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REPORT ON CITIZENSHIP LAW: UGANDA

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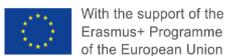
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Report on Citizenship Law

Uganda

Tigranna Zakaryan

1. Introduction

Contemporary international laws often use the terms of nationality and citizenship interchangeably to define the legal relationship between a State and an individual. As defined by the International Court of Justice, and as cited in the African Commission on Human and Peoples' Rights (ACHPR) report on the *Right to Nationality in Africa*, nationality is defined as the 'legal bond based on a social fact of attachment, a genuine connection of existence, interests and feeling, together with mutual rights and duties' and as 'the juridical expression of the fact that the individual upon whom it is conferred, either directly by the law or as the result of an act of the authorities, is, in fact, more closely connected with the population of the State conferring nationality than with that of any other State'.¹ Such a definition is further reflected in the Universal Declaration of Human Rights, which acknowledges the entitlement to citizenship as a fundamental human right for all people (Article 15).

In Uganda, nationality laws mirror the influence of British common law, which continue to impact the institutional and legal frameworks governing the country's citizenship laws following its independence in 1962. British colonialism implemented the common law principles in the African territories under its control, which in Uganda has played a key role in influencing citizenship legislation. Under the common law framework, those born in British colonial territories were considered as 'British protected persons', which by definition granted them some rights but were still marginal in relation to those of 'British subjects' born in the British Isles. The distinction between the two categories define a 'British protected person' as one who is governed by customary laws that are generally unwritten but utilized in the literal sense by colonial courts to pass judgements on indigeneity.² A 'British subject' on the other hand, is considered a citizen of the United Kingdom and its colonies on the basis of the 1948 reform of England's nationality laws—and by virtue of this definition, have the same civil and political rights as British citizens.³

Following the independence era, former British territories in the East African Community including Kenya, Uganda, and Tanganyika shared similar legal frameworks determining access to nationality, which were further negotiated into the independence

¹ *The Right to Nationality in Africa*, African Commission on Human and People's Rights, May 2014, see further:

² Manby, Bronwen. *Struggles For Citizenship in Africa*. London: Zed, 2009.

³ Ibid.

constitutions agreed upon with Britain.⁴ In Uganda, the introduction of the 1962 Uganda Citizenship Act⁵ provided the legal merits by which one would become a Ugandan citizen either through automatic acquisition on the basis of being born in the country prior to independence and for those who were considered either citizens of the United Kingdom or its colonies, or ‘protected persons’⁶ as discussed above, in addition to laws governing access to citizenship through registration and naturalisation. This report sets out the evolution of the relevant laws on the acquisition and loss of citizenship in Uganda as a former British Protectorate, as well as in its post-independence era as the Republic of Uganda, initially, under the 1962 Uganda Citizenship Act and, currently, as defined by the 1995 Uganda Constitution⁷ and the 1999 Uganda Citizenship and Immigration Control Act (UCICA)⁸, as amended in 2005 and 2009.

As the report will demonstrate, nation-building within postcolonial Africa has witnessed the struggle of inclusively defining national identity or a sense of belonging within state governments and institutions.⁹ In the case of Uganda, there are significant challenges with regard to fully enjoying citizenship rights based on the doctrines defining indigeneity and belonging in the Ugandan state. The report will also explore the rights of ethnic minorities and refugees, who are of particular relevance when assessing Uganda’s post-independence political history and citizenship laws and practices. Prior to discussing the current citizenship regime and current challenges, the report discusses the historical context of citizenship law in Uganda.

2. Historical Context

2.1. Pre-independence legislation

The evolution of Uganda’s nationality laws should be examined through the Commonwealth model and more particularly through the colonial legacy of the British Empire, which established Uganda as a part of the British Protectorate in 1894. The Imperial British East African Company, which was the administrative entity of the British Empire, deemed Ugandans as natives of the Protectorate but did not regard them as British citizens in accordance with the British Protected Persons Order 1934.¹⁰ This act was later replaced by the British Nationality Act of 1948, which provided the statutory framework acknowledging Ugandans as ‘protected persons’ of Britain, given their relationship to the British

⁴ Bronwen Manby, *Statelessness and Citizenship in the East African Community*. United Nations High Commission for Refugees, 2018. <https://data2.unhcr.org/en/documents/download/66807> (accessed 18 December 2018).

⁵ “Uganda Citizenship Act 1962.” Uganda Legal Information Institute. Accessed 12 December 2018. <https://ulii.org/ug/legislation/consolidated-act/65>

⁶ Bronwen Manby, *Statelessness and Citizenship in the East African Community*. United Nations High Commission for Refugees, 2018. <https://data2.unhcr.org/en/documents/download/66807> (accessed 18 December 2018).

⁷ “Constitution of the Republic of Uganda.” Uganda Legal Information Institute. Accessed 12 December 2018. <https://ulii.org/ug/legislation/consolidated-act/0>

⁸ “Uganda Citizenship and Immigration Control Act.” Uganda Legal Information Institute. Accessed 12 December 2018. <https://ulii.org/ug/legislation/consolidated-act/66>

⁹ Hovil, Lucy. *Refugees, Conflict, and the Search for Belonging*. Springer International Publishing, 2016.

¹⁰ “British Protected Persons Order 1934.” Government of United Kingdom. Accessed 02 January 2019. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/633482/pandp_states.pdf

Protectorate.¹¹ There was no provision within this Act that defined the nationality of British protected persons, as Ugandans were not made citizens of the British Commonwealth. Hence the nationality of Ugandan citizens remained undefined.¹² The ambiguity of Ugandan nationality remained in place until 1962, when Uganda gained independence upon the enactment of the Uganda Independence Act.

2.2. Post-independence era

The 1962 Uganda Independence Act defined Ugandans' citizenship and nationality through Section (2) which states, "any person who immediately before the appointed day is a citizen of the UK and colonies shall on the day cease to be a such a citizens if (a) under the law of Uganda he becomes on that day a citizen of Uganda; and (b) he, his father or his father's father was born in Uganda."¹³

The 1962 Constitution of Uganda subsequently defined Ugandan citizenship either by descent, otherwise referred to as 'jus sanguinis', or by acquisition through the process of registration, naturalisation, or by marriage. According to this provision, citizenship by descent reflected that of the Independence Act, basing citizenship on whether the individual's "...father or father's father was born in Uganda" (Article 2(2)).¹⁴ This provision, however, posed a challenge to the maternal transmission of citizenship, adding a discriminatory gender element given that only men were able to pass down citizenship. Further, citizenship by registration was only provided to women who were married to Ugandan citizens after the 8th of October 1962 (Article 11). Citizenship through naturalisation, on the other hand, was left to the powers of the Parliament in the case individuals were not able to acquire citizenship based on the criteria highlighted in the Constitution (Article 15(1)), and in the same manner, the Parliament had the authority to make provisions depriving one of Ugandan citizenship (Article 15(2)). The Constitution required anyone who attained Uganda citizenship and happened to have the citizenship of another county, to renounce the citizenship of the other country or lose the Ugandan citizenship (Article 12). These legislative frameworks which defined Ugandan citizenship immediately following its post-independence era where subsequently succeeded by the Uganda Citizenship Act, also of 1962,¹⁵ which became the overarching framework defining citizenship acquisition and loss.

During its immediate post-independence era, Uganda experienced tumultuous transitions in political leadership and legislative practices. In 1962, Milton Obote became the first Prime Minister of Uganda. After four years, Obote struggled to consolidate power among the various localised power dynamics that existed throughout Uganda's vast ethnic and cultural communities. Obote responded by suspending the country's Constitution in 1966.

