

FROM ARCHAIC TO MODERN LAW: UGANDA'S REFUGEES ACT 2006 AND HER INTERNATIONAL TREATY OBLIGATIONS

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ABSTRACT

Uganda enacted its first law to deal with refugees in 1955, which was repealed in 1960 by the Control of Alien Refugees Act. While the 1960 law was still in force, Uganda ratified international and regional human rights instruments. In 1995 a new Constitution with a comprehensive Bill of Rights was promulgated. These developments made the 1960 Act incompatible with Uganda's international, regional and national human rights obligations. As a result, in May 2006 Uganda passed the Refugees Act which integrates its international and regional obligations into the refugee legal regime. This article critically reviews the 2006 Refugees Act and Uganda's refugee obligations in light of its international human rights obligations. The article argues that the 2006 Refugees Act substantially reflects Uganda's international and regional obligations under the relevant refugee and human rights instruments, but finds that some questions, such as the definitions of 'spouse' and 'public order' remain unanswered.

I. INTRODUCTION

By June 2006 Uganda was home to 257,256 refugees.¹ These refugees come mainly from neighbouring countries like the Democratic Republic of Congo, Rwanda, Sudan, and Burundi, but also from as far away as Ethiopia and Somalia.² Uganda is party to both international and regional refugee related treaties. Under international law the government has a duty to ensure that the rights of refugees under those treaties are promoted, protected and fulfilled, where necessary.³ This article analyses

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1. 2005 GLOBAL REFUGEE TRENDS: STATISTICAL OVERVIEW OF POPULATIONS OF REFUGEES, ASYLUM-SEEKERS, INTERNALLY DISPLACED PERSONS, STATELESS PERSONS, AND OTHER PERSONS OF CONCERN TO THE UNHCR (2006), at 10.

2. UNHCR STAT. Y.B. (2003), at 351.

3. See generally, VIENNA CONVENTION ON THE LAW OF TREATIES (1969).

how the Ugandan government has transformed its refugee laws in the last 51 years: that is, from 1955 to 2006.

II. THE HISTORY OF REFUGEES IN UGANDA

Uganda started hosting refugees as early as before it achieved independence.⁴ From 1930 to 1944, as a result of World War II and political upheavals, 7000 refugees, including European and Arab refugees, mainly women and children, were received in Uganda. They were settled in two camps – in Nyabyeya and Kojja.⁵ Other people who arrived in Uganda during World War II included Italian prisoners of war who were accommodated at Jinja, and Italian civil internees who were housed in Entebbe. Civilian internees from Germany, Australia, Romania, Bulgaria, Yugoslavia and Hungary, as well as stateless Jews were also located in Uganda during World War II at the Arapai Camp.⁶ These refugees either went back to their respective countries or settled in various European countries when World War II came to an end.

Uganda has for a long period of time also been home to many African refugees. Political instability in Rwanda, Burundi, Sudan and the Democratic Republic of Congo has led to many people from those countries to seek refuge in Uganda. Soon after the end of British and Egyptian domination of Sudan, a civil war broke out between the northern Arabs and the black Southerners. This war would lead to an influx of over 178,000 refugees into Uganda.⁷ This war only came to an end in 2004 when a permanent cease-fire agreement was signed at Naivasha, Kenya, between the government of the Sudan and Sudan People's Liberation Movement/Army.⁸ When Belgium was about to relinquish its mandate over Ruanda-Urundi, the two dominant ethnic groups, the Tutsi and the Hutu, rose against each other in the struggle for power.⁹ As a result of this struggle, Uganda received 80,000 refugees.¹⁰ During the same period, the then Belgian Congo (now the Democratic

4. S. Tindifa, *Refugees and Human Rights in Uganda: A Critical Assessment of the Law, Policy and Practice*, 5 EAST AFR. J. PEACE HUM. RIGHTS (1998), at 56-57.

5. *Id.*

6. J.D. Mujuzi, *An Appraisal of Uganda's Local Settlement and its Impact on the Rights of Refugees* (Unpublished LLB dissertation, Makerere University, 2003), 14.

7. A. Kiapi, *The Legal Status of Refugees in Uganda*, 3 EAST AFR. J. PEACE HUM. RIGHTS 115 (1996).

8. *See*, <<http://www.reliefweb.int/rw/RWB.NSF/db900SID/EVIU-6AZBDB?OpenDocument>> accessed 17 June 2007.

9. A.L. Chua, *Markets, Democracy, and Ethnicity: Toward a New Paradigm for Law and Development*, 52 YALE L. J. 108 (1998).

10. Kiapi, *supra* note 7, at 115.

Republic of Congo) faced political instability,¹¹ and about 33,000 refugees fled to Uganda.¹² Uganda has also been a producer of refugees for decades,¹³ but discussion of this aspect is beyond the scope of this article. The refugee influx meant that Uganda had to enact law to regulate them.

A. Putting in Place the Legal Regime to Govern Refugees in Uganda

The above discussion shows that the majority of the refugees in Uganda had come from Southern Sudan. All signals pointed to the fact that the civil war in that country was not about to come to an end. As a result, the Protectorate Government enacted the Control of Refugees from the Sudan Ordinance in 1955.¹⁴ The Protectorate Government also realized that there was still political instability in both Rwanda and Burundi between the two major ethnic groups in those countries, and that the number of refugees in Uganda from those two countries had also grown. These factors prompted it to pass the Control of Alien Refugees Ordinance in July 1960, which repealed the Control of Refugees from Sudan Ordinance. The reason for this, it is submitted, was to provide one legal regime to govern all the refugees in Uganda, without having to enact a law for each group of refugees from a different country. The Control of Alien Refugees Ordinance would become the Control of Alien Refugees Act when Uganda gained its independence from Britain in October 1962.

