republic of Uganda

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## 2.0 SUBJECT OF THE REFERENCE AND SUMMARY OF THE POINTS OF LAW

2.1 The 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> Applicants are Members of Parliament of the Republic of Uganda, a Partner State of the EAC and as such have a duty, obligation, rights and freedom under the Constitution of Uganda to, *inter alia*:

- (i) Uphold, defend, protect and preserve the Constitution as the supreme law of the land and the laws made thereunder as a framework for the rule of law, good governance, accountability and democracy through ensuring the observance, enforcement

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and compliance with the provisions of the Constitution and laws of the Partner State (Uganda).

- 2.2 The acts herein complained of and the subject of this Reference were committed by the Speaker of the Parliament of Uganda and/or by security operatives/Special Forces Command as officials, agents, servants and proxies of the Government of Uganda, under the command of the Inspector General of Police, General Kale Kayihura, with the acquiescence of the Speaker of Parliament. Additionally, the Parliament of Uganda that the Speaker heads is an arm of the Government of Uganda whose acts by way of omission or commission are justiciable before the East African Court of Justice (this Court) for judicial interpretation, application and compliance in the context of the Treaty. Additionally, other acts that are the subject of this Reference were committed by the Parliament, Cabinet, Presidency and other organs of the state of Uganda. — 10
- 2.3 The acts through commission, omission or active and direct or indirect participation of the Speaker of Parliament, in relation to the events at Parliament on the 27<sup>th</sup> day of September 2017, and which are are inconsistent with Articles 6(d); 7(2); 8(1)(c) and 123(3)(c) of the Treaty for the Establishment of the East African Community include but are not limited to: — 20

- a) Suspending 24 Members of Parliament under Rule 80 of the Rules of Procedure of the Parliament of Uganda (Parliamentary Rules of Procedure) without a hearing and without according them a right to be heard or natural justice;
- b) Inviting and/or allowing the deployment of security operatives (not allied to or forming part of the Sergeant-at-Arms or Parliamentary Police) at Parliament to enforce the decision of the Speaker or order to forcibly and violently eject the 24 Members of Parliament together with others not suspended out of the House through torture and brute force to dehumanise, degrade 10 and humiliate the Members of Parliament contrary to the Constitution and the Parliamentary Rules of Procedure;
- c) Allowing the wrongful trespass of Parliament by security operatives who wrongfully entered the parliamentary chambers, wrongfully and violently ejected Members of Parliament while torturing, dehumanising, degrading and humiliating the said members contrary to the Parliamentary Rules of Procedure and the Constitution of Uganda.
- d) Commanding, ordering, directing or otherwise approving directly or tacitly by looking on as security operatives she had invited to 20 illegally siege and raid parliament, tortured, assaulted, battered and treated six Members of Parliament not named among the

suspended ones, viz: HON. MATHIAS MPUGA NSAMBA, HON. CHARLES ANGINO GUTMOI, HPN.

e) Looking on in agreement and approval of the acts being done or directly approving the conduct and acts of the security operatives while terrorising and harassing members of the civil society, media and general public in the Gallery who had come to witness and/or record the parliamentary proceedings of that day coupled with confiscating their electronic gadgets and devices, cameras and equipment for capturing and recording pictures, video and data of the events of the day. — 10

2.4 The continuation to do business in the House by the Speaker with Members of Parliament that had been terrorised and traumatised by the acts of the security operatives against their colleagues and consequent acts in exclusion of the thirty (30) Members of Parliament brutally ejected, tortured and treated in a cruel, degrading and dehumanising manner is inconsistent with and in contravention of Articles 6(d); 7(2); 8(1)(c) and 123(3)(c) of the Treaty.

2.5. The conduct of the Speaker in handling the affairs of Parliament on the 27<sup>th</sup> September, 2017 and subsequent dates up to the first reading of the Constitutional amendment fell below the legitimate — 20

expectations in the Speaker by the Petitioners contrary to Articles 6(d); 7(2); 8(1)(c) and 123(3)(c) of the Treaty.

2.6 The act of the Government of Uganda (through Parliament, Cabinet and the President) in seeking to amend the Constitution whose resultant effect is to allow the current President of Uganda and incumbent to rule for life and create a legacy of life presidency is inconsistent with Articles 6(d); 7(2); 8(1)(c) and 123(3)(c) of the Treaty.