¹¹ "British Nationality Act 1948." Government of United Kingdom. Accessed 02 January 2019. http://www.legislation.gov.uk/ukpga/1948/56/pdfs/ukpga_19480056_en.pdf

¹² Marshall Godfrey Alenyo, *International Refugee Law and the Right to Nationality: Legal Responses to the Rwandan Refugee Crisis in Uganda*. Accessed 14 January 2019. http://citizenshiprightsafrika.org/wp-content/uploads/2016/08/Alenyo-Refugee-Law-and-Right-to-Nationality-Rwandan-Refugees-in-Uganda_LLM2014.pdf (pg.43).

¹³ Ibid.

¹⁴ "Constitution of Uganda 1962" Chapter Two, Section 10 reference: <http://citizenshiprightsafrika.org/wp-content/uploads/2016/08/Uganda-Constitution-1962-Citizenship.pdf>; also reflected in the Uganda Independence Act, Section 2(2), reference: <https://ulii.org/ug/legislation/consolidated-act/162>

¹⁵ "Uganda Citizenship Act 1962." Uganda Legal Information Institute. (Accessed 12 December 2018) <https://ulii.org/ug/legislation/consolidated-act/65>

Thereafter, an Interim Constitution was passed in 1966 with no debate among members of parliament, and a year later in 1967, a new Constitution was adopted.

The 1967 Constitution maintained the core elements of the citizenship provisions of the 1962 Constitution and Independence Act. It provided citizenship based on descent and recognized the citizenship of those who acquired it prior to the passing of the 1962 Constitution. It also maintained that women who were married to Ugandan men were eligible to gain citizenship through registration. While the majority of provisions resembled those of the former Constitution, the 1967 Constitution did eliminate gender discrimination. It stated that every person born in Uganda “after the commencement of this Constitution one of whose parents or grandparents is or was a citizen of Uganda” was considered a citizen (Chapter II, Article 4(1b)). This overturned the former provision, which deemed that citizenship was only to be passed down by one’s father. This development was indeed a positive step in eradicating discrimination against women within the early stages of Uganda’s citizenship structures, in addition to upholding its support for international frameworks spearheading gender equality. An example of such a framework is the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which Uganda signed on 30 July 1980 and ratified in 1985.¹⁶

2.3. The Amin regime and mass expulsions

Following Uganda’s independence, several ethnic communities faced discrimination and challenges in accessing citizenship. One of the most notable episodes in Uganda’s post-independence era with regard to citizenship deprivation was the mass expulsion of Ugandan Asians, the majority of whom were Indians and Pakistanis, in 1972, under president Idi Amin Dada who seized power of Uganda in 1971. At the time, Uganda’s Asian population was estimated to be just under 60 thousand, of which approximately one third possessed Ugandan nationality and did not have any other citizenship.¹⁷ The expulsion of this community has been commonly analysed by scholars as a consequence of the visible wealth and class mobility of South Asians who played a key role in the socioeconomic evolution of Uganda throughout the 1950s until the 1970s.¹⁸ It has been argued that to a large extent, this is a direct result of the administrative repression the Ugandan colonial state inflicted toward African traders while encouraging Indian traders.¹⁹ Hence, the status of Uganda’s Indian community, and the state-driven discrimination they were subjected to following independence, was not as much a radical or ethnic issue, as it was socio-economic. Nevertheless, scholars have argued that Uganda was able to utilize the shortcomings of its own citizenship laws to find legal loopholes upholding the citizenship rights of its Asian

¹⁶ The CEDAW was adopted in 1979 by the UN General Assembly; it is an international bill advocating for the rights of women and defines discrimination against women as “...any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field”, available at: UN Women, Overview of the Convention, <http://www.un.org/womenwatch/daw/cedaw/> (accessed 03 February 2019).

¹⁷ Bronwen Manby, *Statelessness and Citizenship in the East African Community*. United Nations High Commission for Refugees, 2018. <https://data2.unhcr.org/en/documents/download/66807> (accessed 18 December 2018).

¹⁸ Hundle, Anneeth Kaur. "1970s Uganda: Past, Present, Future." *Journal of Asian and African Studies*, Vol. 53, no. 3 (2018): 455-75.

¹⁹ Ibid.

minority. It is estimated that approximately twelve thousand to fifteen thousand Asians believe they acquired Ugandan citizenship based on Article 7(1) of the 1962 Ugandan constitution which states that every person born or a resident of Uganda on the day of independence, was considered a Ugandan citizen given one of their parents was born in Uganda.²⁰ Due to international pressure, President Amin qualified his expulsion policy by suggesting that he did not intend on expelling Asians who were Ugandan citizens should they present documents verifying their citizenship. This proceeded with a brief verification period in which any Asian claiming Ugandan citizenship had to provide an original birth certificate or a certified copy; those who did not possess original documents faced the challenge of acquiring one from the Office of the Registrar of Births and Deaths. However, given the short timeframe and high volume of requests, the government was forced to shut the office down for several days.²¹ Further, over twelve thousand applications for Ugandan citizenship by registration were made before 9 October 1964 but never reviewed because there was no legal timeframe for which these applications were meant to be processed. In December 1971 representatives from the Asian community complained about the unprocessed applications to President Amin, in which he informed that his government had come to power through a coup d'état and was not responsible for the shortcomings of the previous administration.²² Even for those who had managed to become citizens either through registration or naturalisation faced challenges in seeking administrative support, such as applying for a passport in which their original documents would be filed away by the Office of Immigration and never returned; such occurrences which would result in them being deemed non-citizens and lead to their eventual expulsion.²³ Thus, what was regarded as the "Asian question" under Obote's presidency would eventually present itself in the policies of Idi Amin in 1971 as it pertains to the visas, permits, residencies of the Asian population in Uganda, otherwise known as the Immigration (Amendment) Decree of 1972.²⁴ This measure allowed for the expulsion to take place. Based on this policy, Ugandan Asians were forced to leave Uganda within a three-month period of which the official deadline was the 9th of November 1972. They were also required to leave behind their property and possession without any compensation.²⁵

This event was a critical turning point for the discourse characterizing access to nationality and citizenship in East Africa following the decolonization period and the manner by which the right to belonging was defined, in addition to having broader international ramifications.

2.4. The post-Amin regime

Amin's rule came to an end when he was forced into exile as a result of the Uganda-Tanzania War or 1978-1979. The roots of the war are reflective of the rivalry between Amin and Julius Nyerere, Tanzania's president, given that Nyerere never officially recognized Amin's regime

²⁰ K. C. Kotecha, "The Shortchanged: Uganda Citizenship Laws and How They Were Applied to Its Asian Minority," *International Lawyer (ABA)* 9, no. 1 (1975): 1-29

²¹ *Ibid.*

²² *Ibid.*

²³ *Ibid.*

²⁴ Hundle, Anneeth Kaur. "1970s Uganda: Past, Present, Future." *Journal of Asian and African Studies*, Vol. 53, no. 3 (2018): 455-75.

²⁵ Frank Wooldridge; Vishnu D. Sharma, "International Law and the Expulsion of Ugandan Asians," *International Lawyer (ABA)* 9, no. 1 (January 1975): 30-76.

and enjoyed a close relationship with former Ugandan president Obote, to whom he offered exile following his ousting.²⁶ Amin's annexation of the Kagera Salient located in northwestern Tanzania in November of 1978 served as the trigger for the war which would end of his rule in April 1979.²⁷ This would lead to Obote's eventual return to power for another five-year second term.

