

**Mandates of the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Working Group on Arbitrary Detention; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression**

REFERENCE:  
AL UGA 4/2020

21 December 2020

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the rights to freedom of peaceful assembly and of association; Working Group on Arbitrary Detention; Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, pursuant to Human Rights Council resolutions 41/12, 42/22, 44/5 and 43/4.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning alleged **arbitrary arrest and detention, as well as judicial harassment of Mr. Kyagulanyi, Ms. Florence Namayanja, Mr. Mathias Mpuuga, and Dr. Abed Bwanika, and the excessive use of force against protesters by Ugandan Police Forces (UPF) during the 17 and 18 November protests in Uganda.**

According to the information received:

On 16 June 2020, the Electoral Commission of Uganda (EC) issued a roadmap for the 2020-2021 General Elections in the framework of COVID-19, which back then were scheduled on 11 May 2021. This roadmap provided for a "scientific" electoral process, with a reduced period for nomination of candidates and for the electoral campaign. It also established that the campaigns will be held "digitally", prohibiting mass rallies during the campaigns.

On 22 October 2020, the EC announced through a press statement that "*in accordance with the measures and guidelines put in place by the Ministry of Health to prevent the spread of COVID-19, and the Standard Operating Procedures (SOPs) issued by the Electoral Commission to prevent and combat person-to-person, person-to-object and object-to-person spread of the COVID-19 during the conduct of election activities, processions and public/mass rallies remain banned; Candidates will, however, be allowed to organize/hold campaign meetings, in a regulated manner, preferably outdoors, with limited attendance of a maximum of seventy (70) persons, to enable the observance of the 2-meters social distancing rule for the persons attending the meeting.*"

On 4 November 2020, the EC announced the names of the 11 candidates of the presidential elections in Uganda and set the presidential campaign period from 9 November 2020 until 12 January 2021. The EC further specified 14 January 2021 as the polling date (instead of 11 May 2021 as originally set) for presidential elections urging all nominated candidates, their agents, supporters

and the public to carefully observe the guidelines issued by the EC for this campaign period.

On 11 November 2020, the EC issued a press statement on “observations on the conduct of candidates during campaigns for 2021 General Elections”, in which it *“noted with concern that some candidates, including Presidential candidates, are holding their campaigns in a manner that violates the Guidelines for Conduct of Campaign Meetings”*. The Commission warned *“all candidates contesting for various elective positions under the General Elections 2021, and all other stakeholders in the electoral process to conduct themselves in accordance with the Guidelines for the campaigns and strictly observe the measures issued by the Commission.”* It also indicated, *“non-compliance with the Guidelines issued for the campaign period will necessitate intervention by law enforcing agencies, among other measures”* without clearly specifying the nature of the penalty for the non-compliance.

On 17 November 2020, one presidential candidate was arrested by the UPF in Matidi Sub-country, Kitgum District. At the time of the arrest, the candidate had stood outside of his vehicle to wave at his local supporters, when Police fired tear gas to disrupt the spontaneous mass gathering. He was released a few hours later.

On 18 November 2020, the UPF published a press release in which the Inspector General of Police stated that *“unlike the elections of 2016, this time we are faced with a pandemic that can only be controlled if we adhere to Ministry of Health guidelines, with regulated gatherings of not more than 200 people and the use of new media (online media), to help safeguard the health and safety of all Ugandans and visitors to the country...While we understand the right to freedom of expression as a very important part of democracy, unauthorized assemblies are currently prohibited under the Electoral Commission and Ministry of Health guidelines. As a result the safety and security of all candidates, their agents and the successful conduct of the political campaigns remains a top priority. Fortunately, all candidates are aware of these guidelines.”* In this framework, the Inspector General also announced the approach *“to preserve the integrity of the electoral process...We have dispatched our specialist teams and quick reaction teams, to identify ring leaders (and principals) for apprehension in the face of crime...In addition, the Electoral and Political Offences Department at CID headquarters, has obtained videos of the respective campaign trails, and started gathering evidence to press formal charges, on candidates, campaign agents and influencers who are caught on the wrong side of the law.”*

On the same day and following this press release, UPF officers arrested another presidential candidate, Mr. Robert Kyagulanyi, also known as Bobi Wine, alongside other National Unity Platform (NUP) leaders. The arrest occurred as Mr. Kyagulanyi was set to address his supporters in an electoral campaign activity in Luuka District, Busoga Region, when a dozen armed police officers attacked, and forced him into a police truck. During the arrest of Mr. Kyagulanyi, the UPF officers fired tear gas against the NUP supporters to

disperse them. It is also alleged that Mr. Kyagulanyi was ill-treated during the transport to detention and while in custody.

