

FAHAMU

REFUGEE LEGAL AID NEWSLETTER

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WELCOME TO THE FAHAMU REFUGEE LEGAL AID NEWSLETTER

*a monthly forum for relevant news
and wider reflection on the
provision of refugee legal aid.*

Africa	Asia	Middle East	Americas
<i>Fear of LRA causes thousands to flee in Western Equatoria</i> • <i>Deportations of Zimbabweans from South Africa to resume</i>	<i>Violence against asylum seekers detained in Indonesia</i> • <i>Afghan refugees missing, displaced in Pakistan floods</i> • <i>Refugees fear return to post-election Burma</i> • <i>Japan launches Refugee Studies Forum</i> • <i>Troubling changes to Malaysia immigration detention</i> • <i>Last detained Ethiopians released from Japan</i>	<i>Saudi Arabia departs Somalis to war zone</i> • <i>Egypt-Israel border killings continue</i>	<i>Canada opens doors for Haitian women at risk of rape</i> • <i>Charges of sexual abuse in US detention center</i> • <i>Mexican immigration law criticized</i> • <i>US immigration backlog at all time high</i>

Somalis in Yemen may lose prima facie refugee status

Suggesting that they are 'economic migrants [who] should not be granted automatic refugee status' and 'militants seeking to join al-Qaeda groups to destabilize the country', the Government of Yemen is set to [end prima facie refugee status recognition for Somali asylum seekers](#) that reach the country.

All asylum seekers in Kenya required to proceed to Dadaab camp

Kenya's *The Nation* newspaper has run an announcement requiring all asylum-seekers in the country to proceed to Dadaab camp for registration and status adjudication, including those already holding appointments with the UNHCR. The announcement comes just as [Human Rights Watch](#) has released a report documenting [widespread police extortion of bribes from asylum seekers trying to reach the three camps near Dadaab](#) and Médecins Sans Frontières has expressed serious concerns about conditions there.

Israel drops 'anti-infiltration law'

The [African Refugee Development Center \(ARDC\)](#) has announced that [the Israeli 'anti-infiltration law'](#) has been dropped from consideration. The bill received significant opposition, including [flash mob public protest by Israelis](#). ARDC remains wary however, noting 'fresh concerns that the government will turn to amending the current Anti-Infiltration legislation from 1951 and that such amendments may be [even] worse than the formerly proposed legislation'.

New research challenges traditional view of sexual violence in DRC

A paper in the *Journal of the American Medical Association* has challenged the traditional image of sexual violence in the Democratic Republic of the Congo, asserting that 41 percent of female and 10 percent of male survivors of conflict-related sexual violence said the perpetrator was a woman. [NGOs have urged caution](#) in interpreting the findings, but the report may assist legal aid providers presenting cases of abuse by women.

Repression in Rwanda as refugee cessation looms

Opposition politician Victoire Ingabire has declared that stability in Rwanda is [based on repression](#), echoing concerns about the country published in the *New York Times* following the re-election of President Paul Kagame. These developments continue to raise alarm as regards Rwandans refugees and the planned [cessation of refugee status for Rwandans](#) in Uganda.

The Fahamu Refugee Legal Aid Newsletter seeks your input, feedback and submissions for upcoming issues. Please email editors [Themba Lewis & Nora Danielson](#).

Libya's refusal to authorize exit permits for ten privately sponsored Eritrean refugees has resulted in [Citizenship and Immigration Canada](#) having to suspend travel plans for the ten. While efforts are underway to remedy the situation, Canada's Paris visa office is placing current and future sponsorships on hold. Libya has also refused exit permits for Eritrean refugee awaiting resettlement in the US, the Netherlands and Switzerland. *Submitted by Haile Kiflai*

The European Commission's proposal for a Directive of the European Parliament and of the Council on [minimum standards on member state procedures in for granting and withdrawing international protection](#) has received [comment from UNHCR](#). The organization has also released a comment on the European Commission's proposal for a Directive of the European Parliament and of the Council on minimum standards for the [qualification and status of third country nationals or stateless persons](#) as beneficiaries of international protection and the content of the protection granted, which can be found [here](#).

Concerning protection needs for Iraqis, UNHCR has also disseminated a [note](#) clarifying its position in the document: *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Iraqi Asylum-Seekers-April 2009*. The note added that political, security and human rights developments are not yet sufficient to constitute a significant change required to update the Guidelines. UNHCR reports that 'those involved in the adjudication of international protection claims lodged by asylum-seekers from Iraq and those responsible for establishing government policy in relation to this population [should] continue to rely on the April 2009 UNHCR Guidelines. Accordingly, the current UNHCR position on returns to Iraq also remains unchanged.' The annex to the note contains [Reports of Attacks and Security Incidents in Iraq since April 2009](#), potentially very helpful for those adjudicating and advocating Iraqis' asylum claims.