In 1983, the new government passed the Expropriated Properties Act,²⁸ which allows for the return of Ugandan Asians and the right to reclaim their confiscated properties. The Act provided for the "transfer of the properties and businesses acquired or otherwise expropriated during the military regime to the Ministry of Finance, to provide for the return to former owners or disposal of the property by the Government and to provide for other matters connected therewith or incidental thereto" to identified "departed Asians" who left Uganda in 1972. This measure, however, did not reinstate citizenship rights for this particular group, and upon, for example, applying for a passport previously expelled persons would find out they were not considered a Ugandan citizen. Since the introduction of national identity cards and mass registration under the UCICA, a complaint mechanism was developed to address cases of those persons whose citizenship was in question. During this process, the Directorate of Citizenship and Immigration supported the verification of citizenship and registered eligible people as citizens; in the case one's citizenship was brought into question, cases were to be heard in person and decisions were only to be made on the basis of providing valid documentation. This posed a challenge for many who do not have birth certificates or other forms of documentation.²⁹ Further, this procedure is merely administrative and does not carry any judicial weight in identifying stateless persons and provide a pathway for citizenship.³⁰

Additionally, the children of Ugandan Asians who later returned to Uganda have faced challenges securing citizenship. This is because the registration or naturalisation of one's parents does not transfer to the child following the parent's acquisition of Ugandan citizenship. In some cases, the children of Ugandan Asian "returnees" do not have Ugandan citizenship despite having grown up or born in Uganda.³¹ Others, on the other hand, might be stateless in the case their parent renounced their citizenship to another country in order to acquire Ugandan citizenship prior dual citizenship being permitted.³²

Uganda introduced a new constitution in 1995. It was implemented following country-wide consultations led by the 'Odoki Commission', a constitutional review commission named after its chair.³³ While the 1962 and 1967 constitutions focused on defining citizenship rights for the country's Asian population, the debates shaping the 1995 Constitution focused on providing a more explicit definition for the citizenship rights of the countries' vast ethnic communities, including addressing the status of African immigrants and refugees. Hence, the 1995 Constitution defined access to citizenship through a more

²⁶ Roberts, George. "The Uganda-Tanzania War, the Fall of Idi Amin, and the Failure of African Diplomacy, 1978-1979." *Journal of Eastern African Studies* 8, no. 4 (November 2014): 692-709.

²⁷ Ibid.

²⁸ Expropriated Properties Act 1983. Uganda Legal Information Institute. (Accessed 12 December 2018). <https://ulii.org/ug/legislation/consolidated-act/87>

²⁹ Bronwen Manby, *Statelessness and Citizenship in the East African Community*. United Nations High Commission for Refugees, 2018. <https://data2.unhcr.org/en/documents/download/66807> (accessed 18 December 2018).

³⁰ Ibid.

³¹ In accordance with the UCICA, Section 12(b), 14, 15, 25: The 20-year period required to apply for citizenship by registration does not apply to students or minors.

³² Reference 2005 Constitutional Amendments.

³³ Manby, Bronwen. *Struggles For Citizenship in Africa*. London: Zed, 2009.

explicit ethnic definition that listed fifty-six groups considered ‘indigenous’ to Uganda and would later include nine more based on the 2005 Constitutional Amendments. While ethnic communities such as the Banyarwanda whose status in Uganda fuelled much of the debates shaping access to citizenship in the 1995 framework were included in the list of indigenous communities, attempts by Asians to argue for their inclusion were unsuccessful.³⁴ Thus, Uganda is among a small group of countries whose legal framework poses severe challenges to citizens whose ethnic background is not legally reflected in their national sense of belonging—a reality that reinforces the marginalisation and citizenship deprivation of such groups. The sections below will outline Uganda’s current citizenship practices both in legal merit and practical approaches.

3. Current Citizenship Regime

3.1. Introduction

The current citizenship framework in Uganda is based on the principles of the 1995 Constitution of the Republic of Uganda and the 1999 UCICA (as last amended in 2009). While the main principles of descent-based acquisition from the 1995 Constitution are in line with those from the 1967 Constitution, the 1995 Constitution introduces a new concept of “indigenous communities” under the Third Schedule of the Constitution³⁵. The introduction of “indigenous communities” into the 1995 Constitution could provide support in protecting some communities from statelessness; yet, at the same time, this could also present strong risk of perpetuated statelessness within Uganda among those groups that are not represented among the 56 communities defined by the Constitution.

The 1995 Constitution reformulates the definition for citizenship entitlement through registration and naturalisation, as well as the parameters that constitute the loss of citizenship. Under the 1995 Constitution, the National Citizenship and Immigration Board was announced. This entity holds various responsibilities, among which include granting and cancelling citizenship by registration and naturalisation (Article 16, section C), among other activities. While the Constitution provided for the opportunity for those who already possessed Ugandan citizenship to continue doing so, it repealed the “jus soli” provision for those who were born prior to 1967, and for those who are not characterised as indigenous on the grounds of being present in Uganda in 1926 when its original colonial borders were established. As mentioned, one of the major legal gaps pertained in the Constitution and the UCIC is the fact that Uganda’s ‘jus sanguinis’ provision does not extend citizenship to any member of a nonindigenous group and is limited to only the children of citizens by birth. This means that if a person obtains Ugandan citizenship either through registration or naturalisation, their child does not obtain citizenship (whether born or unborn). This gap in Uganda’s citizenship laws is indeed unusual in comparison to regional and international frameworks and bears the risk of increasing statelessness among children.

Upon the introduction of the mass national identification registration drive, which will be discussed in greater depth below, various communities learned that they did not have access to Ugandan citizenship— such experiences are prevalent during administrative

³⁴ Ibid.

³⁵ Third Schedule, Constitution of the Republic of Uganda, 1995. Uganda Legal Information Institute. (Accessed 14 December 2018). <https://ulii.org/ug/legislation/consolidated-act/0>

processes such as attempting to obtain a passport and being subjected to difficult vetting and discrimination. While the depth of this report will not cover the experiences of those who are not listed in the 1995 Constitution, it will discuss to an extent, two particular case studies including the Maragoli community, as well as the Ugandan Asian community.³⁶ These two communities have continuously argued to be included as indigenous of the grounds of being present in Uganda in 1926, and while progress has been made, their status continues to remain in the state of ambiguity.

In February of 2019, the National Identification and Registration Authority (NIRA) launched a three-month massive registration for all Ugandan citizens to ensure that everyone is included in the national register and in providing a National Identification number. It is believed that approximately 2.4 million Ugandans under the age of sixteen do not possess national identification cards, and application for national IDs often face the challenges of documentation or insufficient information.³⁷ The information below will shed further light on the debates and development shaping Uganda's current citizenship regime, as it pertains to its acquisition and loss, dual nationality, and provide key examples that impact the discourse and legal merits of these debates.

3.2. Acquisition of citizenship

3.2.1. At birth

The 1995 Constitution and the UCICA provide two categories by which citizenship by birth can be acquired. First, Ugandan citizenship is acquired automatically by every person born in Uganda, one of whose parents or grandparents is or was a member of any of the indigenous communities existing and residing within the borders of Uganda as at the first day of February 1926, as listed in the Constitution (Constitution, Art. 10(a) and Third Schedule; UCICA, Art. 12(a)). Second, for persons born outside Uganda, they automatically acquire Ugandan citizenship provided one of their parents or grandparents were at the time of birth of that person a citizen of Uganda by birth (Constitution, Art. 10(b); UCICA, Art. 12(b)). The two categories, by design, explicitly omit the right for whites and Asians to acquire Ugandan citizenship,³⁸ while also generating debates surrounding the Constitution's definition of Ugandan 'indigeneity'. It is also important to highlight that citizenship by birth does not solely impact the rights of an individual by virtue of where they are born, and the relationship they maintain with the State as a result, but in the Ugandan context it also determines the collective rights of communities and the manner by which they can be represented within the State structure.³⁹

³⁶ For a more in-depth analysis of other communities in Uganda who have not been included under the Third Schedule of the 1995 Constitution, see further: Bronwen Manby, *Statelessness and Citizenship in the East African Community*. United Nations High Commission for Refugees, 2018. <https://data2.unhcr.org/en/documents/download/66807>

³⁷ Daily Monitor, *NIRA starts massive 3-month Registration for IDs*, 11 February 2019. (accessed 11 February 2019). <https://www.monitor.co.ug/News/National/NIRA-starts-massive-3-month-registration-IDs/688334-4976194-13ft11ez/index.html>

³⁸ Manby, Bronwen. *Struggles For Citizenship in Africa*. London: Zed, 2009.