2.7 The act of the Government of Uganda (through Parliament, Cabinet and the President) of removing the only and remaining safeguard (after the removal of term limits) to a peaceful and orderly transition or transfer of power from one President to another after 31 years rule by the one and only President since January, 1986 is inconsistent with and contravene Articles 6(d); 7(2); 8(1)(c) and 123(3)(c) of the Treaty. — 10

3.0 The acts of Parliament and the Legal and Parliamentary Affairs Committee, (after this Reference is filed herein this Court) of continuing to, *inter alia*, consider the Bill to amend the Constitution and consequently proceed to the Second and Third Reading leading to the enactment of the Constitutional Amendment Act whilst this Reference is pending hearing and which acts are detrimental to the resolution of the dispute herein or aggravates this dispute are — 20

inconsistent with Articles 38(2); 6 (c) & (d); 8(1)(c); 123(3)(c), 4(d) of the Treaty.

2.9 The acts of the Government of Uganda through the Uganda Communications Commission, of banning live coverage of the parliamentary proceedings on the 27<sup>th</sup> September, 2017 in order to cover up, conceal and hide the siege of Parliament by security operatives was inconsistent with and a breach of Articles 6(d); 7(2); 8(1)(c) and 123(3)(c) of the Treaty. Additionally, the banning of coverage of the proceedings of Parliament on September 27, 2017 is part of a growing and consistent pattern by the — 10 Government of Uganda against the media and undermines the growth of East Africa's private media and is therefore inconsistent with Article 128(2)(a) of the Treaty.

2.10 The provision of money to the Legal and Parliamentary Affairs Committee and Members of Parliament as facilitation to consult and/or market the lifting of the age limit proposed under the Amendment Bill is inconsistent with and contrary to Articles 6(d); 7(2); 8(1)(c) and 123(3)(c) of the Treaty.



### 3.0 Acts of the Speaker and security operatives against the 24 Members of Parliament

3.1 On the 27<sup>th</sup> September, 2017 at 2.04 pm, the Speaker of Parliament came to the House and soon thereafter named 24 Members of Parliament whom she suspended under Rule 80(2) of the Parliamentary Rules of Procedure.

3.2 The Speaker thereafter ordered the Members of Parliament named and suspended to exit the chambers.

3.3 The named and suspended Members of Parliament (who were in shock at the Speaker's order and who were also scared of the forces already stationed at all exits as well as outside Parliament) did not refuse to obey the Speaker's direction and as they were internalising and absorbing the Speaker's direction, the Speaker invited the Sergeant-at-Arms to remove them from the House. — 10

3.4 That before the Sergeant-at-Arms could ensure compliance with the Speaker's orders, the Speaker suspended the House for 30 minutes with orders that "when I return you should be away. **We shall resume in 30 minutes and you must be out of this House!**" (Emphasis ours). *(A copy of the transcript and record of proceedings shall be produced in evidence and relied on for its full legal import and purport).* — 20

3.5 The Speaker before suspending the House did not call the attention of the House to the fact that recourse to force had become necessary in order to compel obedience of her direction nor did she call upon the Sergeant-at-Arms to eject the named and suspended Members of Parliament from the House contrary to Rule 79 (1) of the Parliamentary Rules of Procedure.

3.6 Instead and immediately after suspension of the House by the Speaker, and while the House was not in session, persons in civilian clothes and not known to be officers of the Sergeant-at-Arms or part of the Parliamentary Police, otherwise called strangers (and who later on were identified as elements of the Special Forces Command) attacked and raided the House to brutally eject the named and suspended Members of Parliament out of the House. (*A copy of the ID of one of the strangers that was dropped in the House by the stranger, shall be produced as evidence and relied on for its full import and purport*). 10

3.7 The appearance of strangers in the House with the aim of ejecting the named and suspended Members of Parliament created terror, havoc and anarchy in the House as the suspended Members of Parliament sought to defend and protect themselves against strangers who were assaulting, battering or torturing and treating Members of Parliament opposed to the amendment of the 20

Constitution and/ or removal of the age limit in a cruel, degrading and dehumanising manner.

3.8 The named and suspended Members of Parliament were eventually subdued by the strangers who dragged the Members of Parliament outside the House and bundled them into waiting cars that drove off taking the Members of Parliament to diverse police cells for detention.

3.9 In the process, other Members of Parliament, namely Hon. Mathias Mpuga Nsamba, Hon. Charles Angino Gutnoi, Hon. Peter Okot, Hon. Gerald Karuhanga, Hon. Ibrahim Semujju Nganda and Hon. Theodore Ssekikubo, who had not been named or suspended, were also subjected to torture, inhuman and cruel treatment by the security operatives who dragged the said Members of Parliament out of the House and were later detained in various police cells. — 10

3.10 The Speaker thereafter came back to the House and resumed business and the Constitutional Amendment Bill was tabled.