According to a statement issued by the Luuka Police Station, Mr. Kyagulanyi was charged with “*negligent act likely to cause spread of an infectious disease, section 171 of the Penal Code Act*”. Mr. Kyagulanyi was then taken for custody in Nalufenya Police Station, in Jinja District. Police also reported that five more NUP leaders were arrested in the course of the transportation of NUP supporters to Nalufenya Police Station. Additionally, two journalists were allegedly arrested and charged with interference in police duties.

In the afternoon of the same day, 18 November 2020, another presidential candidate was arrested by UPF in Gulu Municipality, as he was going to address an electoral campaign event. He was allegedly charged with the same offence as Mr. Kyagulanyi, under Section 171 of the Penal Code Act- *Negligent act likely to cause spread of an infectious disease*. It has also been alleged that in the evening of the same day, four members of NUP party, including Ms. Florence Namayanja, Mr. Mathias Mpuuga, and Dr. Abed Bwanika were arrested by the police in Masaka.

In the protests which took place on 17 and 18 November 2020, the Spokesperson of the UPF announced three deaths, and 35 cases of injuries. However, information made available to us reported more than 40 deaths and 50 injuries attributable to the use of live ammunitions by the UPF as well as approximately 600 cases of arrest and detention of protestors. Several video footage available on social media portray UPF and individuals in civilian attire allegedly identified as “Local Defence Units” using live ammunitions, and shooting tear and paper gas directly into the population to disperse them. No mediation or clear warning for voluntary dispersal seems to have been given in the majority of instances.

It is further reported that journalists covering the campaigns of opposition candidates were also beaten by police during the aforementioned protests while clearly identifying themselves as journalists. Further, on 10 December, the Media Council reportedly issued new guidelines requiring foreign journalists to reapply for their accreditations within one week, which might limit their ability to cover the elections.

While we do not wish to prejudge the accuracy and the veracity of the above-mentioned, we are gravely alarmed by the allegations of excessive and lethal use of force against demonstrators, and those participating in elections campaign related events. The number of deaths and injuries, as well as of those arrested, does not seem to intend to merely protect the population from health related risks but rather to disband any political opposition and silence dissent. There are widespread concerns that the measures used by the Government to address the spread of the COVID-19 pandemic, including Presidential Directives and other laws on disease control are being used in a discriminatory and arbitrary manner. While the use of *online media* has been recommended by the Government instead of mass gatherings, we are not convinced that this method is available to all, and if free access to these channels is granted to all. We express our concern on the reports of internet shut downs and limitations imposed on

the access to social media sites during previous elections, measures which aimed at stopping the spread of misinformation and disinformation. We also raise concern at the imposition of a social media tax in July 2018, aiming to combat online “gossip”, which required individuals using Facebook, WhatsApp, and Twitter, to pay a small daily fee to use these sites. With this background, we are concerned that further limitations on the access to the internet and social media<sup>1</sup> might happen during the 2021 elections.

We are disturbed at the allegations of the use of “Local Defence Units”, whose members are civilians, and trained by military or police, to perform duties related to security and law enforcement. While they have been temporarily prevented from enforcing COVID-19 measures, there are reasonable grounds to believe that they might continue to be deployed during the electoral process.

We are also concerned by the allegations of arrests, intimidation and judicial harassment of political leaders, including presidential candidates such as Mr. Kyagulanyi, as well as activists and journalists. The prosecution of candidates appears to be directly related to their opposition to the candidacy of the current President of the country, and the actions by the police and the judicial system may have a chilling effect on dissent, can instil widespread fear, and discourage an open and transparent campaign and, subsequently, inhibit free and fair elections.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide updated information into the number of deaths and injuries as well as the number of individuals arrested between 17 and 18 November 2020, and the status of investigations undertaken on each case.
3. Please provide information on the legal basis used for mass arrest of protestors, presidential candidates and their supporters, and explain how these actions are consistent with Uganda’s obligations under international human rights law.
4. Please provide detailed information about the arrest and detention of Mr. Kyagulanyi, Ms. Florence Namayanja, Mr. Mathias Mpuuga, and Dr. Abed Bwanika and any charges which might have been brought against them, as well as the current status of their cases before the

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<sup>1</sup> The Special Rapporteur on the freedoms of peaceful Assembly and of association has stressed the importance of free access to these platforms for the enjoyment of the fundamental freedoms, in his report entitled: “the exercise of the rights to freedom of peaceful assembly and of association in the digital age”, which can be accessed here: <https://undocs.org/A/HRC/41/41>

judiciary. Please also indicate whether they were able to be assisted by a lawyer.