³⁹ For further elaboration of the relationship between individual and collective rights in Uganda, reference the case of the Buganda community in demanding for federal status: Barya John-Jean. *Reconstituting Ugandan Citizenship Under the 1995 Constitution: a Conflict of Nationalism, Chauvinism, and Ethnicity*. Centre for Basic Research, (2000). Working Paper No. 55.

The third component is reflected in accordance with Chapter Three Article 12 (1) of the 1995 Constitution. It determines eligibility for citizenship through registration on the basis that at the time of birth, “(i) neither of his or her parents and none of his or her grandparents had diplomatic status in Uganda; and (ii) neither of his or her parents and none of his or her grandparents was a refugee in Uganda; and (b) who has lived continuously in Uganda since the ninth day of October, 1962, shall on application, be entitled to be registered as a citizen of Uganda.”

3.2.2. Foundlings and Adopted Children

Under the Constitution, foundlings also acquire Ugandan citizenship by birth. This applies if a child is five years of age or younger, and whose parents are not known, they are presumed to be a citizen by birth (Article 11, section 1). Secondly, a child is eligible for citizenship through registration in the case they are under the age of eighteen and is adopted by a citizen of Uganda (Article 11, section 2).

3.2.3. Residence-based acquisition

Ugandan citizenship can be acquired in two ways, after a certain period of residence. First, a more facilitated form of acquisition by ‘registration’ is open to persons who have either voluntarily migrated to Uganda and lived there for at least ten years (Constitution, Art. 12(2)(b)) or who, on the commencement of the 1995 Constitution, have lived in Uganda for at least twenty years (Constitution, Art. 12(2)(c)). Moreover, Chapter Three Article 12 (1) of the 1995 Constitution determines citizenship through registration as “Every person born in Uganda (a) at the time of whose birth— (i) neither of his or her parents and none of his or her grandparents had diplomatic status in Uganda; and (ii) neither of his or her parents and none of his or her grandparents was a refugee in Uganda; and (b) who has lived continuously in Uganda since the ninth day of October, 1962, shall on application, be entitled to be registered as a citizen of Uganda.” Second, a discretionary ‘naturalisation’ procedure of residence-based acquisition is open to persons who have resided in Uganda for an "aggregate period of twenty years" and for twenty-four month following their application for naturalisation (Constitution, Art. 13; UCICA, Art. 16). In addition, persons should have knowledge of a “prescribed vernacular language” or English [which is the official language of Uganda]; and maintain good character. As mentioned, Uganda’s naturalisation laws have a major gap as it pertains to children because in the case a child’s parent has become a citizen through means of naturalisation, a child must also undergo the same process in order to acquire Ugandan citizenship. As indicated above, the twenty-year residency period does not apply to minors despite having either been born or grown up in Uganda. Therefore, in practice, once a minor becomes an adult at the age of eighteen, they have the opportunity to naturalise twenty years later at the age of thirty-eight.

Under the 1995 Constitution, anyone who became a citizen of Uganda was required to renounce any citizenship of another country (Article 15). Following the Constitutional Amendments Act of 2005, however, renunciation of a previous citizenship is no longer required.

3.2.4. Marriage

Chapter Three Article 12 (1) of the 1995 Constitution determines citizenship through registration as “Every person born in Uganda (a) at the time of whose birth— (i) neither of

his or her parents and none of his or her grandparents had diplomatic status in Uganda; and (ii) neither of his or her parents and none of his or her grandparents was a refugee in Uganda; and (b) who has lived continuously in Uganda since the ninth day of October, 1962, shall on application, be entitled to be registered as a citizen of Uganda.” For persons married to a Ugandan citizen, citizenship can be acquired upon registration after three years marriage (Constitution, Art. 12(2)(a); UCICA, Art. 14(2)(a).

3.2.5 Re-acquisition of Ugandan citizenship

Under the UCICA (as amended in 2009), an individual has the right to reacquire their citizenship based on two key provisions. According to Article 19G, “(1) a person who was a citizen of Uganda by birth and who on acquiring the citizenship of another country renounced his or her Ugandan citizenship, may apply to the [National Citizenship and Immigration Board] in the prescribed manner to re-acquire his or her former Ugandan citizenship” and further notes “(2) The board may allow a former Ugandan citizen to reacquire his or her Ugandan citizenship if it is satisfied that the grounds for the loss of his and her Ugandan citizenship are of no adverse effect to the public order and security of Uganda.”

3.3. Loss of citizenship

The parameters by which citizenship is lost are set by the Citizenship and Immigration Control Act of 1999. In Part 3 of this Act, Article 17 defines loss of citizenship by registration and gives the National Citizenship and Immigration Board to revoke citizenship should one extend "voluntary service in the armed forces or security forces of a country hostile to or at war with Uganda" in addition to the acquisition of citizenship on the basis of "fraud, deceit, bribery" or having made false statements in the application process, in addition to being found guilty of espionage against Uganda. The same provisions apply to the deprivation of citizenship by naturalisation in accordance with Article 18.

3.3.1. Voluntary renunciation of citizenship

A Ugandan national may voluntarily renounce her or his citizenship should s/he make an official declaration to the National Citizenship and Immigration Board. Nationals are in the position to renounce their citizenship upon the acquisition of citizenship of another country and the request must be formally registered by the Board. This protocol is further defined in Article 20 of the UCICA, as follows: “If a citizen of Uganda of full age and capacity who acquires citizenship of a foreign country makes a declaration in the prescribed manner of renunciation of citizenship of Uganda, the board shall cause the declaration to be registered; and upon registration, that person shall cease to be a citizen of Uganda”.

3.3.2. Cancellation of citizenship

Prior to the Constitutional Amendments Act of 2005, which allowed for dual nationality [discussed below], Article 24 of the UCICA required for any person who acquired Ugandan citizenship through means of registration or naturalisation to provide documentation within a ninety-day period proving the renunciation of any other nationality, or to have her or his Ugandan citizenship cancelled: “the registration or naturalisation of that person as a citizen of

Uganda shall be cancelled; and he or she shall be taken never to have been so registered.” (Article 24, UCICA).

3.3.3. *Deprivation*

It is important to acknowledge Uganda’s colonial boundaries in the context of the European “Scramble for Africa” in that its territorial boundaries are arbitrary and there are cross-border communities residing in its neighbouring countries including the Democratic Republic of Congo, South Sudan, Rwanda, and Kenya. The 1995 Constitution added another layer of complication in defining the right to citizenship in Ugandan by explicitly identifying ethnic communities whose ancestors were of indigenous origin to Uganda and were therefore entitled to citizenship by birth. This is noted in the Third Schedule of Article 10(a), which identifies Uganda’s ethnic communities based on the demarcation of Uganda’s borders as of the 1st of February 1926. Based on schedule three, one has access to *jus soli* citizenship if their parents or grandparents "is or was a member of any of the indigenous communities existing and residing within the borders of Uganda as at the first day of February 1926".⁴⁰ This excludes Europeans and those of Asian descent who may have resided in Uganda prior to its independence, who are deemed ineligible based on this provision. The Constitution (Amendment) Act, 2005 amended the Third Schedule of the 1996 Constitution by inserting additional communities⁴¹ consider indigenous based on the stated February 1926 standard, bringing the total number to sixty-five, who are eligible to attain citizenship based on the same guidelines.

3.4 Dual citizenship and the rights of citizens living abroad

The growth of the Ugandan diaspora following its independence has led to sizeable communities of Ugandans living abroad. Although to-date Uganda does not have out-of-country voting for its citizens, in more recent years it has extended the opportunity for its citizens to maintain their ties to Uganda while residing abroad. This is a recent development as allowed through the Constitutional Amendments Act of 2005, which repealed the restriction on dual citizenship formally put in place by the Uganda Citizenship Act 1962, and then later reinforced by the 1995 Constitution of the Republic of Uganda.