3.11 Some of the 24 Members of Parliament, namely ZAAKE FRANCIS, BETTY NAMBOOZE BAKILEKE, OSEGE ANGELINE and ALLAN SSEWANYANA, who were badly tortured, were hospitalised and remained in hospitals for treatment. (*Evidence of the hospital* — 20)

*records during treatment and hospitalisation shall be produced and relied on as evidence at the hearing).*

3.12 The Uganda Parliament, and specifically the precincts of Parliament, are, under the laws of Uganda, inviolable, sacred and sacrosanct and any entry and acts by strangers in the precincts of Parliament as happened on the 27<sup>th</sup> September, 2017 amount to desecration or sacrilege of the Uganda Parliament.

3.13 The acts of the strangers against the Members of Parliament opposed to the lifting of the age limit and amendment of the Constitution was in full view of the rest of the Members of Parliament who clearly witnessed the terror and horror of torture, brutality, cruelty and dehumanisation of their fellow Members of Parliament inside the House. — 10

3.14 Additionally, the strangers went on a rampage and terrorised the members of the public, civil society, media and ex-Members of Parliament in the gallery who had come to observe and witness the parliamentary proceedings. The strangers confiscated, destroyed and smashed electronic gadgets, devices and equipment for the said members of the public in the gallery believed or assumed to have been used to record and capture their acts of terror, torture and dehumanisation against the Members of Parliament. — 20

3.15 Earlier on, preceding the events of 27<sup>th</sup> September 2017, Uganda Communications Commission had banned live coverage of parliamentary proceedings and accordingly the siege of Parliament by strangers was not broadcast to the public thereby creating a blackout on the siege on Parliament. *A copy of the Uganda Communications Commission letter banning the live coverage dated 26<sup>th</sup> September 2017 shall be produced at the hearing.*

3.16 The Speaker precipitated the fracas, chaos and anarchy in the House when she invited and authorized elements of the Special Forces Command to use brute force, violence and might against the named and suspended Members of Parliament, by inviting strangers instead of invoking and applying Rule 80(6) of the Parliamentary Rules of Procedure. — 10

3.17 The Sergeant-at-Arms is a professional and commands a professional force that is well trained, equipped and has the experience to deal with Members of Parliament and knows when to use force and the amount of force to use in order to compel obedience in accordance with Rule 80(6) of the Parliamentary Rules of Procedure, which is the reason why the said office is mandated to handle parliamentary security consistent with the aspirations and provisions of the Uganda Constitution and laws. — 20

3.18 In the process, the fundamental rights of the Members of Parliament and public in the gallery protected and guaranteed by the Constitution were violated and infringed by the Speaker's decision to invite and allow elements of the Special Forces Command to raid and siege Parliament in order to enforce compliance with her orders, which were, in any case, unlawful.

3.19 The Speaker acted in an arbitrary and irrational manner not guided by the requisite wisdom and good judgment of an accountable and transparent leader before reaching the decision to invite the security operatives to wreak havoc in Parliament and as a result her conduct of the affairs of Parliament on the 27<sup>th</sup> September, 2017 fell below the legitimate expectations in a Speaker as an accountable leader in a democracy adhering to and upholding the rule of law, democracy, good governance, accountability and transparency in the management of public affairs. On the contrary, the Speaker mysteriously, stealthily and arbitrarily without any due regard to the principles of transparency and accountability invited the strangers to come to Parliament to desecrate and cause havoc in the House and eject Members of Parliament using brute force, cruel, dehumanising and degrading treatment or means.

3.20 The proceedings of Parliament and events as happened on 27<sup>th</sup> September 2017 were captured and recorded on the Closed Circuit Television (CCTV) of Parliament and the Applicant shall by way of

discovery seek to disclose and produce the CCTV video footage as evidence to be relied on in Court.

3.21 Additionally, the Applicants shall produce and rely on the evidence of video footages and coverage of events of 27<sup>th</sup> September, 2017 at Parliament recorded by various media houses and TV stations plus videos uploaded on You Tube and other social media platforms including WhatsApp, Facebook, Twitter, Instagram, among others.