From **Nakivale refugee settlement in Uganda**, word has come that the site has been in 'lock-down,' with entry or exit forbidden, and that several non-Rwandans may have gone missing in the forced deportations. This follows on July's [mass forced repatriation of 1700 Rwandan asylum-seekers](#) from the Nakivale and Kyaka camps in Uganda - discussed here [last month](#). If anyone has any information about the situation in the camp, please email the [newsletter editors](#).

Refugees in Tanzania at risk of forcible return?

The [Refugees Self-Reliance Initiative \(RSI\)](#) has reported that refugees from the Democratic Republic of Congo, Rwanda, and Burundi are facing forcible return from the new camp of Nyarugusu. The RSI also reports that some have already been forced out from the recently closed Lugufu camp.

ANNOUNCEMENTS

Saharawis in Algeria or Western Sahara?

Anyone aware of human rights or development NGOs working with the Saharawis in Algeria or Western Sahara is encouraged to be in touch with [Gwendolyn Roeske](#).



Mental health in UK detention centers?

Sana Malik is currently working on a systematic review of the mental health experiences of asylum seekers (children and families specifically) in detention centres in the UK, and is looking to contact anyone currently conducting research in this field in the UK. Please send an email if you are able to assist.



Request for country of origin information: stateless Bihari from Bangladesh?

Susannah McNeill would like to be in touch with anyone having recent experience representing stateless Biharis from Bangladesh, as there is very little country information on the current situation. She would be interested in contacts for any NGO's or community legal centers in Bangladesh that might have first hand knowledge of the current situation. Please email her.



Call for nominations: Oak Human Rights Fellowship

*The US-based Oak Institute fellowship is a one-semester appointment for a scholar-in-residence, designed to provide one human rights practitioner doing "on-the-ground" work a respite from front-line duties and enable them to reflect, write, and communicate their work to the campus community. Nomination deadline is **1st November**; applications due by **15th December, 2010**. Details [online](#).*

From Refugee to citizen? Obstacles to the naturalization 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, ideally 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. The 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 process and, most seriously, the difficulty of 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.

Uganda’s refugee and citizenship laws

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 naturalized citizen.

The Refugees Act (2006)

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[come] 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 [they] 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.

The Uganda Citizenship and Immigration Control Act (1999)

As just stated, art. 45 of the *Refugees Act* holds that the usual laws on naturalization, 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 naturalization 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 naturalization of refugees.

(Continued on page 4)

Pambazuka News

The Fahamu Refugee Legal Aid Newsletter is distributed in Pambazuka News, the authoritative pan-African electronic weekly newsletter and platform for social justice in Africa. With over 1000 contributors and an estimated 500,000 readers, Pambazuka News provides cutting edge commentary and in-depth analysis on politics and current affairs, development, human rights, refugees, gender issues and culture in Africa. Visit [online](#) or subscribe by email.

(Continued from page 3) 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.

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).

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.

Good Character – Art. 16(5)(d)

The precise meaning of this criterion is evidently ambiguous, but presumably a naturalization 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.

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

Conclusion on naturalization

Nothing in Ugandan law would seem to prohibit a recognized refugee from being considered to ‘reside’ in Uganda for purposes of naturalization under art. 16 of the *UCICA*.

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Sinai migrants shot by Bedouin and police

Six migrants [have been shot dead](#) on the Egypt-Israel border. While the Egyptian shoot-to-kill policy at the border has [already killed 24 people](#) this year, this incident raises serious alarm, as four were killed by Bedouin smugglers and two were killed by police, highlighting the peril of the journey. The [Jerusalem Post](#) reports that shots have been fired at women and children, and quotes General Muhammad Shousha, governor of north Sinai: “of course it’s not a mistake that we shoot them, it’s necessary to shoot them. To deal with an infiltrator, he has to be fired at.” Those who make it across the border face deportation, and Israel has recently [vowed to remove 400 children](#).

UNHCR publishes special report on annual NGO consultations

UNHCR has published its [Annual Consultations with NGOS, 29 June – 01 July 2010](#) report, covering the official proceedings of the 2010 UNHCR-NGO annual consultations. The report does not include commentary on the various side-meetings and thematic sessions held independently during the event.

Limited progress in Lebanon for Palestinian refugees

Lebanon has [passed a law allowing Palestinians refugees the right to work](#). The move has brought [cautious optimism](#) that the situation is improving for the some 400,000 Palestinians in the country, but there are still many restrictions on employment. Palestinians will continue to be barred from work in the public sector, medicine, law and engineering. Refugees also cannot access Lebanese state medical and educational facilities. They will, however, be able to claim for work-related injuries and some retirement benefits, if employed in the private sector.