The revised Constitution hence provides for the opportunity to become a Uganda citizenship again, for those who have lost their citizenship because of their possessing the citizenship of another country (Article 15, Section 4). This process would require taking an oath of allegiance as specified in the Fourth Schedule of this Constitution (Article 15, Section D). Furthermore, this provision specifies that in the case the law of a country other than Uganda, “requires a person who marries a citizen of that country to renounce the citizenship of his or her own country by virtue of that marriage, a citizen of Uganda who is deprived of his or her citizenship by virtue of that marriage shall, on the dissolution of that marriage, if he

⁴⁰ According to the Third Schedule of the 1995 Constitution, fifty-six indigenous groups are identified: Acholi; Alur; Baamba; Babukusu; Babwisi; Bafumbira; Baganda; Bagisu; Bagungu; Bagwe; Bagwere; Bahehe; Bahororo; Bakenyi; Bakiga; Bakonzo; Banyabindi; Banyankore; Banyara; Banyarwanda; Banyole; Banyoro; Baruli; Basamia; Basoga; Basongora; Batagwenda; Batoro; Batuku; Batwa; Chohe; Dodoth; Ethur; Ik (Teuso); Iteso; Jie; Jonam; Jopadhola; Kakwa; Karimojong; Kebu (Okebu); Kuku; Kumam; Langi; Lendu; Lugbara; Madi; Mening; Mvuba; Napore; Nubi; Nyangia; Pokot; Sabiny; So (Tepeth); and Vonoma.

⁴¹ According to Article 48 to the Third Schedule of the 2005 Amendments, nine additional indigenous groups were added: Aliba; Aringa; Banyabutumbi; Banyaruguru; Barundi; Gimara; Ngikutio; Reli; and Shana.

or she thereby loses his or her citizenship acquired by that marriage, become a citizen of Uganda” (Article 15, section 5).

The 2005 Amendments substitutes the previously noted clauses which prevent dual nationality with the following, (Article 15, section (a)(1) “A citizen of Uganda of eighteen years and above, who voluntarily acquires the citizenship of a country other than Uganda may retain the citizenship of Uganda subject to this Constitution and any law enacted by Parliament.” Additionally, “A person who is not a citizen of Uganda may, on acquiring the citizenship of Uganda, subject to this Constitution and any law enacted by Parliament, retain the citizenship of another country.” (Article 15, section (a)(2) Further, the Amendment goes on to permit that the retention of Ugandan citizenship in the case a Ugandan is to acquire the citizenship of another country, in addition to permitting non-Ugandan citizens to apply and receive Ugandan citizenship while retaining the citizenship of their origin countries.⁴²

3.5 Ethnic groups of particular relevance

a. The case of the Maragoli community in Uganda

Some ethnic communities have complained of their exclusion from Ugandan citizenship under the Third Schedule of the 1995 constitutional provisions defining indigeneity. Among the various groups who face this reality, the Maragoli community living within Uganda's Bunyoro Kingdom is a key example.

The Maragoli community are a part of the broader Luhya ethnic community found in Kenya. According to the Maragoli community, their migration history into Ugandan dates back to the 19th century or earlier. Their community in Uganda is known to have grown during the 20th century when the Maragoli arrived to support the construction of the Uganda Railway.⁴³ In 1957, the king of the Bunyoro Kingdom extended an invitation for members of the Maragoli community to settle in his home region of western Uganda and allocated them land.⁴⁴ Though the Bunyoro community spans from western to central Uganda, and the Maragoli community is concentrated in Uganda's central, Kiryandongo District.

The Maragoli are not included in the 1995 Uganda Constitution under the Third Schedule identifying indigenous communities, nor are they included in the 2005 Amendments as previously mentioned. In 1999 they formed the Maragoli Community Association as a response to their exclusion from being officially recognized among Uganda's other indigenous communities and as a means to advocate for both the citizenship as well as socioeconomic inclusion of their members.⁴⁵ In 2014/15 Uganda began a mass registration exercise in order to introduce national IDs. This process led to the NIRA withholding of national IDs of the Maragoli community on the basis on them not meeting the indigeneity requirements as listed in the Third Schedule, and thus, claiming that they are not entitled to citizenship. Following this incident and through continuous lobbying efforts, the Maragoli were offered citizenship by naturalisation during Uganda's mass registration

⁴² Amendment of article 15 of the Constitution, (6)(a)(b)(c) – 2005 Constitutional Amendments.

⁴³ Ibid. pg. 69

⁴⁴ Bronwen Manby, *Statelessness and Citizenship in the East African Community*. United Nations High Commission for Refugees, 2018. <https://data2.unhcr.org/en/documents/download/66807> (accessed 18 December 2018).

⁴⁵ The International Refugee Rights Initiative, *A Quest for Citizenship: the Maragoli*. (accessed 08 February 2019). <http://refugee-rights.org/wp-content/uploads/2019/01/Quest-for-Citizenship-Maragoli-1-1.pdf>

process under the National Security Information System (NSIS) project.⁴⁶ For the Maragoli however, the prospect of attaining citizenship through naturalisation would mean that they would have to prove having resided in Uganda for twenty years, and further, would not be able to transmit citizenship to their children (on the basis on the naturalisation laws as described above). Hence, the Uganda government's offer did not present a plausible solution.

In 2014, the Maragoli community petitioned the Ugandan Parliament to be included under the Constitution and to be acknowledged as an indigenous community under the Third Schedule. They appeared before the Legal and Parliamentary Affairs Committee of the Ugandan Parliament in order to present their case and requested an Amendment to the Constitution to recognize their citizenship. As a result of this effort, the Committee recommended the establishment of a Constitutional Review Commission to review the prospect of their inclusion in the Constitution. In 2018, four years following the initial petition, preliminary nominations to the commission were made.⁴⁷

This process has been slow moving and the status of the Maragoli community is still pending. In February of 2016 the Attorney General issued an official statement to the NIRA characterizing the “legal interpretation of the citizenship status of the Maragoli Community” and informing that the Chairman of the Maragoli Community was advised that their inclusion in the Third Schedule of the Constitution was to be handled only through a constitutional amendment, and further directed NIRA to issue national identification cards given the “pending constitutional amendment for inclusion of the Maragoli as one of the indigenous communities”.⁴⁸ The immediate need to issue national IDs was attributed to the challenges faced by the Maragoli community in accessing services such as land leases, health care, education, employment opportunities, as well as in some cases, the ability to register child births.⁴⁹

Following the Attorney General's advice, the Maragoli community still continued to struggle in obtaining National IDs and filed a complaint with NIRA in August 2016. They also complained to the Ministry of Internal Affairs (MIA) and the Attorney General's office following prolonged administrative issues in accessing the above-stated services. As a result, the MIA raised this issue with NIRA, and it was resolved that the Government of Uganda (GoU) would accept the Maragoli claim to Ugandan citizenship and their inclusion in the Third Schedule of the Constitution.⁵⁰

Despite the positive developments, in May of 2017, the NIRA withheld an estimated 15,000 national IDs from the Maragoli.⁵¹ This led to their writing to the President of Uganda, H.E. Yoweri Museveni who responded by instructing the Ministry of Constitutional Affairs to include the proposed constitutional amendment. Further efforts included a petition to the Equal Opportunity Commission, who mobilized local government officials in Masindi District to host a public dialogue about this issue in March 2018, in addition to a nationality

⁴⁶ Ibid.

⁴⁷ Ibid.

⁴⁸ Maragoli Petition to Attorney-General of Uganda. Citizenship Rights in Africa Initiative. (accessed 18 December 2018). <http://citizenshiprightsafrika.org/wp-content/uploads/2018/06/Maragoli-petition-to-AG-Uganda-2015-responses.pdf>

⁴⁹ A Quest for Citizenship: the Maragoli. The International Refugee Rights Initiative. (accessed 05 February 2019). <http://refugee-rights.org/wp-content/uploads/2019/01/Quest-for-Citizenship-Maragoli-1-1.pdf>

⁵⁰ Ibid.