B. The Control of Alien Refugees Act, 1960

The Control of Alien Refugees Act¹⁵ came into force in July 1960, repealing the Control of Refugees from the Sudan Ordinance of 1955.¹⁶ At that time, Uganda was still incapable of becoming a party to any international treaty, because it was not yet an independent and sovereign state.¹⁷ This meant that it could not ratify the 1951

11. M.K. Malone, *The Rights of Newly Emerging Democratic States Prior to International Recognition and the Serbo-Croatian Conflict*, 6 TEMPLE INT'L & COMP. L. J. 84 (1992).

12. Kiapi, *supra* note 7, at 115.

13. I.C. JACKSON, *THE REFUGEE CONCEPT IN GROUP SITUATIONS* (1999).

14. Ordinance No. 35, 1955.

15. Cap 64, Laws of Uganda, 1964 (hereinafter CARA).

16. Section 26.

17. See, F.T. Chen, *The Meaning of "States" in the Membership Provisions of the United Nations Charter*, 12 INDIANA INT'L & COMP. L. REV. 28 (2001) (discussing the elements of statehood).

Convention Relating to the Status of Refugees. Uganda would accede to this Treaty on 27 September 1976.

CARA provided for some refugee rights, but it was not comprehensive enough to include what are now considered fundamental rights and freedoms. It did not make any mention of women's and children's refugee rights. This could be attributed to the fact that in the 1960s very few countries, if any, especially in Africa, took human rights seriously; hence this affected many laws and policies in such countries, Uganda not being an exception. However, CARA recognized some rights for refugees: the right to obtain permits to remain in Uganda;¹⁸ the right to compensation in cases where their animals were sold by the Minister;¹⁹ and the right to work, subject to among other conditions that such work was not dangerous to their life and health.²⁰ CARA also prohibited the return or deportation to his or her country of origin of a refugee who had committed an offence in Uganda or his/her country of origin if there was ground to believe or suspect that upon return that refugee may be persecuted.²¹ This was in a way a realization of the right of *non-refoulement*.

The CARA contained some provisions that violated refugees' rights. For example: their right to freedom of movement was circumscribed, as they were required to stay in settlements and could only move out after acquiring a movement permit from the relevant authorities;²² they could be detained without trial on suspicion that they had committed an offence;²³ the government had the power to use a refugee's vehicle without any form of payment;²⁴ and the settlement commandant had a right to arrest any refugee without a warrant provided he suspected that they had committed an offence.²⁵ Lomo rightly observed that CARA '...not only provid[ed] for the isolation of refugees but also deprive[d] them of their property without due compensation [and this was] in complete abrogation of the 1951 U.N. Refugee Convention and the rules of natural justice.'²⁶ This meant that there was a need to repeal CARA to comply with Uganda's international obligations.

18. *See*, § 6.

19. *Id.*, § 10.

20. *Id.*, § 15.

21. *Id.*, § 20.

22. *Id.*, §§ 5, 6, 8, 11, & 21.

23. *Id.*, §§ 9 & 19.

24. *Id.*, § 16.

25. *Id.*, § 22.

26. Z.A. Lomo, *The Struggle for Protection of the Rights of Refugees and IDPs in Africa: Making the Existing International Legal Regime Work*, 18 BERKELEY J. INT'L L. 275 (2000).

III. THE REFUGEES ACT, 2006

As earlier observed, CARA was outdated because it contained various provisions that violated refugees' rights protected both in regional and international instruments to which Uganda was a party. In 2003 the First Deputy Prime Minister and Minister of Disaster Preparedness and Refugees tabled the Refugees Bill in Parliament, and it was gazetted in the Uganda Gazette on 21 November 2003.²⁷ After consultations with the relevant stakeholders, the Refugees Bill was debated in Parliament and passed into an Act, and assented to by the President of Uganda on 24 May 2005. At the time of writing the Minister had not yet determined the date on which the Act should come into force.

A. Purpose of the Act

The Act seeks to make new provision for matters relating to refugees, in line with the 1951 Convention Relating to the Status of Refugees and other international obligations of Uganda relating to the status of refugees; to establish the Office of Refugees; to repeal CARA; and to provide for other related matters. The Refugees Bill however, had a more elaborate purpose than the final Act. According to the Refugees Bill, the purposes of the Act would be to:

... seek ... to repeal and replace the Current Control of Alien Refugees Act, Cap 62 (which is considered obsolete not only in its substantive provisions but also in its institutional and procedural provisions for the treatment of refugees) with a new legislation which among other things:

- a) Conform ... to the relevant provisions of the current Constitution, particularly regarding the protection and promotion of fundamental human and other rights, and respect for international law and treaty obligations;
- b) Give ... effect to the relevant international and regional conventions and instruments particularly the 1951 Geneva Convention relating to the Status of Refugees, including its protocol of 1967, and the 1969 OAU Convention Governing

27. Bills Supplement No. 8, Bill No. 20, Uganda Gazette Volume XCVI, No. 58.

the Specific Aspects of Refugee Problems in Africa and the East African Cooperation Agreement;

- c) Incorporate...Uganda's domestic policies, practices and procedures for refugee status determination and humanitarian assistance delivery guidelines; and
- d) Provide for other related matters.²⁸

Although the purpose of the Act, as stipulated in the Act itself, is not as elaborate as it was in the Bill, it is submitted that in effect its purpose is not only to repeal CARA, but also to overhaul all the refugee governing structures in Uganda that were created on the basis of CARA. The Act has injected new blood into the veins of the administration policies and procedures for refugees and which not only contains international law components but is also reflective of Uganda's determination to uphold the principles relating to human rights and freedoms in the Constitution, as well as in relevant international and regional human rights instruments. The Act makes it clear that the grant of refugee status to any person does not imply any judgement of, or may not be construed as an unfriendly act towards the country of origin of the person in question, but must be regarded as a peaceful and humanitarian act extended to that person as part of his or her human rights.²⁹