Sri Lanka

Canada has accepted 490 Tamil asylum seekers who arrived by boat (now held in [Canadian detention](#)), just as treatment in [Sri Lanka is raising increasing concern](#). Reports of torture-related deaths in the centers are also emerging from human rights groups there, and [Amnesty International has condemned ongoing emergency rule](#).

Ethiopia to end refugee warehousing

Ethiopia has allowed [Eritrean refugees to live outside of camps](#). These steps were commended by USCRI in a recent mailing suggesting [the steps will help end refugee warehousing](#).

ANNOUNCEMENTS (Cont'd.)

Wednesday, 15th September is the registration deadline for [International Refugee Law and Contemporary Challenges](#), a distance learning certificate course offered 11th October to 21st November 2010 by [Human Rights Education Associates](#) and the [University for Peace Human Rights Centre](#). The web-based course introduces participants to the international system for refugee protection, from the historical, legal, theoretical and practical perspectives, based on a dynamic pedagogy including reading materials, video clips, case studies, and interactive webinars with the instructor, students and NGO and UNHCR practitioners, with an emphasis on critical reflection and peer-to-peer learning. Tuition is \$US 435, or \$US 165 to audit. Applications and further information are available [online](#).



The [Global Detention Project](#) has expanded its [country profiles](#), adding [Lebanon](#), [Latvia](#), [Lithuania](#), and [Bulgaria](#).



[Immigration Detention and the Law: U.S. Policy and Legal Framework](#), a [Global Detention Project Working Paper](#), has been published. The paper is intended to assist scholars, activists, practitioners, and concerned members of the public in taking stock of the current state of U.S. immigration detention policies and practices. The paper covers everything from the country’s relevant international legal commitments and the grounds for detention provided in domestic law, to recent court rulings on the rights of detainees and the increasing trend in criminalizing immigration violations, particularly at the state and local levels. This paper may provide useful guidance for legal aid providers in the global south.



The [Equal Rights Trust](#) has launched its report ‘[Unravelling Anomaly: Detention, Discrimination and the Protection Needs of Stateless Persons](#)’. The report, based on two years of research, reflection and debate, is an important contribution to a growing body of expertise on the discrimination and detention of stateless persons around the world.



The [University of Oxford](#) has published [conference papers](#) from a recent conference on the meaning and practice of immigration detention.

CASE NOTE**United Kingdom: the right to work during the asylum claim process**

by Tom Barratt

Few countries in the global south allow people seeking asylum the right to work during the refugee claim-making process, much less allowing recognized refugees the right to work. Here we see a decision by the United Kingdom Supreme Court which gives Somali refugees the right to seek employment, even on a second application for refugee status. This welcomed submission from UK-based lawyer Tom Barratt may provide legal advisers a basis for their advocacy in the global south and elsewhere.



In the case *R (ZO (Somalia) et al v SSHD [2010] UKSC 36*, the UK Supreme Court has upheld the right of asylum claimant to apply for permission to work when their claim been under consideration for more than a year, even if *is* their second claim.

Background

In the United Kingdom, an asylum seeker who has been waiting for more than twelve months for a claim decision must have access to the labour market, provided that the delay is not his or her own fault.¹ This right, from European Union law, is subject to the conditions of the member state. The UK's conditions forbid self employment or engagement in a business or professional activities, and require that the asylum seeker apply for permission to work to the UK Secretary of State.² Under UK law, an initially unsuccessful asylum claimant may claim asylum again (a 'fresh claim'), provided that new evidence which creates a realistic prospect of success is submitted.³

The case

ZO and MM were Somali asylum claimants making fresh claims. Although their cases had exceeded twelve months, the Secretary of State withheld their permission to work on the basis that the right to work only exists for initial claims.

Arguments & judgement

The Secretary of State's argument was challenged and rejected in the Supreme Court on the basis that the right to labour market access exists for *all* asylum claims. This decision noted that

'an application for asylum' in the Reception Directive must be interpreted to include a subsequent application made after an original application has been determined and that the term 'asylum seeker' should be construed accordingly to include a person who makes such a subsequent application.⁴

The judgement continued its support of the fresh asylum claimant:

It is clear, therefore, that a person who has been in the United Kingdom for some time can apply for asylum and, on the interpretation that the appellant espouses, such a person would be entitled to the benefits of the Reception Directive whereas an applicant who has made an application immediately on arrival would lose those benefits forever after the first application has been determined.⁵

There is nothing unusual or untoward in the notion that one can be received into that system on more than one occasion.⁶

Thus the judgement not only clarifies the right of all asylum seekers to seek work after their cases have been in process for a year, it also points out that to judge otherwise might have the undesirable result that a person who waits some time after entering the UK before claiming asylum might be in a better position than one who claims straight away.

