

FROM REFUGEE TO CITIZEN?

Obstacles to the Naturalisation of Refugees in Uganda

by Samuel G. Walker¹

The received wisdom dictates three potential “durable solutions” for refugees: (1) voluntary repatriation; (2) resettlement to a third country; and (3) local integration in the country of asylum, often through the grant of citizenship. This paper focuses on the last of these three solutions, with a particular focus on acquisition of citizenship in Uganda.

Uganda hosts many refugees who have been in the country for more than 20 years, and in some cases in excess of 40 years. A Kampala-based NGO, Refugee Law Project (RLP), estimates that they number in the thousands, and are of primarily Sudanese, Congolese and Rwandese origin.² Some have spent their entire lives in Uganda, raised families there, and consider it their home. However, up until now they have not been provided with the opportunity to legally become Ugandan. Refugee status has become a permanent limbo for such migrants – they are unable or unwilling to return to their home countries because of the persecution suffered there, but not permitted to integrate in their adopted home. Lack of citizenship results in many tangible consequences, such as the inability to vote or participate in the political

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² Interviews with experienced immigration lawyers at Refugee Law Project’s Legal Aid Clinic, May – August 2008.

process and difficulty obtaining employment. Citizenship would seem the ideal means by which to allow them to shed their refugee status and end their transient existence.

However, an erroneous belief persists that refugees cannot become citizens of Uganda, despite enabling legislation to the contrary. Unfortunately, while the law is clear (and has been since at least 2006), the reality is that the Ugandan government has yet to implement the necessary procedures. The Ugandan example explored below may shed light on similar situations that exist in other countries, and call attention to the need to realize acquisition of citizenship as a viable and hitherto ignored durable solution.

1. The Law of Uganda on Refugees and Citizenship

(a) The Refugees Act (2006)

The now defunct 1960 *Control of Alien Refugees Act* stated, at art. 18: “For the purposes of the Immigration Act and the Uganda Citizenship Act, no period spent in Uganda as a refugee shall be deemed to be residence in Uganda.” This effectively barred refugees from ever accruing the period of residence needed in order to become a naturalised citizen.

However, in 2006 Parliament passed the *Refugees Act*, which repealed the 1960 law. It deliberately omits the above provision and replaces it with art. 45, which states: “The Constitution and any other law in force in Uganda regulating naturalisation shall apply to the naturalisation of a recognized refugee.”

It seems clear, therefore, that with the 2006 law Parliament intended to allow refugees to become Ugandans. The drafting history confirms this. In Parliamentary

debates over the *Refugees Act*, some explicitly supported the concept. For example, Kalule Ssenko (MP for Gomba County, Mpigi) said:

I am interested in seeing more controls on the whole issue of refugees, how and when they should become citizens and there should be a formal way for these people to become Ugandans. We are not against them becoming Ugandans but let us have a formal way just as other countries do.³

While the author was unable to obtain a copy of the report on the refugee bill prepared by the Committee on Presidential and Foreign Affairs,⁴ it would appear that the Committee also supported citizenship for refugees. In Parliament, Jack Sabiiti (MP for Rukiga County, Kabale) stated:

I suggest, as the committee highlighted on page 7, that we become very flexible about the time when a person should be a citizen of this country, if she is a refugee. If I want to go to Kenya and be a citizen and I apply, it should note that I am a refugee – I should be allowed, if I am an African and I want to stay in that country... I would suggest that we become very flexible on this matter and that for example all those that have been refugees in this country for over a year, if they want can become citizens. Let us go ahead and integrate them in...⁵

The debate transcripts do not show a single MP opposing citizenship for refugees.

(b) The Uganda Citizenship and Immigration Control Act (1999)

As just stated, art. 45 of the *Refugees Act* holds that the usual laws on naturalisation, including the Constitution, will apply to refugees. Ostensibly, this puts refugees in the same situation as any other migrant. It remains to be explored, however, whether any technicalities in these laws nevertheless exclude refugees.

The Constitution only mentions naturalisation once, at article 13: “Parliament shall by law provide for the acquisition and loss of citizenship by naturalisation.”

³ Hansard, Parliament of Uganda, Second Reading (The Refugee Bill, 2003), 22 March 2006.

⁴ Upon an in-person trip to the library of the Parliament of Uganda in July 2008, I was informed that the report had been misplaced and could not be located.

⁵ Hansard, Parliament of Uganda, Second Reading (The Refugee Bill, 2003), 22 March 2006.