B. Who Qualifies to be Granted Refugee Status in Uganda?

Section 4 of the Act provides six categories, proof of one or more of which would entitle a person to be granted refugee status in Uganda. Five of the categories (as is the case with the refugee Acts of Tanzania,³⁰ Lesotho³¹ and South Africa³²) repeat verbatim the conditions under which a person qualifies for refugee status under the 1951 Refugee Convention, read together with the Protocol and the OAU Convention on Refugees. However, the section 4 of Act introduces one new ground upon which

28. Memorandum to the Refugees Bill.

29. Section 3(1).

30. Tanzanian Refugees Act 1998, section 4.

31. Lesotho Refugee Act 1983, section 3.

32. South African Refugee Act 1998, section 3.

a person qualifies to be granted refugee status in Uganda, which does not appear in the above mentioned international instruments and laws of other countries:

Owing to well-founded fear of persecution for failing to conform to gender discriminating practices, that person is compelled to leave his or her place of habitual residence in order to seek refuge in another place outside the country of origin or nationality.

This section is wide enough to include many people in 'the refugee bracket' in Uganda. It is a major departure from CARA, which contained a vague and unhelpful definition of refugee, thus:

... any person being one of a class of aliens declared by the Minister by statutory instruments to be refugees for the purpose of this Act but shall not include:

- a) any person ordinarily resident in Uganda;
- (a) any person with diplomatic immunity;
- c) any agent or employee of any Government who enters Uganda in the course of his duty; or
- d) any person or class of person declared by the Minister by statutory instrument not to be a refugee.³³

This definition gave the Minister wide discretion to determine who a refugee was by a Statutory Instrument. Thus, by Statutory Instrument 64-3 of 1964, the Minister declared the following persons as classes of refugees for purposes of CARA:

- a) any alien, being an African of Batutsi tribe ordinarily resident in Rwanda who entered Uganda between 1st November 1959 and 10th July 1960;
- b) any alien, except the aliens specified in the first schedule to this Act who enters or has entered Uganda from Rwanda, Burundi or other territories formerly comprising Belgian Congo on or after the 10th day of July 1960; and

33. Section 3(1).

- c) any alien, except aliens specified in the second schedule, who enters or has entered Uganda from the Republic of Sudan on or after the 20th of December 1960.³⁴

It is submitted that the additional refugee category provided by section 4 of the Act is a striking aspect thereof, and a new development in the area of refugee law, that reflects that the grounds upon which somebody could be granted refugee status are widening.³⁵ Unlike the other traditional grounds under the 1951 Convention and the Convention Governing Specific Aspects of Refugees in Africa, this new ground will be more beneficial to women than men, because in many countries, especially African countries, it is women who are more likely to be victims of gender discrimination practices. This conclusion can even be inferred from the definition of 'gender discrimination practices' in the Act, which include 'strict and forced adherence to a dress code, obligatory pre-arranged marriages, physical harmful facial or genital mutilation, rape, domestic violence and other gender related negative activities.'³⁶

One problem with this definition is that it may impose a heavy burden on the applicant to prove that what they are alleging can be categorized as a form of gender discrimination practice when the conduct in question falls to be determined as 'other gender related negative activities.' This is because it is likely that some officials in Uganda would have difficulty in establishing what amounts to 'other gender related negative activities,' and as a result, either genuine refugees will be turned away or some people who do not qualify to be granted refugee status will be granted refugee status, because of the vagueness of the ground.³⁷ Another likely challenge to this ground is that in many circumstances rape and domestic violence are committed by private individuals and not by states, and there are always laws in place under which perpetrators of those crimes can be prosecuted. The question that is likely to arise is: whether the relevant authorities in Uganda would require an applicant to prove that there are no remedies in their country to address that problem, and that therefore they qualify for refugee status. Another problem with this ground is that the authorities in Uganda will have to determine whether people in order to qualify to be granted

34. A. Kiapi, *The Legal Status of Refugees in Uganda*, 3 EAST AFR. J. PEACE HUM. RIGHTS 115 (1996).

35. REFUGEE PROTECTION IN INTERNATIONAL LAW: UNHCR'S GLOBAL CONSULTATIONS ON INTERNATIONAL PROTECTION (E. Feller, V. Türk & F. Nicholson eds., 2003).

36. Section 2.

37. Though under section 39 refugee status can be withdraw where it was granted to a person who did not qualify.

refugee status, would have to prove practices that amount to direct gender discrimination, like those enumerated in the Act with physical consequences, or whether indirect forms of gender discrimination practices will also be allowed. It is suggested that in answering these questions the authorities should always give the asylum seeker the benefit of the doubt, and that regard should be had to international human rights principles.

C. Who Does Not Qualify for Refugee Status in Uganda?

Even though the grounds for granting asylum seekers refugee status in Uganda may appear to be wide, and to include many people, some people, according to the Act, do not qualify for refugee status in Uganda. These people are stipulated under section 5 of the Act. Section 5 is a combination of Article 1F of the 1951 Geneva Convention relating to the Status of Refugees and Article 5 of the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa. It is submitted that this section shows the commitment that Uganda has to ensure that its refugee law is in line with its national, regional and international obligations. The refugee Acts of Lesotho,³⁸ South Africa³⁹ and Tanzania⁴⁰ also provide for the same grounds as the Ugandan Act, except that the South African Act is strengthened by the addition of the ground that 'no exercise of a human right recognized under international law may be regarded as being contrary to the objects and principles of the United Nations Organization or the Organization of the African Unity.'⁴¹ This means that the right to same sex marriage which is recognized under international law but may widely regarded as contrary to the principles of the OAU is protected under South African refugee law.