3.22 Further, the proceedings of Parliament sitting as a House were captured and recorded on an audio recording system and thereafter transcribed into a written record or Hansard. The Applicants shall seek to discover and disclose both the audio and written record of proceedings and produce the same as evidence in Court. — 10

3.23 All the above acts lend credence to the assertion that the raid and siege on Parliament by the strangers (who have thereafter been identified as Special Forces Command (SFC)) was a well-designed and calculated grand scheme or plan by the Speaker in concert with senior security officials of the Respondent State, who deployed the strangers into the House to:

a) Torture, dehumanise and violently subdue all Members of Parliament opposed to the amendment of the Constitution and/or removal of the age limit Article with brute force or might; — 20

- b) Create terror and serve as a warning to all other Members of Parliament against opposing the Constitutional amendment thereby compromising their independence and freedom in legislating and oversight;
- c) Show the public the might and intent of the Respondent State to use all the might in dealing with dissent.

3.24 In furtherance of the grand scheme, the use of brute force and acts of cruelty, torture, dehumanisation and degradation against persons opposed to the amendment coupled with violent disruptions and suppression are now a common occurrence in Uganda. *Video recordings of such occurrences shall be produced in evidence and relied on for their full legal effect and purport.* — 10

3.25 Additionally, civic activities by Civil Society Organisations (CSOs), Non-Government Organisations (NGOs) and activists are under siege through trumped charges of money laundering, terrorism, treason, office closures and seizure/confiscation of office equipment to paralyse and halt operations coupled with threats of arrest and detention by the Uganda Police. *Evidence in this respect shall be produced and relied on for its full legal purport and effect.*

3.26 In the context of all the above stated events, occurrences and acts by the different government organs including the — 20



Speaker/Parliament, Cabinet, Presidency and security agencies, there is a grand scheme to subdue all persons opposed to the amendment of the Constitution using brute force, torture and analogous acts of impunity and arbitrariness against those opposed to the lifting of the age limit and bribery or corrupt practices clothed as facilitation as in the case of Members of Parliament.

3.27 Specifically the Uganda Police and security agencies are engaging in arbitrary and wanton acts of impunity against the populace and persons who are opposed to the removal and lifting of the age limit article or the amendment of the Constitution popularly known as "TOGIKWATAKO" which acts infringe on and violate the peoples fundamental human rights guaranteed under the Constitution contrary to and inconsistent to the principles of good governance, rule of law, accountability and democratic governance in Uganda. — 10

### The Removal of Age Limit

3.28 The orderly and peaceful transition and transfer of power from the incumbent to a newly elected government and/or president is a hallmark and virtue of democratic governance characterised by the rule of law, good governance, accountability and democracy.

3.29 The transfer of power and/or transition from one government to another in Uganda has a horrific history since the time of — 20

independence to date. There has never been any orderly and peaceful transition or transfer of power from one government or president to another. All transfers or transitions of power from one president to another have been through the force of arms and/ or *coup de tat*.

3.30 Term limits and/or age limits are the safeguards of orderly and peaceful transition of government and transfer of power from one government or president to another. Otherwise, without either safeguard, governance is left to the control of the incumbent who wields a personality cult that cannot allow an orderly and peaceful transition and transfer of power. The Applicants shall produce evidence of such occurrence in Uganda and elsewhere in the world and rely on the same for its full import and purport. — 10

3.31 The current presidency has rigours of incumbency characterised by the full control of all state organs with a resultant effect of pushing anything and everything in the path of, or against, the interests of the incumbent, compounded by the overbearing and omnipotent authority and control over all power centres, organs and institutions of government plus the citizens that constitute the electorate or have a say as voters in respect of the Bill. For example, the incumbent President has expressly declared that "I am behind removing age limit and anyone against the amendment is against me". Additionally, the incumbent President asked the NRM Members — 20

of Parliament (who constitute the majority of Parliament) who do not support the amendment to raise their hand so that he can see who is against him.

3.32 By these words of the incumbent President, coupled with the manner the 24 Members of Parliament were treated, there is no independence on the part of Parliament to debate and pass laws consistent with Article 79 of the Constitution of Uganda. The Members of Parliament are terrorised and lack independence lest they will be seen to be against the incumbent President.