⁵¹ The Observer (Kampala), *Uganda: NIRA Withholds 15,000 National IDs of Maragoli Tribe*. (accessed 08 February 2019). <https://allafrica.com/stories/201705250122.html>

workshop hosted by the International Refugee Rights Initiative⁵² in which this issue was raised. By mid-2018, NIRA released the formally withheld national IDs during the 2014/15 mass registration drive, and by November 2018 fourteen members were appointed to the Constitutional Review Commission in order to review the Maragoli case.⁵³ Despite the perseverance of this particular community in their citizenship claims, it is imperative to equally acknowledge that they are other minority groups who while less vocal, also face the same circumstances.⁵⁴

b. Refugees

Uganda currently hosts over one million refugees and asylum seekers.⁵⁵ It has gained international recognition for its open asylum policy and progressive stance toward refugee management.⁵⁶ A sizeable number of its refugee communities in Uganda are multigenerational refugees who do not have Ugandan citizenship, and in some cases do not have access to the citizenship rights of their origin countries.⁵⁷ Those who have resided in Uganda for over twenty years, which is the residency period in which one is eligible to apply for naturalisation, face challenges in lawfully acquiring Ugandan citizenship. Uganda is a signatory of the 1951 UN Convention and Protocol Relating to the Status of Refugees⁵⁸ which states the need for refugee-hosting states to extend every effort to the “assimilation” and “naturalisation” of refugees in a timely and cost-efficient manner.

The Refugees Act of 2006 is the legal framework guiding refugee management in Uganda.⁵⁹ Article 45 of this Act determines that a refugee is eligible for naturalisation based on the “Constitution and any other law in force in Uganda regulated naturalisation”. According to this provision, the naturalisation process for refugees is based on the 1995 Constitution (inclusive of the 2005 Amendments) and the 1999 UCICA (inclusive of the 2009 Amendments). Unfortunately, these legal instruments fall short of granting tangible pathways for refugee communities to access citizenship in Uganda, and subsequently face significant legal challenges in the naturalisation process.⁶⁰

⁵² International Refugee Rights Initiative, *Summary of IRRI Hosted Workshop on the AU Draft Protocol on the Right to a Nationality*, 2018. (accessed 08 February 2019). <http://refugee-rights.org/irri-hosts-meeting-in-kampala-on-the-draft-protocol-on-the-right-to-a-nationality/>

⁵³ A Quest for Citizenship: the Maragoli. The International Refugee Rights Initiative. (accessed 05 February 2019). <http://refugee-rights.org/wp-content/uploads/2019/01/Quest-for-Citizenship-Maragoli-1-1.pdf>

⁵⁴ The complexities in defining Uganda's ‘indigeneity’ in relation to both its colonial past and its contemporary post-independence era is an underlying issue on a cross-sector of the area defining its current public policies. see further: The 2013 Uganda National Land Policy has a more inclusive definition for minority groups which are left out of the Third Schedule of the 1995 Constitution. *Uganda National Land Policy*, Ministry of Lands, Housing and Urban Development, 2013, <http://extwprlegs1.fao.org/docs/pdf/uga163420.pdf>

⁵⁵ As of December 2018, Uganda hosted 1,190,922 registered refugees and asylum seekers; see further: Uganda Refugees and Asylum-seekers, December 2018, UNHCR, <http://www.un.org/womenwatch/daw/cedaw/>

⁵⁶ International Refugee Rights Initiative, *Uganda's Refugee Policies: The History, the Politics, the Way Forward*. October 2018. (accessed on 08 December 2018). <http://refugee-rights.org/wp-content/uploads/2018/10/IRRI-Uganda-policy-paper-October-2018-Paper.pdf>.

⁵⁷ The greater majority of Uganda's refugee communities are from South Sudan, the Democratic Republic of Congo, Burundi, Rwanda, among other countries.

⁵⁸ Convention and Protocol Relating to the Status of Refugee. United Nations High Commission for Refugees. (accessed 24 January 2019). <https://www.unhcr.org/3b66c2aa10.html>

⁵⁹ *Uganda: The Refugee Act 2006* [Uganda], Act 21, 24 May 2006. (accessed 02 February 2019). <https://www.refworld.org/docid/4b7baba52.html>

⁶⁰ Tigranna Zakaryan, Lina Antara, *Political Participation of Refugees: The Case of South Sudanese and Congolese Refugees in Uganda*. International Institute for Democracy and Electoral Assistance, April 2018.

When assessing the possibility of refugees becoming citizens through registration, Article 12(c) of the Constitution and Article 14(2) of the UCICA determine eligibility based on a twenty-year residency period. Other aspects of the legislation, however, directly exclude refugees. Article 12(a)(2) of the Constitution and Article 14(a)(2) of the UCICA deem citizenship through registration is only available to someone in the case “neither of his or her parents and none of his or her grandparents was a refugee in Uganda”.⁶¹ Additionally, Article 14(2) of the UCICA requires for registration for citizenship to be on the bases of a person having “legally and voluntarily migrated”, a statute which excludes refugees by definition given their forced displacement into Uganda. Moreover, Article 13 of the Constitution defines the qualification for naturalisation as “Parliament shall by law provide for the acquisition and loss of citizenship by naturalisation”. The UCICA further qualifies this with Article 16 by specifying the criteria in which one must legally possess to naturalise. This includes knowledge of a prescribed vernacular language or English, being of good character and the intention to permanently reside in Uganda.⁶² Hence, the legal merit for the prospect of refugees to become Ugandan citizens either through registration or naturalisation proves to be paradoxical.

The desire for refugees to fully integrate into Ugandan society through citizenship, and especially those who have no intention of returning to origin country and are long-term refugees, continues to be a challenge in the Ugandan citizenship context. This lack of clarity in legal interpretation prompted the Refugee Law Project, a non-profit organization providing legal aid to refugees and asylum seekers throughout the Great Lakes Region, to seek clarification on refugees’ rights to citizenship with respect to the 1995 Constitution and UCICA.⁶³ A petition was filed calling upon to Uganda Constitutional Court (UCC) to provide clarification on whether refugees are eligible for citizenship either by registration, naturalisation, or both. In October 2015, the UCC issued a ruling which deemed that refugees are indeed eligible for citizenship through naturalisation but cannot access citizenship through registration because they did not “voluntarily migrated” to Uganda.⁶⁴ Despite this ruling, however, the prospects of extending citizenship to refugees remain sensitive as to date and there have been no successful cases of naturalisation. The complexities which challenge the systematic registration of refugees was explained by Uganda’s former Commissioner for Refugees, who referred to the steps taken by the Office of Prime Minister (OPM), Department for Refugees to support certain refugees in acquiring Uganda citizenship. He stated:

“OPM has submitted a list of people [to Ministry of Internal Affairs] we believe to be eligible for naturalisation but championing this issue can be misconstrued and we need to be strategic with the timing... Elections and the economic dynamics of society play a role, but we need to be active or we will end up with stateless populations.”⁶⁵

(accessed 08 December 2018). <https://www.idea.int/sites/default/files/publications/political-participation-of-refugees-the-case-of-south-sudanese-and-congolese-refugees-in-uganda.pdf>

⁶¹ Ibid.

⁶² Ibid.

⁶³ Constitutional Petition No. 34 of 2010 between Centre of Public Interest Law Ltd. Salima Namusobya [Petitioners] and The Attorney General [Respondent], 06 October 2015. (accessed 23 January 2018). https://refugeelawproject.org/files/others/constitutional_court_ruling_on_refugees_eligibility_to_become_Ugandans.pdf

⁶⁴ Ibid.