D. Ceasing to be a Refugee in Uganda

Section 6(1) of the Act stipulates the circumstances in which a person ceases to be a refugee in Uganda. As is the case with some other provisions of the Act, section 6(1) also incorporates the relevant Articles of the 1951 Geneva Convention relating to the Status of Refugees⁴² and the OAU Convention Governing the Specific Aspects

38. Section 3(2).

39. Section 4 (1).

40. Section 4(4).

41. Section 4(2).

42. Article 1C.

of Refugee Problems in Africa.⁴³ This, again, shows that Uganda is determined to make its refugee law reflect its regional and international obligations.

E. Administrative Aspects

Like any piece of legislation, the Act puts in place administrative structures for its proper implementation. The Office of the Refugees, which is a public office, is established. This Office is responsible for all administrative matters concerning refugees in Uganda, and is obliged to co-ordinate inter-ministerial and non-governmental activities and programmes related to refugees.⁴⁴ The Act also establishes the Commissioner for Refugees (whose office is also a public office) appointed by the President of Uganda in accordance with the advice of the Public Service Commission.⁴⁵ The Commissioner is the head of the Office of the Refugees and is responsible for its day-to-day operations and for the administration, control and organization of its staff.⁴⁶ Under section 10 of the Act, the Public Service Commission appoints other officers and employees for carrying out the provisions of the Act.

1. *The Refugees Eligibility Committee (REC).*—The Act establishes the REC with the following functions: (a) to consider and deal with the applications for refugee status; (b) where necessary, to review or revise cases previously dealt with it; (c) to advise the Minister responsible for refugees on matters relating to refugees; and (d) to recommend to the Minister for his or her action- (i) cases of expulsion or extradition, (ii) cases of cessation of refugee status; and (iii) cases where a person requires assistance to find an alternative country of asylum. The REC is required to “meet as often as necessary to discharge its functions but shall in any case meet at least once in every month.”⁴⁷ The REC is composed of various government officials from different ministries. The United Nations High Commissioner for Refugees (UNHCR) ‘may attend meetings’ of the REC in an advisory capacity. All applications for refugee status must be directed to the REC which is required to make its decision within 90 days, and then communicate it to the applicant within 14 days.

43. Article 4.

44. Sections 7 and 8.

45. Section 9.

46. Section 9(2).

47. Section 11.

The Commissioner, not the REC, has jurisdiction to deal with the applications of the most vulnerable refugees viz: '(a) persons with disabilities; (b) trauma victims, detained persons and victims of torture; (c) minors and vulnerable persons; and (d) other persons requiring urgent attention in accordance with special procedures by regulations under this Act.'⁴⁸ This is a positive development, because it recognizes the fact that, though all refugees should be treated as equals, there are those who have special needs. If they were to be treated like any other refugee with no special needs, they would never benefit from the system, as some would even fail to make use of the system. The problem with the REC proceedings is that, whereas under section 24(2) of the Act an applicant is entitled, during the consideration of his or her application, to a hearing and, where necessary, to obtain the services of an interpreter, this has to be at the applicant's cost. This is also the same under the Tanzanian Act where an asylum seeker appearing before the National Eligibility Committee '... may be permitted to bring along a competent interpreter where necessary.'⁴⁹ The Tanzanian Refugee Act does not expressly mention that the refugees should pay for his interpretation services. But when looked at closely, it implies that he has the option to bring the interpreter or not and if he brings that interpreter then he has to pay the costs.

It is understandable that it would be a mammoth task if the government were to provide interpreters for every applicant who does not understand English or Swahili (which are the official languages in Uganda), but it equally imposes a heavy burden on indigent applicants who may never be able to afford to hire interpreters. It is submitted, that the lack of an interpreter would have serious implications for an applicant, as they may never be able to put across their arguments, which might affect the outcome of the application to their disadvantage. Any person who is aggrieved by the decision of the REC may appeal to the Refugee Appeals Board within 30 days after receipt of the notice of that decision.⁵⁰

2. *The Refugee Appeals Board (RAB)*.—The Act establishes the RAB to receive and hear appeals from the decisions of the REC on questions of law and procedure.⁵¹ The RAB consists of five persons (including the chairperson) appointed by the Minister, and a member of the REC is prohibited from being a member of the

48. Section 22 (2).

49. Section 9(h).

50. Section 21 (1).

51. Section 16.

RAB.⁵² The likely reason for this is to ensure that an appeal is not heard by the same people from whose decision it arose. This ensures that appellants are confident that the appeal process is fair. Unlike the proceedings of the REC, where the UNHCR is only entitled to play an advisory role, at the RAC proceedings the UNHCR may make oral or written representations on behalf of the person whose appeal is being considered.⁵³

The RAB has the following powers: (a) to confirm the decisions of the REC; (b) to set aside the decisions of it and refer the matter back to REC for further consideration and decision; (c) to order a rehearing of the application; or (d) to dismiss the appeal.⁵⁴ The RAB is required to hear and decide the matter expeditiously, and, in any case, within 60 days.⁵⁵ The major weakness of the RAB is that it cannot make a decision granting the status of refugee to an applicant. This is unfortunate, because it would be expected that in most cases asylum seekers appeal against the decisions of the REC because they have been denied refugee status. When the RAB refers the matter back to the REC, the same people who denied the applicant refugee status are likely to come to the same conclusion as in the first case.

At the hearing of an appeal, the appellant is entitled to appear either in person or may be represented by an advocate at his or her expense.⁵⁶ This is the same with the proceedings of the South African Refugee Appeal Board, where it is provided under Rule 9 of the Refugee Appeal Board Rules of 2003 that:

- (a) The appellant is entitled to representation at no expense to the Appeal Board.
- (b) An advocate, a practicing attorney, or a candidate attorney with a right of appearance, may provide such representation;
- (c) Any other person who is duly authorised by the appellant, may represent the appellant after having first obtained leave from the Appeal Board.
- (d) Representation referred to in Rule 9 (2) and (3) must be duly authorised by the appellant by way of a Power of Attorney...