The *Uganda Citizenship and Immigration Control Act* ('*UCICA*') is therefore the operative statute with respect to the naturalisation of refugees. Five criteria must be met under art. 16(5) of the *UCICA*:

- 16.(5) The qualifications for naturalisation are that he or she—
- (a) has resided in Uganda for an aggregate period of twenty years;
 - (b) has resided in Uganda throughout the period of twenty-four months immediately preceding the date of application;
 - (c) has adequate knowledge of a prescribed vernacular language or of the English language;
 - (d) is of a good character; and
 - (e) intends, if naturalised, to continue to reside permanently in Uganda.

(i) *Residence – Art. 16(5)(a) & (b)*

It has been argued that years spent in Uganda as a refugee would not count towards 'residence' under 16(5)(a) and (b). As explained above, this was true under the 1960 *Control of Alien Refugees Act*, but this law has since been repealed. In addition, art. 25 of the *UCICA*, which regulates what types of status do not qualify for 'residence', does not mention refugees:

25. Residence under authority of certain passes not to be residence for acquisition of citizenship by registration or naturalisation.

Notwithstanding any provision of this Act or of any other law, any period of residence in Uganda under the authority of any—

- (a) special pass;
- (b) dependent pass to a holder of an entry permit other than as wife or husband;
- (c) pupils pass;
- (d) visitors pass;
- (e) convention travel document,

shall not be taken into account in computing the time of residence in Uganda for purposes of acquisition of citizenship by registration or naturalisation.

A "dependant pass", "pupils pass" and "visitors pass" all clearly do not refer to refugees. A "special pass," according to art. 10 of the *UCICA Regulations, 2004*, is issued under a number of circumstances (none of which pertain to refugees) and, moreover, can only be issued for 3 months and extended for a maximum of 2 months. It cannot therefore include refugee status, which is normally awarded indefinitely.

“Convention travel document” does pertain to refugees, however it is not equivalent to the Refugee Status Card issued by Ugandan immigration authorities. The *UCICA* at art. 2(g) states: “‘convention travel document’ means a travel document issued to a refugee under the relevant refugee instruments and the Control of Alien Refugees Act”. The *Refugees Act, 2006* at art. 31(5) in turn refers to the 1951 UN Convention Relating to the Status of Refugees (‘Refugee Convention’): “‘travel document’ means a travel document issued under or in accordance with article 28 of the Geneva Convention.” Art. 28(1) of the Refugee Convention (referred to in the *Refugees Act* as the “Geneva Convention”) states:

The Contracting States shall issue to refugees lawfully staying in their territory travel documents for the purpose of travel outside their territory, unless compelling reasons of national security or public order otherwise require, and the provisions of the Schedule to this Convention shall apply with respect to such documents. The Contracting States may issue such a travel document to any other refugee in their territory; they shall in particular give sympathetic consideration to the issue of such a travel document to refugees in their territory who are unable to obtain a travel document from the country of their lawful residence.

Thus, with respect to art. 25(e) of the *UCICA*, “convention travel document” can only mean that a refugee in a state *outside* Uganda who is issued a travel document for the purposes of traveling *to* Uganda cannot be considered as ‘residing’ in Uganda while they are in the country. Refugees with status issued by the Ugandan government would therefore *not* be excluded under art. 25(e).

(ii) *Language – Art. 16(5)(c)*

According to article 6 of the Constitution, English and Swahili (since the *Constitutional Amendment Act, 2005*) are the official languages of Uganda. The “prescribed vernacular languages” are listed in the *Uganda Citizenship (Vernacular Languages) Regulations*, subsidiary to the now defunct *Uganda Citizenship Act*. They are: Ateso/Akaramojong, Kakwa or Kuku, Kinyarwanda, Kumam, Luganda, Lugbara

(which also includes Madi), Lugwere, Lumasaba or Lugisu, Lunyoli, Luo (covering Lango, Acholi and Alur), Lusamia, Lusoga, Rukonjo, Runyankole/Rukiga, Runyoro/Rutoro, and Sebei.

(iii) Good Character – Art. 16(5)(d)

The precise meaning of this criterion is evidently ambiguous, but presumably a naturalisation application could be rejected if the applicant has a serious criminal record. For example, in Canada, residency status can be denied if the applicant has been convicted of a crime with a maximum statutory sentence of ten years.⁶ It may also encompass other considerations, but it would obviously be absurd to imply that refugees, solely by virtue of their status, lack the “good character” necessary for citizenship.