Countering the Secretary of State's argument that allowing all asylum seekers to apply for permission to work would encourage abuse of the system, the Supreme Court stated:

As a general principle, it is of course correct that difficulties in implementing legislation may provide a useful guide to the identification of the true purpose of an enactment but where, as here, the purpose of the Directive is unmistakably

clear, the fact that this may give rise to administrative difficulties cannot impel an interpretation which is inconsistent with that purpose.⁷

Thus the Court avoided the kind of speculation that the government appeared to be inviting.

Although strictly *obiter dictum*, it is an idea that would be well remembered elsewhere in the asylum system.

Implications

This decision affirms a positive interpretation of asylum seekers' right to work. The case has potential implications for other EU states bound by the Reception Directive. Particularly, it makes some useful assessment of arguments for treating less favourably those who have already made an unsuccessful claim. All of the purported rationales for such practice are dismissed, pointing, perhaps, to the more likely explanation that the government seeks to minimise claims wherever possible. While there may be sound concerns for good administration, the case implies that these might be qualified in two ways. First, certain rules will not permit an assessment of administration where they are sufficiently unequivocal about the rights conferred. Second, any concern for the effect on administration must be substantiated and not negligible.

On a more global scope, the arguments of the case could serve as guidance for legal aid providers arguing against administrative inconvenience elsewhere in the world.

Unfortunately, however, since the initial judgement of this case, the United Kingdom has announced that "[the only jobs for which asylum seekers kept waiting for twelve months or more will be able to apply are those on the shortage occupation list](#)" – a list which is [extremely limited](#).



¹Council Directive 2003/9/EC (The Reception Directive), article 11.

²Immigration Rules, rule 360.

³Immigration Rules, rule 353.

⁴*R (ZO (Somalia) et al v SSHD [2010] UKSC 36*, paragraph 31.

⁵*Ibid.*

⁶*Ibid.*, paragraph 32.

⁷*Ibid.*, paragraph 44.

(Continued from page 4)

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 naturalized citizens.

A possible 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 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 arts. 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 naturalization.

Practical obstacles to citizenship

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 naturalized citizens of Uganda. RLP also encountered a refugee on this visit who had come to apply and was simply rejected on the spot.⁹ Clearly practice 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 above), which is distinct from *naturalization* 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 naturalized citizen, we were given forms only for citizenship by registration.

The officials stated that the procedures for naturalization (even for non-refugees) had not yet been implemented – despite naturalization 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 naturalized citizens of Uganda, the Department of Immigration will need to implement procedures for naturalization in keeping with the new legislation.

International law and naturalization in other jurisdictions

The 1951 Refugee Convention encourages the naturalization 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 naturalize 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 naturalization, 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' naturalization 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.

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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

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, naturalized 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 naturalization 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.

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 naturalization. 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 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 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

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:

1. Research

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

2. 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 naturalization, even for non-refugees, then clearly 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. Naturalization 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 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'; (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.

¹B.A. (Yale University, 2005); LL.B./B.C.L. (McGill University, 2010); LL.M. Candidate (University of Cambridge, 2011). This paper originates in field research conducted during an internship at Refugee Law Project in Kampala, Uganda, from May – August 2008. I would like to express my deep gratitude, most of all, to all the brave and dedicated people at RLP, as well as to the McGill Centre for Human Rights and Legal Pluralism for organizing the placement, and the Association of Universities and Colleges of Canada Students for Development programme for funding.

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

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

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

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

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).

⁸It is unclear why this particular period, 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.

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

¹⁰'Reservations and declarations to the 1951 Refugee Convention' (1 March 2006), UNHCR website, available [online](#) [accessed 12 July 2010].

¹¹Paul 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.

¹²UNHCR BiH press release, 'Positive steps forward in the field of citizenship,' 3 August 2006, available [online](#).

¹³Weis, *supra* note 10, at 351.

¹⁴Art. 10, *Staatsangehörigkeitsgesetz* ('The law governing citizenship/nationality'), available [online](#), in conjunction with s. 8.1.3.1, *Allgemeine Verwaltungsvorschrift zum Staatsangehörigkeitsrecht* ('General administrative regulations regarding the law governing citizenship/nationality'), available [online](#). 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.

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.

¹⁸See for example Jude Murison, 'The Citizenship and Naturalization of Rwandan Refugees in Uganda', available [online](#).

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

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

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

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

²³While 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.

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