It is submitted that, unless appellants are wealthy, which is not the case for most asylum seekers in Uganda, many risk not being represented by advocates because of the high fees charged by them in Uganda. Maybe appellants would be

52. *Id.*

53. Section 18.

54. Section 17 (2).

55. Section 17 (4).

56. Section 21(3).

obliged to contact legal aid non-government organizations, like the Refugee Law Project, to obtain the services of advocates to represent them at such hearings. The decision of the RAB shall be final.⁵⁷

F. Expulsion, Deportation, Prosecution and Extradition of Refugees

A person who has exhausted the right of appeal in relation to an application, and the refugee status has not been granted, is allowed, under section 23, to stay in Uganda for a period not exceeding 90 days to enable him or her to seek asylum or admission into a country of his or her choice. At the expiry of these 90 days, the person whose application has been rejected shall be subject to expulsion or deportation from Uganda, or other appropriate action under the applicable law. However, the Minister may, on application by the person concerned, extend the period of 90 days if he/she has reasonable ground to believe that that person is likely to be given asylum in, or to be admitted to, the country of his or her choice within the extended period.

1. Expulsion and Deportation.—The Minister may, after consultation with the Minister responsible for internal affairs, order the expulsion of any refugee from Uganda, if the Minister considers the expulsion to be necessary or desirable in the interest of national security or public order.⁵⁸ It is vital to note that before ordering the expulsion of a recognized refugee, the Minister is required to give due consideration to any representation made by the refugee concerned, or his or her representative, or the representative of the UNHCR.⁵⁹ It is submitted that the strongest argument that a refugee can put so as to avoid expulsion is that he or she does not have any other country to go to, apart from their country of nationality or habitual residence, in which country they would still face persecution, if they were to go back. This argument would put Uganda in a very difficult position, because the international law principle of *non-refoulement* obliges it not to expel or return a refugee to the frontiers of a territory where his or her life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion. It is proposed that if Uganda were to find itself in such a dilemma, one of the most viable option would be to arrest such a refugee and charge them with the relevant offence or offences according to the applicable laws in Uganda, because under section 35 of the Act a recognized refugee is bound by, and

57. Section 21(4).

58. Section 40(1).

59. Section 40(2).

required to conform to, all laws and regulations currently in force in Uganda, and not engage in activities which may endanger state security, harm public interest or disrupt public order. The second viable option would be for Uganda to arrange and have that refugee resettled in a third country.

2. *Extradition and Prosecution.*—Where a country, with which Uganda has extradition arrangements or a treaty, or an international tribunal, makes a request to Uganda for the extradition of a recognized refugee on the ground that such a refugee— (a) is required to answer criminal charges; or (b) has been convicted by a court of competent jurisdiction of a serious criminal offence which is non-political in nature, the Minister may, after consultation with the Minister responsible for internal affairs and the Attorney-General, order the extradition of such refugee in accordance with the provisions of the applicable extradition law.⁶⁰ A request for an extradition may be granted only if the offence that gave rise to the extradition request was committed in the territory of the requesting country.⁶¹ It is submitted that in cases where a person sought to be extradited committed international crimes (such as torture, crimes against humanity, war crimes, and piracy) even if they were not committed in the territory of the country seeking extradition, and Uganda is unwilling or unable to bring such people to justice, it has an obligation under international law to extradite them to countries willing and able to prosecute them.

However, the Minister may deny a request for extradition if the offence for which extradition has been sought can be tried under the laws of Uganda, or if the Minister is of the opinion that it will not be in the public interest to grant the request.⁶² The phrase ‘public interest’ is not defined in the Act, nor is its definition in the Constitution helpful here.⁶³ The Act also does not expressly give the Minister the authority to clarify what amounts to ‘public interest.’⁶⁴ This means that the Minister is not required to define what amounts to ‘public interest’ but will have to decide what amounts to ‘public interest’ for purposes of extradition on a case by case basis. But it is appropriate to speculate, that in cases where such extradition would lead to Uganda’s violation of its international obligations under the human rights instruments to which it is a party, it would be against the ‘public interest’ to extradite such persons. For instance, Uganda is a State Party to the Convention against

60. Section 41 (1).

61. Section 41 (2).

62. Section 41 (3).

63. Article 43.

64. Section 48.

Torture and, if there are reasonable grounds to suspect that a person, if extradited, would be subject to torture, then it would be in the 'public interest' not to extradite such person. It would also be against the public interest if a person were deported to a country where they would be persecuted. This would violate the right to *non-refoulement* which is protected under international refugee law and section 42 of the Act.

G. Family of a Recognized Refugee

Under section 26 of the Act, every member of the family of a recognized refugee who enters Uganda shall enjoy the same protection as that of the recognized refugee. The Act in section 2, strictly defines 'member of family of a refugee' to mean: '(a) a spouse or spouses of the refugee; (b) a child of the refugee; and (c) any person who is dependant on the refugee.' This definition should be contrasted with the definition of a member of the family of a refugee by section 2 of the Refugee Act of Liberia, 1993 which provides that:

"Member of his family" in relation to a refugee, means: (a) any spouse of a refugee; or (b) any unmarried child of the refugee under the age of eighteen years; or any person who is related to the refugee by blood or marriage and who is dependant on the refugee.