(iv) Intention to Stay – Art. 16(5)(e)

Factors that might be considered under this criterion could include: the credibility of the applicant’s professed intention; their family, social or economic ties to Uganda; their integration into Ugandan society and culture; or their travel history. In Canada, such factors are considered to determine whether “Canada is the place where the applicant ‘regularly, normally or customarily lives’... [or] the country in which he or she has centralized his or her mode of existence.”⁷

⁶ *Immigration and Refugee Protection Act* (2001), c. 27, Parliament of Canada, at s. 36.

⁷ *Koo Re*, [1993] 1 F.C. 286 (Federal Court of Canada).

(c) Conclusion on Naturalisation

Nothing in Ugandan law would seem to prohibit a recognized refugee from being considered to ‘reside’ in Uganda for purposes of naturalisation under art. 16 of the *UCICA*. Presumably, there is also no legal bar to refugees meeting the requirements of language, good character, and intention to settle in Uganda. Refugees should therefore be fully capable of becoming naturalised citizens.

(d) A Possible Alternative: Citizenship by Registration?

It is also possible to acquire citizenship in Uganda by registration, as distinct from naturalisation or by birth. The *UCICA* at art. 14(2) states:

- (2) The following persons shall, upon application, be registered as citizens of Uganda—
- (a) every person married to a Ugandan citizen, upon proof of a legal and subsisting marriage of five years or more;
 - (b) every person who has legally and voluntarily migrated to and has been living in Uganda for at least twenty years;
 - (c) every person who, on the commencement of the Constitution had lived in Uganda for at least twenty years.

The words “legally and voluntarily migrated” in art. 16(2)(b) likely mean residency under a work permit or similar status, excluding refugees. But the words “has been living in Uganda” in art. 16(2)(b) seem to have been deliberately chosen to be distinct from “legally and voluntarily migrated.” A plain reading would imply that “living in Uganda” is a broader concept that, absent the initial qualifier of art. 16(2)(b), can include both those who have “legally and voluntarily migrated” as well as those who have not. This would mean that, for the purposes of 16(2)(c), a refugee in Uganda could have “lived in Uganda for at least twenty years” even without having “legally and voluntarily migrated” there. Thus, 16(2)(c) could provide a pathway to citizenship for refugees. However, it would be a limited solution only applying to those who have

been in the country for the 20 years preceding 1995, the year the Constitution was ratified.⁸

However, art. 14(1) (as well as art. 12(1) of the Constitution) which provides for citizenship by registration upon birth in Uganda, explicitly excludes those born to parents who are refugees. This might imply that citizenship by registration under art. 14(2) was never intended to apply to refugees. However, a plain reading of the text would seem to indicate that 14(1) and 14(2) are meant to be understood separately.

In any case, this alternative would clearly apply only in very limited instances and would eventually become obsolete. Thus, efforts should instead be directed towards realizing naturalisation.

2. Practical Obstacles

In a visit to the Department of Immigration in June 2008 in Kampala, RLP spoke to two officials who both insisted that refugees could never become naturalised citizens of Uganda. RLP also encountered a refugee who had come to apply and saw as he was simply rejected on the spot.⁹ Clearly reality has not caught up with the law.

In support of their contention, the officials cited art. 12 of the Constitution. However, art. 12 only deals with citizenship by *registration* (discussed below), which is distinct from *naturalisation* as dealt with in art. 13.

Alas, the problem appears to be even deeper still. When RLP requested a copy of the application forms for becoming a naturalised citizen, we were given forms only

⁸ It is unclear why this particular period from 1975-1995 attracts particular attention, but it may have something to do with Idi Amin's regime and the reluctance to grant citizenship to the Sudanese he employed who had arrived in the decades before 1975, as well a reluctance to grant citizenship to Rwandese who had arrived in the 1950s.

⁹ In-person trip by the author and RLP officials, June 2008.

for citizenship by registration. The officials stated that the procedures for naturalisation (even for non-refugees) had not yet been implemented – despite naturalisation having become a legal avenue to citizenship in 1999. Moreover, the forms they supplied cited the long-repealed *Uganda Citizenship Act* of 1964, as opposed to the new *Uganda Citizenship and Immigration Control Act* of 1999. These forms contained a number of erroneous requirements that the 1999 law has since modified.

It would seem, therefore, that before refugees can ever become naturalised citizens of Uganda, the Department of Immigration will need to implement procedures for naturalisation in keeping with the new legislation.

3. International law and Naturalisation in Other Jurisdictions

The 1951 Refugee Convention encourages the naturalisation of refugees. It states, at Art. 34:

The Contracting States shall as far as possible facilitate the assimilation and naturalization of refugees. They shall in particular make every effort to expedite naturalization proceedings and to reduce as far as possible the charges and costs of such proceedings.