5. Please indicate what steps have been taken to investigate the use of force by State and non-State security forces during the protests on 17 and 18 November 2020.
6. Please provide information as to how the Government is ensuring that COVID-19 risk is not politically used to hamper equal chance to address the public and the participation of all in the campaign process, in particular since the Government has made authorization compulsory prior to assemblies.
7. Please provide the details of the new guidelines requiring foreign journalists to reapply for their accreditations within one week, and how the Government ensures this will not hamper the right of the media to information.
8. Please clarify what measures have been taken to facilitate public access to the *new media (online media)* as it has been encouraged in the press release by the Inspector General of the UPF, as opposed to and as an alternative to mass gatherings in the electoral period.
9. Please provide information on the legal basis as to why an authorization regime was established for peaceful assemblies during the campaign process.

We would appreciate receiving a response within 60 days. Passed this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

We may publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government to clarify the issues in question.

We would like to inform your Excellency's Government that after having transmitted an allegation letter to the Government, the Working Group on Arbitrary Detention may transmit the case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. Such letters in no

way prejudge any opinion the Working Group may render. The Government is required to respond separately to the allegation letter and the regular procedure.

Please accept, Excellency, the assurances of our highest consideration.

Clement Nyaletsossi Voule  
Special Rapporteur on the rights to freedom of peaceful assembly and of association

Elina Steinerte  
Vice-Chair of the Working Group on Arbitrary Detention

Agnes Callamard  
Special Rapporteur on extrajudicial, summary or arbitrary executions

Irene Khan  
Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

## **Annex**

### **Reference to international human rights law**

In connection with above alleged facts and concerns, we would like to remind your Excellency's Government of its international obligations under articles 6 (1), 7, 9(1), 19, 21 and 25 of the International Covenant on Civil and Political Rights (ICCPR), to which Uganda acceded on 21 June 1995, which protect the right to life, right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment, right to security of person, right to freedom of expression, the rights to freedom of peaceful assembly, and the right to "take part in the conduct of public affairs, directly or through freely chosen representatives" respectively.

Arresting or detaining an individual as punishment for the legitimate exercise of the rights as guaranteed by the Covenant constitutes a violation of article 9 (CCPR/C/GC/35 para 17). According to article, 9 of the ICCPR, any arrest or detention shall be carried out in accordance with the grounds and procedures established by law. In addition, anyone deprived of his liberty shall be entitled to challenge the legality of such detention before a court or judicial authority; this is a self-standing human right, the absence of which constitutes a human rights violation (A/HRC/30/37). Moreover, the deprivation of liberty as punishment for the legitimate exercise of rights guaranteed by the ICCPR is arbitrary, this includes protections for the rights to freedom of opinion and expression, as well as freedom of assembly and association (CCPR/C/GC/35).

We would like to draw your attention to Article 6 of the ICCPR, which protects the right to life through the prohibition on the arbitrary deprivation of life. The Human Rights Committee, charged with monitoring compliance with the Covenant, has indicated that the obligation under Article 6 "extends to reasonably foreseeable threats and life-threatening situations that can result in loss of life. States parties may be in violation of article 6 even if such threats and situations do not result in loss of life", CCPR/C/GC/36 para. 7. The obligation entails taking all necessary measures to prevent arbitrary deprivations of life, including by soldiers tasked with law enforcement missions, *id.* para. 13. The notion of arbitrariness in Article 6 includes elements of "inappropriateness, injustice, lack of predictability, and due process of law as well as elements of reasonableness, necessity, and proportionality", *id.* para 12.

We further wish to draw to your Excellency's Government attention articles 2 and 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) which Uganda acceded to on 3 November 1986.

We wish to stress that law enforcement officials shall at all times respect and protect fundamental human rights and freedoms, in particular when they are considering the use of force of any kind. Furthermore, the report of the Special Rapporteur on Torture (A/72/178) states that, "any extra-custodial use of force that does not pursue a lawful purpose (legality), or that is unnecessary for the achievement of a lawful purpose (necessity), or that inflicts excessive harm compared to the purpose pursued (proportionality) contradicts established international legal principles governing the use of force by law enforcement officials and amounts to cruel, inhuman or degrading treatment or punishment." Any use of force by law enforcement officials shall comply with the principles of legality, precaution, necessity, proportionality, non-

discrimination and accountability. The use of potentially lethal force for law enforcement purposes is an extreme measure, which should be resorted to only when strictly necessary in order to protect life or prevent serious injury from an imminent threat. Even less lethal weapons, must be employed only when they are subject to strict requirements of necessity and proportionality, in situations in which other less harmful measures have proven to be or are clearly ineffective to address the threat.