Both the Ugandan and Liberian definitions should be contrasted with that under the Refugees Act of Lesotho, which is to the effect that "member of family" in relation to a refugee means a spouse or spouses of the refugee, unmarried child under the age of twenty-one years or any other relative who is dependent on the refugee.⁶⁵ The definition under the Tanzanian Act is also worth noting, as "family" includes husband or wife or a lawfully recognized spouse, children below 18 years and any person living with the asylum seeker or refugee as a dependant.⁶⁶

It is submitted that the rationale behind limiting the number of family members of the refugee is probably to avoid the likely big families that are associated with extended families, which are a characteristic of many African societies. If many African refugees were allowed to come along with all their "family members," this would mean their sisters, brothers, cousins, in laws, parents, grandparents, aunties, uncles, and so on. The government had to limit the ambit.

65. Section 2.

66. Section 3.

However, when the Ugandan Act says that ‘any person who is dependant on the refugee’ is considered to be a family member of the refugee, this again leaves a wide discretion for the refugee to bring into Uganda as many people as he or she wishes, because many people may be depending on him for various needs. It is the same with the Liberian Act, and probably even more so with the Lesotho Act, but not with the Tanzanian Act which defines dependent with reference to the Immigration Act, 1995 which defines a ‘dependant’ in section 3 to mean ‘a person who is materially dependant upon the earnings of another.’ The appropriate authorities in Uganda may need to define what amounts to ‘depending on a refugee’, because the Act is silent on this issue.

Another important aspect relates to the issue of a ‘spouse’ of the refugee. Some refugees may be in same sex relationships which, unlike in South Africa,⁶⁷ are prohibited in Uganda.⁶⁸ The Act does not define who a spouse is. It is submitted, that the Act assumes a spouse to be one in a heterosexual relationship, and for as long as same sex relationships are still prohibited in Uganda, spouses in such relationships who decide to seek refuge in Uganda would either pretend to be relatives, or take a difficult decision to go public about their relationship. The likely effect, in the latter event, is that they will not be recognized as spouses under Ugandan law, and one, or both of them, may even be denied refugee status. It should also be noted, that, unlike the Liberian Act, the Ugandan and Lesotho Acts use the term ‘spouses.’ This is an indication that they recognize polygamous marriages which are common in many African countries.

IV. RIGHTS OF REFUGEES IN UGANDA

Under section 28 of the Act, every refugee is entitled to the rights and shall be subjected to the obligations provided for or specified in the Geneva Convention, the OAU Convention, and any other convention or instrument relating to the rights and obligations of refugees, to which Uganda is a party. However, under the same section, these rights and obligations are subject to any reservations entered by Uganda to any international or regional convention or instrument. It should be recalled that Uganda entered a number of reservations and interpretative declarations to the 1951 Geneva Convention Relating to the Status of Refugees. It is important that we just outline them here.

67. Civil Union Act, 2006.

68. Article 31 of the Constitution and sections 140, 141 and 143 of the Penal Code.

A. *Reservations by Uganda to the 1951 Geneva Convention*

1. *In respect of article 7.*—The Government of the Republic of Uganda understands this provision as not conferring any legal, political or other enforceable right upon refugees who, at any given time, may be in Uganda. On the basis of this understanding the Government of the Republic of Uganda shall accord refugees such facilities and treatment as the Government of the Republic of Uganda shall in her absolute discretion, deem fit having regard to her own security, economic and social needs.

2. *In respect of articles 8 and 9.*—The Government of the Republic of Uganda declares that the provisions of articles 8 and 9 are recognized by it as recommendations only.

3. *In respect of article 13.*—The Government of the Republic of Uganda reserves to itself the right to abridge this provision without recourse to courts of law or arbitral tribunals, national or international, if the Government of the Republic of Uganda deems such abridgement to be in the public interest.

4. *In respect of article 15.*—The Government of the Republic of Uganda shall in the public interest have the full freedom to withhold any or all rights conferred by this article from any refugees as a class of residents within her territory.

5. *In respect of article 16.*—The Government of the Republic of Uganda understands article 16 paragraphs 2 and 3 thereof as not requiring the Government of the Republic of Uganda to accord to a refugee in need of legal assistance, treatment more favourable than that extended to aliens generally in similar circumstances.

6. *In respect of article 17.*—The obligation specified in article 17 to accord to refugees lawfully staying in the country in the same circumstances shall not be construed as extending to refugees the benefit of preferential treatment granted to nationals of the states who enjoy special privileges on account of existing or future treaties between Uganda and those countries, particularly states of the East African Community and the Organization of African Unity, in accordance with the provisions which govern such charters in this respect.

7. *In respect of article 25.*—The Government of the Republic of Uganda understands that this article shall not require the Government of the Republic of

Uganda to incur expenses on behalf of the refugees in connection with the granting of such assistance except in so far as such assistance is requested by and the resulting expense is reimbursed to the Government of the Republic of Uganda by the United Nations High Commissioner for Refugees or any other agency of the United Nations which may succeed it.

8. *In respect of article.*—Without recourse to legal process the Government of the Republic of Uganda shall, in the public interest, have the unfettered right to expel any refugee in her territory and may at any time apply such internal measures as the Government may deem necessary in the circumstances; so however that, any action taken by the Government of the Republic of Uganda in this regard shall not operate to the prejudice of the provisions of article 33 of this Convention.⁶⁹

The above reservations are clear and need no further explanation. Uganda did not enter reservations or any interpretative declaration, to the OAU Convention on Refugees. This means that refugees in Uganda enjoy all the rights granted under the OAU Convention on Refugees.

B. Rights of Refugees under the Act

Under section 29(1) of the Act, a recognized refugee shall, subject to the OAU Convention and the Geneva Convention, enjoy the following rights while in Uganda:

- (a) be issued with an identity card in a prescribed form stating the refugee status of the holder for purposes of identification and protection;
- (b) be permitted to remain in Uganda;
- (c) be entitled to fair and just treatment without discrimination on grounds of race, religion, sex, nationality, ethnic identity, membership of a particular social group or political opinion;
- (d) receive at least the same treatment as is generally accorded to aliens under the Constitution and any other law in force in Uganda; and be entitled to privileges that may be granted under the laws of Uganda by any administrative agency or organ of the Government;

69. <<http://www.unhchr.ch/html/menu3/b/treaty/2ref.htm>> accessed on 12 July 2006.