⁶⁵ Tigranna Zakaryan, Lina Antara, *Political Participation of Refugees: The Case of South Sudanese and Congolese Refugees in Uganda*. International Institute for Democracy and Electoral Assistance, April 2018. (accessed 08 December 2018). <https://www.idea.int/sites/default/files/publications/political-participation-of-refugees-the-case-of-south-sudanese-and-congolese-refugees-in-uganda.pdf>

This reality demonstrates the contrast between Uganda's progressive refugee policies and its ability to fully integrate refugee communities and provide them with a sense of belonging in the long-term.

4. Current Debate and Reforms

4.1 Implementation of the “Action Plan of the International Conference on the Great Lakes Region (ICGLR) on the Eradication of Statelessness”

As a member state of the International Conference on the Great Lakes Region (ICGLR),⁶⁶ Uganda is in the process of implementing the “Action Plan of the International Conference on the Great Lakes Region (ICGLR) on the Eradication of Statelessness”—a step intended to harmonizing the efforts of ICGLR member states to address the phenomena of statelessness in the African Great Lakes Region and expanding the right to a nationality.⁶⁷ It is also a part of a global campaign spearheaded by the United Nations High Commission for Refugees (UNHCR) to end statelessness by the year 2024.⁶⁸

The ICGLR and UNHCR work with each member state to share best practices and the implementation of capacity-building measures to actualize the regional action plan. In December 2018 the GoU, the Ministry of Internal Affairs, and the UNHCR hosted a stakeholders meeting to develop a national plan for Uganda.⁶⁹ This initiative is expected to launch in March of 2019 through the Directorate of Citizenship and Immigration Control.⁷⁰ This effort is in line with the ICGLR member states review their nationality laws and related legislation, and align themselves with international frameworks as identified in the Declaration, more specifically the United Nations 1954 Convention relating to the Status of Stateless Persons⁷¹ and the 1961 Convention on the Reduction of Statelessness.⁷² The

⁶⁶ The ICGLR is an intergovernmental organization working to promote the following pillars in the Great Lakes Region: peace and security; democracy and good governance; economic development and regional integration; humanitarian and social issues. Member states include Angola, Burundi, Central African Republic, Republic of Congo; Democratic Republic of Congo; Kenya; Uganda; Rwanda; Republic of South Sudan; Sudan; Tanzania; Zambia.

⁶⁷ This effort is a result of each ICGLR member states reaffirming their commitment to end stateless by signing the “Declaration of International Conference on the Great Lakes Region (ICGLR) Member States on the Eradication of Statelessness” in Brazzaville, Republic of Congo, on the 16th October 2017; see further: Regional Treaties, Agreements, Declarations and Related, *Declaration of International Conference on the Great Lakes Region (ICGLR) Member States on the Eradication of Statelessness*, 16 October 2017, CIRGL/CIMR/DEC/15/10/2017. (accessed 05 February 2019). <https://www.refworld.org/docid/59e9cb8c4.html>

⁶⁸ UN High Commissioner for Refugees (UNHCR), *Campaign Update, October – December 2018*, October 2018. (accessed 5 February 2019). <https://www.refworld.org/docid/5c1783737.html>

⁶⁹ For further details for the action plan for Uganda, reference objective 3.2.2. under *the Action Plan of the International Conference on the Great Lakes Region (ICGLR) on the Eradication of Statelessness*. (accessed 01 February 2019). <https://data2.unhcr.org/en/documents/download/62888>

⁷⁰ Interview with Johanna Seidl, Citizenship Programme Coordinator, *International Refugee Rights Initiative*, 28 January 2019.

⁷¹ 1954 Convention relating to the Status of Stateless Persons. United Nations High Commission for Refugees. (accessed 24 January 2019). https://www.unhcr.org/ibelong/wp-content/uploads/1954-Convention-relating-to-the-Status-of-Stateless-Persons_ENG.pdf

objective is to establish a harmonised regional approach toward addressing issues of statelessness among ICGLR members. Uganda is party to the 1954 Convention and is in the process of considering the adoption of the 1961 Convention on Statelessness.

4.2 Draft Protocol to the African Charter on Human and Peoples Rights on the Specific Aspects on the Right to a Nationality and the Eradication of Statelessness in Africa

Uganda is currently in the process of reviewing a draft protocol of the “African Charter on Human and Peoples Rights on the Specific Aspects on the Right to a Nationality and the Eradication of Statelessness in Africa”.⁷³ The Draft Protocol is established by the African Union to address the challenges on statelessness in Africa and ensure nationality rights across the continent. The Specialized Technical Committee (STC)⁷⁴ on Migration, Refugees and Internally Displaced Persons is due to meet in April of 2019 to further discuss the Protocol.⁷⁵ Upon its finalization, and if adopted, this measure will expand the legal instruments defining the right to nationality in Uganda, as well as support the expansion of the definition of statelessness. The Draft Protocol considers fundamental aspects of international laws and conventions, and if adopted by Uganda, will undergo a legal consistency review through the Ministry of Justice and Constitutional Affairs to ensure Uganda’s domestic laws are aligned with the regional and international frameworks.

4.3 Challenges of registering births and providing birth certificates

Uganda continues to face challenges in registering births and providing certificates to the entirety of its populations, the majority of whom reside in rural and remote communities. These challenges are further exacerbated for its refugee and asylum seekers communities as Uganda continues to be the epicentre of forced displacement in the Great Lakes Region. In an attempt to acknowledge and address this reality through a broader framework, Uganda is a signatory to both international and regional treaties, which seek to uphold the rights of children with respect to ensuring their proper identification and preventing stateless, in addition to mirroring these initiatives in its own domestic legislation.

In 1990, Uganda ratified the “Convention on the Rights of a Child” (CRC), which requires that “The child shall be registered immediately after birth and shall have the right from birth to a name, [and] the right to acquire a nationality” (Article 7).⁷⁶ The CRC further requires that “State Parties shall ensure the implementation of these rights in accordance with

⁷² 1961 Convention on the Reduction of Statelessness. United Nations High Commission for Refugees. (accessed 24 January 2019). https://www.unhcr.org/ibelong/wp-content/uploads/1961-Convention-on-the-reduction-of-Statelessness_ENG.pdf

⁷³ Draft Protocol to the African Charter on Human and Peoples’ Rights on the Specific Aspects of the Right to a Nationality and the Eradication of Statelessness in Africa. African Union. (accessed 24 January 2019). https://au.int/sites/default/files/newsevents/workingdocuments/34999-wd-pa22526_e_original.pdf

⁷⁴ Specialized Technical Committees are policy organs of the African Union in accordance with Article 5 of the Constitutive Act of the African Union; see further: https://au.int/sites/default/files/newsevents/conceptnotes/34999-cn-malabo_november_concept_note_for_extraordinary_stc-rev2.pdf

⁷⁵ Interview with Johanna Seidl, Citizenship Programme Coordinator, *International Refugee Rights Initiative*, 28 January 2019

⁷⁶ Convention on the Rights of the Child. United Nations Human Rights Office of the High Commissioner. (accessed 08 February 2019). <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.” Regionally, Uganda is a signatory of the African Charter on the Rights and Welfare of the Child.⁷⁷ Article 6 of the Charter notes that “(1) Every child shall have the right from birth to a name; (2) Every child shall be registered immediately after birth; (3) Every child has the right to acquire a nationality”. These provisions are reflected in Uganda’s domestic legislation, which states that “The State shall register every birth, marriage, and death occurring in Uganda” (1995 Constitution, Article 18). Uganda’s domestic framework is further supported by the Registration of Persons Act 2015, which upon its establishment of the NIRA, was designed to provide a national identification card and alien identification cards. The Act characterizes one of the key functions of NIRA as (b) “to register citizens of Uganda” (Article 5(b)) as well as “to register births and deaths” (Article 5(d)).⁷⁸ The Act also deems the free and compulsory registration of births through Article 28.