Uganda has made no reservations to this article.¹⁰

According to the *travaux préparatoires* this cannot be construed as *requiring* states to naturalise refugees as the grant of citizenship is always considered a privilege bestowed by the state and never a right. As explained by Dr. Paul Weis, former head of the UNHCR Legal Division:

¹⁰ “Reservations and declarations to the 1951 Refugee Convention” (1 March 2006), UNHCR website, available online at <http://www.unhcr.org/cgi-bin/texis/vtx/search?page=search&docid=3d9abe177&query=1951%20Refugee%20Convention> [accessed 12 July 2010].

The decision of the State granting naturalisation, in this respect, is absolute. It cannot be compelled to grant its nationality, even after a long waiting period, to a refugee settled in its territory since naturalization confers on the naturalized citizen a series of privileges, including political rights.¹¹

Thus art. 34 merely requires the contracting states to “facilitate” naturalisation where such opportunities exist.

The UNHCR in Bosnia has explained the meaning of “facilitate” as follows:

To "facilitate" naturalization means that, refugees and stateless persons should be given appropriate facilities for the acquisition of the nationality of the country of asylum and should be provided with the necessary information on the regulations and procedures in force. Furthermore, it implies that national authorities should adopt legal or administrative procedures for the benefit of refugees by which they are enabled to qualify for naturalization earlier than aliens generally, they are not required to give evidence of loss of their former nationality and that the fees normally paid for naturalization proceedings are reduced or waived.¹²

This interpretation is confirmed by the practice of several states. The Council of Europe in 1969 recommended to all members that refugees be subject to a minimum period of residence that does not exceed five years.¹³ In current German law for instance, the residency requirement may be reduced from the normal 8-year period to 6 years in the case of refugees.¹⁴

¹¹ Paul Weis, *The Refugee Convention, 1951: the travaux preparatoires analysed, with a commentary by the late Dr. Paul Weis*, Cambridge International Documents Series, Volume 7 (Cambridge University Press, 1995), at 344.

¹² UNHCR BiH press release, “Positive steps forward in the field of citizenship,” 3 August 2006, available at <http://www.unhcr.ba/press/2006pr/030806.htm>

¹³ Weis, *supra* note 11, at 351.

¹⁴ Art. 10, *Staatsangehörigkeitsgesetz* (“The law governing citizenship/nationality”), available at http://vwvbund.juris.de/bsvwvbund_13122000_V612400513.htm#ivz9, in conjunction with s. 8.1.3.1, *Allgemeine Verwaltungsvorschrift zum Staatsangehörigkeitsrecht* (“General administrative regulations regarding the law governing citizenship/nationality”), available at <http://www.gesetze-im-internet.de/rustag/index.html>. Weis, *supra* note 10, at 351, notes in his 1995 book that at the time Denmark reduced the requirement from seven to six years in the case of refugees, in Belgium from six to three years, and in the Netherlands from five to four years. He also writes that some states reduce other hurdles to naturalisation, such as exempting refugees from the requirement to renounce dual-nationality in Switzerland and Finland. In Denmark, the language and integration requirements are relaxed for refugees. At the time of writing, the author has been unable to verify the veracity of these claims in current law.

As it stands, Uganda's 20-year residence requirement is exceptionally long in comparison to other countries, even in the region. In Kenya, for example, naturalised citizenship can be acquired after only five years of residence.¹⁵ In South Africa it is four years,¹⁶ and in Rwanda five years.¹⁷

It has been suggested that the significant obstacles to naturalisation in Uganda result from the long-term presence of foreign armed rebel groups, for whom the Ugandan government has been reluctant to provide pathways to citizenship.¹⁸ Nevertheless, an argument could be made that in keeping with art. 34 of the 1951 Refugee Convention, Uganda should at least attenuate the twenty-year residence requirement for refugees.

4. Do Refugees Actually Want to Become Ugandan Citizens?

In a June 2008 visit to Kyangwali Refugee Settlement, near the Congolese border, RLP encountered two refugees who had lived in Uganda for 19 years, just shy of the 20 years required for naturalisation. Their diverging responses to the idea of becoming Ugandan likely reflect the two general types of possible reactions:

- One was a 40-year old woman from Sudan who had arrived in February 1989. She is divorced and has 5 children, ages 3-14. She testified that she does not feel Ugandan and does not want to become a citizen. She only speaks Acholi and perceived no hope of being integrated. She worried about the “bad

¹⁵ *Constitution of the Republic of Kenya*, art. 93.

¹⁶ *South African Citizenship Act*.

