



Refugee Law Project

Faculty of Law, Makerere University

Briefing
Paper
July 2008

CAN REFUGEES BECOME CITIZENS OF UGANDA?

Sam Walker

INTRODUCTION

The general received wisdom is that there are three potential durable solutions for refugees: (1) voluntary repatriation; (2) resettlement to a third country; and (3) local integration in the country of asylum through the grant of citizenship. This paper focuses on the last of these three solutions, the grant of citizenship, an option that is erroneously believed to be legally impossible 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. Refugee Law Project estimates that they number in the thousands, and are of primarily Sudanese, Congolese and Rwandese origin. Some have spent their entire lives here, raised families here, and consider Uganda their home. However, up until now they have not been provided with the opportunity to legally become Ugandan.

This briefing paper will explain how the law provides refugees with the opportunity to become citizens. Unfortunately, while the law is clear, the reality is that the government has not yet implemented the necessary procedures.

THE LAW ON REFUGEES AND NATURALISED CITIZENSHIP

The 1960 *Control of Alien Refugees Act* stated, at section 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However, in 2006 Parliament passed the *Refugees Act*, which repealed the 1960 law.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 Ssengo (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.¹

While RLP was not able to obtain a copy of the report on the refugee bill prepared by the Committee on Presidential and Foreign Affairs, 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...²

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

NATURALISED CITIZENSHIP IN UGANDA

The *Refugees Act* at art. 45 states “The Constitution and any other law in force in Uganda regulating naturalisation shall apply to the naturalisation of a recognized refugee.”

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

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 section 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.

(a) & (b) Residence:

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, section 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

¹ Hansard, Parliament of Uganda, Second Reading (The Refugee Bill, 2003), 22 March 2006.

² Hansard, Parliament of Uganda, Second Reading (The Refugee Bill, 2003), 22 March 2006.

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 “dependent pass”, “pupils pass” and “visitors pass” all clearly do not refer to refugees.

A “special pass,” according to regulation 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 with no specified period of time.

A “convention travel document” does pertain to refugees, however it is not equivalent to the OPM Refugee Status Card. 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 *UN Convention*: “‘travel document’ means a travel document issued under or in accordance with article 28 of the Geneva Convention.” Art. 28(1) of the *UN 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 section 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 section 25(e).

(c) Language

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.

(d) Good character

It is not clear what this means exactly, 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 five years.

(e) Intention to stay

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 country in which he or she has centralized his mode of existence."³

Conclusion

In sum, 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.

PRACTICAL DIFFICULTIES

In a visit to the Department of Immigration in June 2008, 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 witnessed that he was simply rejected on the spot. Clearly, reality has not caught up with the law.

In support of their contention, the immigration 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 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.

³ *Chen v. Canada* (2001), Supreme Court of Canada.

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.

INTERNATIONAL LAW AND NATURALISATION IN OTHER JURISDICTIONS

Art. 34 of the *UN Convention* states:

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.⁴

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:

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.⁵

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.⁶

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. In Austria, generally the period of residence is reduced from ten to four years for refugees. In Denmark it is reduced from seven to six years, in Belgium from six to three years, in Germany from ten to seven years, and in the Netherlands from five to four years. Some states also reduce other hurdles to naturalisation, such as exempting

⁴ <http://www.unhcr.ch/html/menu3/b/treaty2ref.htm>

⁵ Paul Weis, *The Refugee Convention, 1951: the travaux préparatoires analysed, with a commentary by the late Dr. Paul Weis*, Cambridge International Documents Series, Volume 7 (Cambridge University Press, 1995), at 344.

⁶ 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>

refugees from the requirement to renounce dual-nationality in Switzerland and Finland. In Denmark the language and integration requirements are relaxed for refugees.⁷

As it stands, Uganda's twenty-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.⁸ In South Africa it is four years,⁹ and in Rwanda five years.¹⁰

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.¹¹

Nevertheless, an argument could be made that in keeping with art. 34 of the *UN Convention*, Uganda should at least reduce the twenty-year residence requirement for refugees.

ALTERNATIVE: CITIZENSHIP BY REGISTRATION?

It is also possible to acquire citizenship in Uganda by registration, as distinct from naturalization or by birth. The *UCICA* at section 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 16(2)(b) likely mean residency under a work permit or similar status, excluding refugees. But the words “has been living in Uganda” in 16(2)(b) seem to have been deliberately chosen to be distinct from “legally and voluntarily migrated.” A plain reading would imply they are wider in scope, and possibly would include refugees ‘living’ in Uganda. However, it would be a limited solution only applying to those who have been in the country for the 20 years preceding 1995, when the Constitution was passed.¹²

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

⁷ Weis, at 351.

⁸ *Constitution of the Republic of Kenya*, art. 93.

⁹ *South African Citizenship Act*.

¹⁰ *Organic Law N° 29/2004 of 03/12/2004 on Rwandan Nationality Code*, art. 14.

¹¹ See for example Jude Murison, “The Citizenship and Naturalization of Rwandan Refugees in Uganda”, available at http://www.allacademic.com/meta/p72266_index.html

¹² 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 as a reluctance to grant citizenship to Rwandese who had arrived in the 1950s.

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.

DO REFUGEES ACTUALLY WANT TO BECOME UGANDAN CITIZENS?

In a June 2008 visit to Kyangwali Refugee Settlement, 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 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 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.¹³
- 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.¹⁴

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 for refugees 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 1980.¹⁵ They were recently notified by OPM that they 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 [their] own food.” While citizenship would not necessarily solve their particular land issue, it may be part of finding them a durable solution.¹⁶

¹³ Interview with Sudanese refugee woman, Kyangwali Refugee Settlement, 17 June 2008.

¹⁴ Interview with Sudanese refugee man, Kyangwali Refugee Settlement, 19 June 2008.

¹⁵ Memorandum from Leadership of Ruhangire (Kyaka I) to Office of Country Director UNHCR Uganda, 6 June 2008.

¹⁶ Memorandum from Leadership of Ruhangire (Kyaka I) to Office of Country Director UNHCR Uganda, 6 June 2008.

RECOMMENDATIONS

(1) Research

Research should be undertaken in order to provide an approximate number of refugees who would fit within the criteria for naturalisation, to ascertain 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.

(2) Training

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

(3) Naturalisation test case

As a last resort, it may be useful to initiate a test case of naturalizing a refugee. Theoretically, such an applicant would be rejected by immigration officials and then an appeal for judicial review should be submitted. Under section 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;¹⁷
- (3) has no criminal convictions or an otherwise questionable record that would impinge upon his/her “good character”;
- (4) intends to permanently reside in Uganda and not to return to his/her country of origin.

¹⁷ While section 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.