Despite the existing legal structures however, the process of ensuring all children are documented has proven to be one of immense complexity.⁷⁹ This can be attributed to lack of awareness among parents who do not differentiate between notifying of their child’s birth as opposed to acquiring a proper birth certificate, in addition to being unaware of how to access the services, which would grant their child documentation (despite them being free).⁸⁰ Although birth registration and documentation may pose minimal significance during the earlier course of a child’s life, the ramifications of not having documentation especially as a refugee, vary from the inability to eventually access both humanitarian and socio-economic resources (i.e. education and health care), in addition to more broader consequences like the risk of becoming stateless or being excluded from the opportunity to eventually access citizenship either in Uganda, or in their origin country should they repatriate.

4.4 Immigration and xenophobia

a. Equal Opportunities Commission Ruling on Uganda Multiracial Community

On the 15th of February 2016, a complaint was filed by Yasin Omar against the Attorney General of Uganda. The complainant is the chairperson of the non-governmental organization known as the “Multi-racial Community of Uganda” which is an organization that promotes the right of “half castes” in Uganda. The complaint was filed based on the allegation of various occurrences by which the so-called “half caste” community faces discrimination by the Ministry of Internal Affairs (MIA).⁸¹ As documented in the ruling, instances of discrimination happen when individuals attempt to apply for or renew passports and national

⁷⁷ African Commission on Human and Peoples’ Rights, *African Charter on the Rights and Welfare of the Child*. (accessed 10 February 2019). http://www.achpr.org/files/instruments/child/achpr_instr_charterchild_eng.pdf

⁷⁸ *Registration of Persons Act 2015*, Uganda Legal Information Institute, <https://ulii.org/system/files/legislation/act/2015/4/Registration%20of%20Persons%20Act%202015.pdf>

⁷⁹ Citizenship Rights in Africa Initiative, *Birth Registration of South Sudanese Refugee Children: The View from Uganda*, 2017. (accessed 10 February 2019). <http://citizenshiprightsafrika.org/birth-registration-of-south-sudanese-refugee-children-the-view-from-uganda/>

⁸⁰ *Ibid.*

⁸¹ The Equal Opportunities Commission, EOC Ref No. EOC/CR/010/2016, Yasin Omar [Complainant] Versus Attorney General [Respondent], 15 February 2016. (accessed 05 February 2019). http://www.eoc.go.ug/sites/equalopportunities/files/publications/yasin_omar_vs_attorney_general_ruling.pdf

identity cards. This allegation by virtue, suggests that the MIA is violating their constitutional rights to citizenship in addition to access to passports and national ID cards.⁸²

There were three main issues identified by the Tribunal requiring a legal judgment on the basis of whether discrimination did indeed take place. These include the following: 1) “whether the actions of the officials of MIA involved in the processing of the Passports and National Identity Cards amounted to discrimination of multi-racial individuals ordinarily known as half castes”, 2) “whether the actions of the said officials of the MIA amounted to violation of the Complainant’s and other members of the Multi-racial community’s right to citizenship”, and 3) “whether multi-racial communities may be accorded Affirmative Action in the political, social, and economic opportunities available to other Citizens of Uganda”.⁸³

The ruling confirmed that the accuracy of the evidence provided by the witnesses claiming discrimination by the MIA, noting “alarming discrimination against multi-racial individuals”.⁸⁴ The ruling called upon officials of the MIA to provide an equal opportunity for all Ugandans to apply for passports, and for MIA official to refrain from withholding passports due to the colour of one’s skin. Additionally, the case brought into question the right to access citizenship of Mr. Feher Ahmed Hamed, which ruled that he met all the legal requirements in accordance with Article 12(1) and 12(2) of the 1995 Constitution, in addition to Section 14 of the UCICA, and called the MIA to grant him citizenship by registration.⁸⁵ Furthermore, the ruling outlines the following legal framework, which the MIA should uphold in order to avoid the discrimination of multi-racial communities in Uganda: Articles 12, 20, 21(1), (2) and (3), 32 and 36 of the 1995 Constitution. It also called upon the MIA to “diligently perform the functions of the Directorate of Immigration and Citizenship as contained in Section 7 of the Uganda Citizenship and Immigration Control Act, Cap 66 as amended” and practice refraining from any personal bias and discriminatory practices.⁸⁶

b. Promoting positive social cohesion among refugees and Ugandan host communities

The GoU vows to maintain its refugee policies and is working on bridging the humanitarian and development nexus dedicated to the refugee response in order to promote resilience among Ugandan host communities and strengthen the socio-economic dynamics. Uganda is a pilot country for the Comprehensive Refugee Response Framework (CRRF),⁸⁷ which for Uganda encompasses five mutually reinforcing pillars. Pillar three more particularly focuses on resilience and self-reliance. It promotes development interventions for refugees and host communities through “livelihood initiatives, enhanced service delivery, and activities to promote peaceful coexistence.” Notably, this approach is tailored to support the protracted nature of forced displacement in Uganda by strengthening the capacities of institutions and local host communities through development interventions in particular, and by effect, positioning them to better respond to mass influxes of refugees into their districts. Currently, stakeholders in the Uganda refugee response are working to promote positive social cohesion between refugees and local host communities in order to sustain Uganda’s refugee policies and prevent xenophobic attitudes. It is important to bear in mind however, that the growing focus on expanding access to socio-economic resources as a means of locally integrating

⁸² Ibid.

⁸³ Ibid.

⁸⁴ Ibid.

⁸⁵ Ibid.

⁸⁶ Ibid.

⁸⁷ CRRF Global Digital Portal, Comprehensive Refugee Response Framework, Uganda. (accessed 02 February 2019). http://www.globalcrrf.org/crrf_country/uga/

refugees within the respective Ugandan host communities, while important, does that further mobilize the policy debate in actualizing a legally tangible path for refugees to access citizenship in Uganda—a pillar which continues to be widely overlooked.⁸⁸ Despite a sizable number of the country's refugees having lived in Uganda between twenty to forty years, the time they have spent in Uganda is not considered in relation to the country's citizenship laws.⁸⁹ Moreover, the popular opinion among Ugandan nationals proves mixed among those who have participated in a perceptions survey on the topic of refugees having the ability to access citizenship: it demonstrates that while 53 per cent believe that refugees should be granted citizenship, approximately 47 per cent oppose the idea.⁹⁰

5. Conclusion

If anything has become clear from this report, it is that the way in which Uganda currently regulates the acquisition and loss of citizenship reflects the impact of the colonial era and Uganda's history as a British Protectorate, as well as the formation of Uganda's government and institutions following its post-colonial era. It is equally important to acknowledge the legal debates and discourse challenging the boundaries of citizenship and belonging in Uganda as ever-changing as the Government works to institutionalize its policies and bridge legal theories with the practical approaches relevant to Uganda's contemporary context.

As this process continues to evolve, the objective of all stakeholders working to expand the access to citizenship should continue to embrace Uganda's ethnic and cultural diversity and support the progressive integration of Uganda's domestic citizenship laws alongside broader regional and international initiatives that support access to citizenship rights. Such efforts will ensure that citizenship does not remain symbolic, as it tends to throughout various African states. Rather, policies and practices should be spearheaded in a manner which continuously expand the right to belong to a nation, and that the social, economic, and legal benefits which are associated with the right to claim citizenship and maintain a tie to a State are enjoyed by all populations, and in this case, by all Ugandans.

⁸⁸ International Refugee Rights Initiative, *Uganda's Refugee Policies: The History, the Politics, the Way Forward*. October 2018. (accessed on 08 December 2018). <http://refugee-rights.org/wp-content/uploads/2018/10/IRRI-Uganda-policy-paper-October-2018-Paper.pdf>.

⁸⁹ International Rescue Committee, *Uganda: Citizens' Perceptions on Refugees*, June 2018. (accessed 10 February 2019) <https://www.rescue.org/sites/default/files/document/2858/ircuganda.pdf>

⁹⁰ Ibid.

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