¹⁷ *Organic Law N° 29/2004 of 03/12/2004 on Rwandan Nationality Code*, art. 14.

¹⁸ See for example Jude Murison, “The Citizenship and Naturalization of Rwandan Refugees in Uganda”, available at http://www.allacademic.com/meta/p72266_index.html

relations” between the nationals and refugees, and did not think she would be welcomed into Ugandan society. As a refugee, at least she can receive some benefits, like a plot of land. If she had to choose between becoming Ugandan and moving back to Sudan, she said she might as well do the latter.¹⁹

- The other was a 24-year old Sudanese man who, orphaned by war at the age of 1, was taken to Kenya for some years until arriving in Uganda with his aunt at the age of 5, in 1989. When he reached P7 his aunt died and since then he has been on his own. He does not even have a memory of Sudan and says there is nothing for him there. While he does not quite feel Ugandan, almost his entire life has been spent here and he says he has nowhere else to go. He would like to become a citizen so that he can work and build a life in the only place he really knows.²⁰

In addition, an April 2008 visit by RLP to Kyaka II refugee settlement discovered at least 56 refugees who, in a signed letter, professed a desire to become citizens. Some even claimed to have been living in Uganda since 1964.

Finally, there may also be a need for such a durable solution in Kyaka I, a settlement which many years ago was ‘decommissioned’ by the government. Many refugees continue to stay there, thinking of it as their home. According to their leaders, they number roughly 300, are primarily of Congolese origin and arrived there in 1980.²¹ They were recently notified by Ugandan immigration authorities that they

¹⁹ Interview with Sudanese refugee woman, Kyangwali Refugee Settlement, 17 June 2008.

²⁰ Interview with Sudanese refugee man, Kyangwali Refugee Settlement, 19 June 2008.

²¹ Memorandum from Leadership of Ruhangire (Kyaka I) to Office of Country Director UNHCR Uganda, 6 June 2008.

had to evacuate the settlement within 60 days, by 30 July 2008. A memo from their leaders strenuously protesting this alarming action did not mention citizenship, but it did state their unwillingness to be repatriated or go to another camp. They stated that “we have settled here for 28 years,” and that they did not want to move from lands where they “grow and feed on our own food.” While citizenship would not necessarily solve their particular land issue, it may be part of finding them a durable solution.²²

5. Conclusions and Recommendations

Despite the fact that Ugandan law clearly entitles refugees to citizenship if they meet the applicable requirements (primarily residence for 20 years), immigration authorities have yet to abide by the legislation. Three initiatives are proposed to help dislodge this frustrating status quo:

(a) Research

Research should be undertaken in order to provide an approximate number of refugees who would fit within the criteria for naturalisation, where they are located, and to assess how best to coordinate their potential citizenship applications. In order to gauge demand, special attention should be paid to whether particular candidates intend to remain permanently in Uganda – in other words, whether they actually want citizenship. This research will be vital in order to ascertain the scope of the problem and to emphasize the urgency of reform.

²² Memorandum from Leadership of Ruhangire (Kyaka I) to Office of Country Director UNHCR Uganda, 6 June 2008.

(b) Lobbying and Training

If it is true that it in fact Uganda's Department of Immigration has yet to receive instructions on implementing the procedures for naturalisation, even for non-refugees, then clearly this problem will need to be resolved as a prerequisite to naturalising refugees.

In general, it would appear that the Department of Immigration has yet to implement the 1999 *Uganda Citizenship and Immigration Control Act*, nor has there been any training on the *Refugees Act* (2006), which differs substantially from the *Control of Alien Refugees Act* (1960).

(c) Naturalisation Test Case

As a last resort, it may be useful to initiate a test case of naturalising a refugee. Theoretically, such an applicant would be rejected by immigration officials and then an appeal for judicial review should be submitted. Under art. 16 of the *UCICA*, this person would ideally be a refugee who:

- (1) has been in Uganda for at least twenty years, and continuously in the past two years;
- (2) has "adequate knowledge" – probably conversational fluency – in English or Swahili;²³
- (3) has no criminal convictions or an otherwise questionable record that would impinge upon their "good character";

²³ While art. 16(c) also permits knowledge of "vernacular languages," for the first test-case it would be advisable to look mainly at English or Swahili, as these would better demonstrate the ability of the candidate to permanently settle in Uganda.

(4) intends to permanently reside in Uganda and not to return to their country of origin.

It is hoped that concerted pressure from the refugee community and its supporters will ensure that those who have spent over twenty years in Uganda, and have begun to call it home, will be given the opportunity to become citizens. No one should be forced to live indefinitely in the inexorable limbo of refugee status.