3.33 At the outset, the scheme or project to remove the age limit through the Amendment Bill currently before Parliament is compromised in favour of the incumbent President, who is the only and sole beneficiary and has shown that YOU ARE EITHER IN SUPPORT OF THE REMOVAL AND THENCE ON HIS SIDE OR AGAINST THE REMOVAL AND THENCE AGAINST HIM. — 10

3.34 Vulnerability of the aged is both a scientific and practical fact of life that has acquired protection for the aged as a group in the form of affirmative action. Accordingly, retirement and withdrawal from labour service for the aged is a right enjoyed by the aged and guaranteed by affirmative action under Articles 21(5) and 32 of the Constitution of Uganda. — 20

3.35 There is abundant evidence to show that there are so many offices other than that of the President that are subject to age limit but are not included in the amendment Bill, lending credence to the fact that the amendment is a project to benefit one person, namely the incumbent and current President.

3.36 Accordingly, the removal of the age limit on the office of the President depicts the aged as capable of engaging in the labour market without retirement or withdrawal which act prejudices the aged as a group that greatly benefits from affirmative action, retirement and social welfare given their vulnerability to perform compared to the non-aged group. — 10

3.37 Lastly, the Applicants shall seek for the discovery and disclosure as evidence to be relied on in Court of:

- a) Call logs on the Speaker's mobile and fixed phones;
- b) SMS/text messages and chats on WhatsApp;
- c) Written correspondences or letters of the Speaker to security chiefs and staff of Parliament relating and relative to the events of 27<sup>th</sup> September 2017 as evidence of her invitation, participation and approval of the acts of the security operatives to wreak the havoc of 27<sup>th</sup> September 2017. — 20

#### 4.0 RELIEFS SOUGHT

4.1 A declaration that the acts through commission, omission or active and direct or indirect participation of the Speaker of Parliament and the Special Forces Command, in relation to the events at Parliament on the 27<sup>th</sup> day of September, 2017 are contrary to Articles 6(d); 7(2); 8(1)(c) and 123(3)(c) of the Treaty.

4.2. A declaration that the massive deployment of a variety of security personnel such as the Special Forces Command, the Uganda Police and vigilante groups under the command of Inspector General of Police, General Kale Kayihura, which ended up restricting public access to parliament and to create fear among the public is inconsistent with the spirit and the letter of the articles of the Treaty aforementioned. — 10

4.3 A declaration that the removal of the age limit safeguard and/or amendment of the Constitution to remove the age limit under Article 102(b) of the Constitution is contrary to Articles 6(d); 7(2); 8(1)(c) and 123(3)(c) of the Treaty.

4.4 A permanent injunction restraining the Respondent from continuing to do acts that are detrimental or aggravate the dispute i.e. to consider the Bill to amend the Constitution and consequently — 20

THE EAST AFRICAN COURT OF JUSTICE  
Lodged in The Sub - Registry, Kampala  
24 NOV 2017  
at 3:00 pm sign .....  
FIRST INSTANCE DIVISION

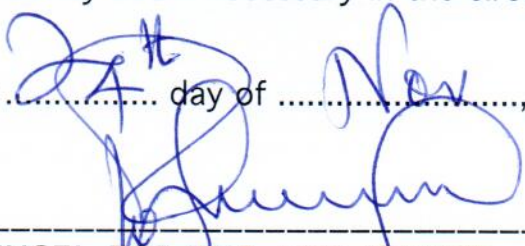
proceed to the Second and Third Reading leading to the enactment of the Constitutional Amendment Act until hearing and final disposal of this Reference.

4.5 An order enforcing compliance with and adherence to the Treaty and directing the Government of Uganda to immediately adhere and comply with the Treaty by taking measures immediately stopping the impugned acts in 4.1 to 4.2 herein above.

4.6 An order that the costs of and incidental to this Reference be borne by the Respondent.

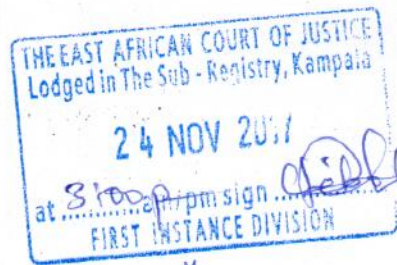
4.7 That this Honourable Court be pleased to make such further or ——— 10 other orders that it may deem necessary in the circumstances.

DATED at Kampala this ..... day of ..... 2017.

  
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COUNSEL FOR THE APPLICANTS

LODGED in the Registry on the ..... day of ..... 2017.

  
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REGISTRAR



Presented for filing at the Registry at Kampala this 24<sup>th</sup> day of Nov, 2017.

Drawn and filed by:

Donald Deya, Advocate

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Kampala, Republic of Uganda

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To be served upon:

The Attorney General of Uganda

Attorney General's Chambers

Ministry of Justice & Constitutional Affairs

KAMPALA

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