- (e) receive at least the same treatment accorded to aliens generally in similar circumstances relating to:
 - i) movable and immovable property and other rights pertaining to property and to leases and other contracts relating to movable and immovable property;
 - ii) the right to transfer assets held and declared by a refugee at the time of entry into Uganda , including those lawfully acquired into Uganda;
 - iii) education, other than elementary⁷⁰ for which refugees must receive the same treatment as nationals, and in particular, regarding access to particular studies, the recognition of foreign certificates, diplomas and degrees and the remission of fees and services;
 - iv) the right to engage in agriculture, industry, handicrafts, and commerce, and establish commercial and industrial companies in accordance with the applicable laws and regulations in force in Uganda;
 - v) the right to practice the profession of the refugee who holds qualifications recognized by the competent authorities in Uganda and who wishes to practice that profession;
 - vi) the right to have access to employment opportunities and engage in gainful employment; and
 - vii) any other right that may legally be accorded to a refugee.
- (f) have the same rights as nationals of Uganda with respect to practicing their religion⁷¹ and the religious education of their children;
- (g) have a right of association as regards non-political and non-profit making associations and trade unions; and
- (h) have free access to courts of law including legal assistance under applicable laws of Uganda.

70. Under section 2 of the Act 'elementary education' means basic primary education.

71. Article 29(1)(c) of the Constitution: 'Every person shall have the right to freedom to practise any religion and manifest such practice which shall include the right to belong to and participate in the practices of any religious body or organisation in a manner consistent with the Constitution.'

Under section 29(2) of the Act, a refugee shall be accorded the same protection as is accorded to the nationals of Uganda in respect of the protection of intellectual property rights, including patents, designs, trade names, and copyrights. The refugees' right to privacy of person, home, correspondence, communication and other property is also recognized under the Act.⁷² The personal status of a recognized refugee shall be governed by the law of the country of his or her domicile or, if he or she has no domicile, by the law currently in force in Uganda.⁷³ The Act also provides that all rights acquired by a refugee and their dependants on personal status, particularly rights attaching to marriage, shall be respected, subject to the laws of Uganda.⁷⁴ As mentioned earlier, the laws of Uganda prohibit same sex marriages, and, therefore, refugees who are in same sex relationships will not have their marriages recognized in Uganda, irrespective of the fact that such marriages may be legal and valid in the concerned refugees' countries of domicile.

Another important issue to note about marriages is that as mentioned earlier, under the Constitution of Uganda⁷⁵ it is men and women of 18 years and above who can enter into a valid marriage relationship. The question that would arise is: if a refugee should come into Uganda with a spouse (man or woman) who is below the age of 18 years but whom they validly married in their country of domicile, would that marriage still be recognized as valid under the Ugandan laws? In practice such marriages would still subsist, because very few, if any, of Uganda's law enforcement officers would 'sniff' into refugees' private affairs, unless it is abundantly clear that the 'spouse' is under age. Another alternative is that should asylum seekers get to know that marriages of persons below the age of 18 are not valid in Uganda, they would 'inflate' their spouse's age to fit the legal requirements in Uganda. This is easy, because they can always claim that they left their relevant documents, like birth certificates and identity documents, in their home countries while fleeing for their lives.

It has to be realized that under the Act, though a recognized refugee is entitled to free movement in Uganda,⁷⁶ this right, like many other rights, is not absolute. The Act provides that the free movement of a recognized refugee in Uganda is subject to reasonable restrictions specified in the laws of Uganda, or directions issued by the Commissioner, which apply to aliens generally in the same

72. Section 43.

73. Section 34.

74. Section 34(2).

75. Article 31(1).

76. Section 30(1).

circumstances, especially on grounds of national security, public order, public health, public morals, or the protection of rights and freedoms of others.⁷⁷ It is argued, that the reason why the right to freedom of movement of refugees is subjected to the same limitations as other aliens, is, that unlike Rwanda, Uganda did not enter reservations to Article 26 of the 1951 Convention on Refugees, and, therefore, cannot establish a regime to govern the movement of refugees to which other aliens are not subjected.

The above discussion shows how Uganda has substantially transformed its refugee law and put in place a law that not only protects and promotes the rights of refugees, but also goes a step further to impose obligation on the state to fulfil some refugee rights. The government realized that some groups of refugees, like children and women, need special protection. It had to ensure that this special protection is provided for those groups; hence the inclusion in the Act of specific provisions to deal with the rights of those two groups.

C. Rights of Refugee Children

The Ugandan Refugees Act, unlike the South African, Tanzanian, Zimbabwean,⁷⁸ Lesotho, Liberian, and many other refugees Acts, not only in Africa but in the world, has more detailed, friendly and specific provisions that relate to the rights of refugee children. Under the Act, refugee children are entitled to the same treatment as nationals with respect to elementary education.⁷⁹ The Act provides that every refugee child is entitled to the enjoyment of the rights and freedoms contained in the Children Act;⁸⁰ the African Charter on the Rights and Welfare of the Child, 1981;⁸¹ the Convention on the Rights of a Child, 1989;⁸² and the Geneva Convention, irrespective of the child's parents' or legal guardian's race, ethnic group, colour, sex, language, relation, political and other opinion, national and social origin, fortune, birth or other status. Identification documents for children and unaccompanied minors shall be issued in accordance with the principles applicable to a recognized refugee.