The Human Rights Committee preventive measures include the adoption of “appropriate legislation controlling the use of lethal force by law enforcement officials, procedures designed to ensure that law enforcement actions are adequately planned in a manner consistent with the need to minimize the risk they pose to human life, mandatory reporting, review, and investigation of lethal incidents and other life-threatening incidents, and the supplying of forces responsible for crowd control with effective “less-lethal” means and adequate protective equipment in order to obviate their need to resort to lethal force.”, *id.* para. 13

Governments should, in line with principle 2 of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, equip law enforcement officials with a broad range of weapons and ammunition that would allow for a differentiated use of force. Less-lethal weapons, for instance, would allow officials to apply varying degrees of force in situations where it would be unlawful to use firearms loaded with lethal ammunition. At the same time, however, less-lethal weapons can easily be misused or abused. In this regard, we therefore wish to refer your Excellency’s Government to the United Nations Human Rights Guidance on Less-Lethal Weapons in Law Enforcement<sup>2</sup> issued by the Office of the United Nations High Commissioner for Human Rights (OHCHR) aimed at ensuring that only appropriate force is used, if force is to be used at all. According to the Guidance training law enforcement officials, equipping them with adequate protective equipment and an appropriate range of less-lethal weapons, and making these officials available are essential precautionary measures if unnecessary or excessive harm is to be prevented. Furthermore, law enforcement policies, instructions and operations must give special consideration to those who are particularly vulnerable to the harmful consequences of the use of force in general and to the effects of specific less lethal weapons; such persons include children, pregnant women, the elderly, persons with disabilities, persons with mental health problems and persons under the influence of drugs or alcohol.

Where death or injury is caused by the use of a less-lethal weapon or related equipment by a law enforcement official, the incident shall be reported promptly to the official’s superiors. This obligation also applies to any private security company undertaking law enforcement activities. All deaths and injuries resulting from the use of less-lethal weapons or related equipment — and not only where they result from an apparently or potentially unlawful use of force — should be reported without delay to a judicial or other competent authority. This independent authority shall be mandated to conduct prompt, impartial and effective investigations into the circumstances and causes of such cases.

We would like to draw the attention of your Excellency's Government to Principle 4 of the UN Basic Principles on the Use of Force and Firearms by Law

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<sup>2</sup> [https://www.ohchr.org/Documents/HRBodies/CCPR/LLW\\_Guidance.pdf](https://www.ohchr.org/Documents/HRBodies/CCPR/LLW_Guidance.pdf)



Officials, endorsed also by the Human Rights Committee, which provides that, “Law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms”, and the Code of Conduct for Law Enforcement Officials, ensuring protesters right to peaceful assembly and without resorting to excessive use of force.

We would also like to refer to the Joint compilation of practical recommendations for the proper management of assemblies of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions A/HRC/31/66, in which was stated that: “The use of force by law enforcement officials should be exceptional, and assemblies should ordinarily be managed with no resort to force. Any use of force must comply with the principles of necessity and proportionality. The necessity requirement restricts the kind and degree of force used to the minimum necessary in the circumstances (the least harmful means available), which is a factual cause and effect assessment. Any force used should be targeted at individuals using violence or to avert an imminent threat. The proportionality requirement sets a ceiling on the use of force based on the threat posed by the person targeted. This is a value judgement that balances harm and benefit, demanding that the harm that might result from the use of force is proportionate and justifiable in relation to the expected benefit” (paras. 57 and 58). Firearms may be used only against an imminent threat either to protect life or to prevent life-threatening injuries (making the use of force proportionate). In addition, there must be no other feasible option, such as capture or the use of non-lethal force to address the threat to life (making the force necessary) (para. 59). Firearms should never be used simply to disperse an assembly; indiscriminate firing into a crowd is always unlawful (para 60).

We wish to stress that the right to life is a foundational and universally recognized right, applicable at all times and in all circumstances, including during armed conflict or other public emergencies. Accordingly, the use of force by law enforcement officials, including firearms, must always be governed in compliance with international obligations. Even under a state of emergency, when law enforcement agencies resort to force, they must continue to abide by the principles of necessity, proportionality and precaution<sup>3</sup>.

With regards to security of person in Article 9(1) of the Covenant, this right concerns freedom from injury to the body and the mind, or bodily and mental integrity regardless of whether the victim is detained or non-detained (CCPR/C/GC/35, para. 3 and 9). As interpreted by the Committee, “the right to personal security also obliges States parties to take appropriate measures (...) to protect individuals from foreseeable threats to life or bodily integrity proceeding from any governmental or private actors. States parties must take both measures to prevent future injury and retrospective measures, such as enforcement of criminal laws, in response to past injury”. Furthermore, we would like to recall that “States have a duty to prevent and redress unjustifiable use of force in law enforcement” (CCPR/C/GC/35, para. 9).

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<sup>3</sup> Special Rapporteur on extrajudicial, arbitrary or summary executions, Human Rights Dispatch No. 1: Police use of force and lethal force in a state of emergency:  
<https://www.ohchr.org/EN/Issues/Executions/Pages/HumanRightsDispatches.aspx>

We would like to bring to the attention of your Excellency's Government General Comment 37 of the Human Rights Committee, which recognizes that the right to peaceful assembly "constitutes the very foundation of a system of participatory governance based on democracy, human rights, the rule of law and pluralism. [W]here they are used to air grievances, peaceful assemblies may create opportunities for inclusive, participatory and peaceful resolution of differences." (CCPR/C/GC/37, para 1). In this regard, the Human Rights Council has stressed "that peaceful protests should not be viewed as a threat, and therefore encouraging all States to engage in an open, inclusive and meaningful dialogue when dealing with peaceful protests and their causes." (A/HRC/RES/44/20).

We remind your Excellency's Government that the right of peaceful assembly can only be subject to certain restrictions, which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others" (Human Rights Council Resolution 15/21). While the "interests of national security" may serve as a ground for restrictions, the suppression of the right of peaceful assembly cannot be used to justify restrictions on this ground (CCPR/C/GC/37, para 42).

We would also like to recall that during a state of emergency, the rights to freedom of peaceful assembly and of association shall not be derogated since the possibility of restricting the right under article 21 of the Covenant is generally sufficient during such situations and no derogation from the provisions in question would be justified by the exigencies of the situation (A/HRC/20/27, para 19). The Human Rights Committee has emphasized that emergency measures "must be able to justify not only that such a situation constitutes a threat to the life of the nation, but also that all measures derogating from their obligations under the Covenant are strictly required by the exigencies of the situation and comply with the conditions in article 4." (CCPR/C/GC/37, para 96).

We would like to draw your attention to the ten key principles developed by the Special Rapporteur on the freedoms of peaceful assembly and of association, in which he reminded the States of the necessity of responding to the COVID-19 pandemic in a manner compliant with their human rights obligations<sup>4</sup>. The second principle on "ensuring that the public health emergency is not used as a pretext for rights infringements" stipulates that "It is imperative the crisis not be used as a pretext to suppress rights in general or the rights to freedom of peaceful assembly and of association in particular. The crisis is no justification for excessive force to be used when dispersing assemblies, as the Special Rapporteur on extrajudicial, summary or arbitrary executions has emphasized, nor for disproportionate penalties to be imposed. States have an obligation to inform the Secretary General of the United Nations if and when a state of emergency has been declared and of any resulting derogation of rights, which must themselves be in compliance with the Siracusa Principles...It is particularly important in the context of a crisis moreover that judicial and parliamentary checks and balances be strengthened, in order to avoid excessive and broad power in the executive branch, and to ensure a check on the arbitrary exercise of executive authority".

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<sup>4</sup> <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25788&LangID=E>

With regard to the rights of the media during elections, we would first like to underscore that the media plays a critical role in promoting pluralism, “framing electoral issues, informing the electorate about the main developments, and communicating the platforms, policies and promises of parties and candidates” (Joint Statement from the Special Rapporteurs on freedom of expression).<sup>5</sup> In its General Comment 34, the Human Rights Committee raised concerns at “restrictions on political discourse [such as] the prohibition of door-to-door canvassing, restrictions on the number and type of written materials that may be distributed during election campaigns, blocking access during election periods to sources, including local and international media, of political commentary, and limiting access of opposition parties and politicians to media outlets” (para. 37). The Human Rights Committee further observed that “undue media dominance or concentration by privately controlled media groups”, may be “harmful to the diversity of sources and views” in public discourse. Accordingly, the Committee underscored the duty of States to protect the diversity of media sources and prevent “monopolistic situations” is critical to the dissemination of opposing viewpoints during elections and creating a media environment that is conducive to informed decision making (General Comment no. 34, para. 40).

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<sup>5</sup> <http://portal.oas.org/en/iachr/expression/showarticle.asp?artID=744&IID=1>