77. Section 32(1).

78. Zimbabwean Refugee Act, 2001.

79. Section 32(1).

80. Cap 59.

81. Section 32(2).

82. *Id.*

What is not clear under the Act is whether refugee children are entitled to same rights as nationals under the Constitution.⁸³ However, in view of the fact that they are entitled to the same rights under the Children Act (which operationalizes the constitutional provisions relating to children), the Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child (Uganda never entered any reservation to any of the two treaties), it can safely be concluded that refugee children are also entitled to those rights under the Constitution. Refugee children are vulnerable and Uganda has a constitutional obligation to accord them special attention. It is submitted, that whereas the Act is progressive towards refugee rights, it is in a class of its own when it comes to the rights of refugee children. In effect, the only difference between Ugandan children and refugee children when it comes to rights, is the identification document that refugee children carry about. Otherwise they are treated equally in all respects.

The question that may arise is whether the Ugandan government will have the resources (both financial and human) to cater for that apparent generosity that it grants to refugee children. Another problem that may arise to test the practicability of the equality between refugee children and Ugandan children is if refugee children were to compete equally with the nationals for scarce resources, like medicine, would the government have to give Ugandan children priority or not? And if the government were to give refugee children priority, what would be the reaction of Ugandans whose children would have been deprived of those resources for the benefit of the *empuuzi* or *abagwira*.⁸⁴ This remains a hypothetical scenario as the assumption is that both refugee and Ugandan children are equal in almost all aspects; but if it arose, it would be interesting to see how the government would resolve it.

D. Rights of Women Refugees

As is the case with refugee children, in contrast to the refugees Acts in various African countries, the Ugandan Refugees Act has friendly, detailed and specific provisions on the rights of refugee women. Under the Act, a woman refugee shall have equal opportunities and access to procedures relating to refugee status, and affirmative action shall be taken to protect women refugees from gender

83. Article 34.

84. Ugandans use these terms interchangeably to refer to refugees or non nationals. *Empuuzi* is the Luganda (the widely spoken language in Uganda) term for refugees, and *abagwira* is the Luganda term for aliens or non-nationals.

discriminating practices.⁸⁵ Under section 33(2), a woman refugee is entitled to equal enjoyment and protection of all human rights and fundamental freedoms in the economic, social, cultural, civil, or any other field, as provided for in the Constitution⁸⁶ and other relevant laws in force in Uganda, as well as international and regional instruments to which Uganda is a party, and in particular the following: the Convention on the Elimination of All Forms of Discrimination Against Women, 1979; and the African Charter on Human and Peoples' Rights, 1981.

It has to be recalled that Uganda did not make any reservation to the Convention on the Elimination of All Forms of Discrimination against Women, and, therefore, refugee women have a right to enjoy all the rights and freedoms provided by that treaty. Under the Act, the Authorised Officer,⁸⁷ while respecting the individual's right to privacy, may search any refugee for purposes of preventing, investigating and detecting of, among other things, any contravention of the Act.⁸⁸ However, where a woman is to be searched, the search shall only be done by an authorised woman officer and shall be conducted with strict regard for decency. Where there is no authorised woman officer available, the search shall be done by a woman specially named for the purpose by an Authorised Officer. Under section 48 (2)(j) of the Act, the Minister may by statutory instrument make regulations prescribing the procedure for affirmative action in the integration of refugee women.

E. Duties and Obligations of Refugees in Uganda

Under section 35 of the Act, a recognized refugee has the following duties and obligations: (a) is bound by, and must conform to, all laws and regulations currently in force in Uganda; (b) shall conform to measures taken for the maintenance of public order; (c) shall not engage in activities which may endanger state security, harm public interests or disrupt public order; (d) shall not engage in any activity contrary to the principles of the Charter of the United Nations and the Statute of the African Union, and in particular, shall not engage in any political activities within Uganda against any country, including his or her country of origin; and (e) if engaged in gainful employment, or fully integrated and has a source of income, shall pay taxes in accordance with the applicable tax laws of Uganda.

85. Section 33(1).

86. Article 33 of the Constitution.

87. Section 43 (1).

88. Section 43(4) & (5).

A member of the family of a recognized refugee is entitled to the same rights, and is subject to the same obligations, as the recognized refugee.⁸⁹ It is important to note that all the refugees' rights and obligations under the Act are more or less the same as those under the 1951 Geneva Convention Relating to the Status of Refugees and the OAU Convention Governing the Specific Aspects of Refugees. Refugees' rights are also protected by the Bill of Rights in the Constitution of Uganda. This means that Uganda made every endeavour to ensure that its Refugees Act complies with its national, regional and international human rights obligations.

V. CONCLUSION

As the discussion above has illustrated, Uganda has hosted refugees for a long period of time, stretching from the moment it was still under colonialism to date. Though hostilities in some countries, like Rwanda and Sudan (Southern Sudan), that led to an influx of refugees have ceased to exist, some of these refugees have not been repatriated. Some countries, like the Democratic Republic of Congo and Somalia, still face political instability in some areas, and this means that more refugees may still come to Uganda. The enactment of the Refugees' Act is an achievement on the part of the government of Uganda, because it has transformed its legal regime relating refugees to reflect its national, regional and international obligations. However, there are some unclear issues, as the discussion above has illustrated, that need to be clarified. These include issues like the definition of 'spouse' and what amounts to 'public interest.' We only hope that some of the likely challenges that have been pointed out above never arise; if they should we remain optimistic that the government of Uganda will take every precaution to ensure that refugees' rights are not violated. The author recommends, that the government ensure that measures are put in place for refugees who do not have advocates to be referred to legal aid non-governmental organizations to help them with their applications to the RAB. It is also recommended, that measures be put in place so that those refugees who genuinely cannot get interpreters are helped by the government to get them. This may arise in cases where a refugee comes from a country that has a small number of refugees in Uganda, or no other refugees at all in Uganda.

89. Section 36.