Naturalisation as a “durable solution” for refugees

In the language of the UNHCR, there are three “durable solutions” to the situation of individuals who have crossed an international border seeking refuge from persecution or from civil war: voluntary repatriation, local integration in the country of first asylum, or resettlement in a third country. Although voluntary repatriation to their home country is in principle the best outcome for refugees, the reality is that for many refugees repatriation may not be possible because of continued insecurity in their home countries. Resettlement in a third country is only ever going to be possible for a small minority of those affected. Many refugee populations in Africa have lived in their countries of asylum for decades or generations, and better systems for local integration into the country of refuge are urgently needed.

Under international law, African states have a duty to promote such local integration. The 1951 UN Convention Relating to the Status of Refugees provides (Article 34) that states parties “shall as far as possible facilitate the assimilation and naturalisation of refugees” by such measures as expediting proceedings and reducing the costs of naturalisation. The 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa does not include a similar provision on naturalisation, though its requirement (Article II.1) that countries of asylum should use their best endeavours to “secure the settlement” of refugees who are unable to return home could be interpreted in the same way. Both conventions require countries of asylum to issue travel documents to refugees. Almost all African countries are parties to the UN Refugee Convention, and the great majority to the African Refugee Convention.

The UNHCR estimated in 2004 that there were approximately 2.3 million people living in sub-Saharan Africa in a protracted refugee situation—defined by the UNHCR to mean those who have been in exile for more than five years without immediate prospects for implementation of durable solutions. Since that date, under pressure both from donor governments to the UNHCR and from some of the countries of origin of the refugees, there have been efforts to

Footnotes:
333 Excluding only Comoros, Eritrea, Libya and Mauritius. Several countries have entered reservations to Article 34 of the UN Refugee Convention, including Botswana, Malawi and Mozambique, indicating that they did not accept any obligation to grant more favourable naturalisation rights to refugees than to other foreigners. List of participants at the UN Treaty Collection website https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=V-2&chapter=5&Temp=mtdsg2&lang=en, last accessed 24 September 2015.
335 Protracted Refugee Situations, Executive Committee of the High Commissioner’s Programme, EC/54/SC/CRP.14, 10 June 2004; Conclusion on Protracted Refugee Situations, No. 109 (LXI) – 2009, UNHCR ExCom Conclusions, 8 December 2009.
resolve some of these protracted situations by invoking the “cessation clauses” from the 1951 Refugee Convention, which set out the situations in which refugee status may properly come to an end.  

The cessation clauses have been invoked four times on the continent, relating to the situation in Sierra Leone (at the end of 2008), Angola and Liberia (in 2012) and Rwanda (in 2013). On invocation of the cessation clause, the refugees become simply foreigners with the same status (and requirements to regularise their status) as any other foreigner. The UNHCR thus enters into agreements with the countries of refuge and origin on measures for the voluntary repatriation or local integration of the former refugees; or for individual exemption from the cessation clause on the grounds of a need for continued international protection.

In practice, as the UNHCR puts it, with restraint: “progress has been rather modest in terms of local integration throughout the continent”. Though there are exceptions, such as Tanzania’s offer to naturalise long-term Burundian refugees (see box) and Senegal’s offer of naturalisation to Mauritanian refugees, there is often no possibility of converting refugee status into a more permanent legal status, whether that of permanent residence or nationality. Without nationality refugees may be unable to obtain schooling beyond primary school for their children or employment in the formal economy, and they are unable to vote or stand for election or public office in their adoptive country.

Very few, if any, African states provide for easier terms of access to nationality for refugees, despite their obligations under the African and international refugee conventions, and a move, prompted by lobbying from the UNHCR, towards greater ratification of the 1961 UN Convention on the Reduction of Statelessness. Few countries globally have adopted legislation to facilitate naturalisation specifically for stateless persons. A few countries provide in general terms that refugees who qualify under the normal rules

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336 These situations may be based on actions by the refugee himself or herself (such as voluntarily returning to the country concerned, or naturalisation in another country), but in cases where the reason for ending refugee status is that the situation in the country of origin has changed sufficiently to make return possible, there is a process for a statement to be made by the UNHCR and the authorities of the country in question that, as a group, refugees from that country no longer have a well-founded fear of being persecuted (though individuals may rebut the presumption). “The Cessation Clauses: Guidelines on their Application”, UNHCR, Geneva, April 1999; “Implementation of the Comprehensive Strategy for the Rwandan Refugee Situation, including UNHCR’s recommendations on the Applicability of the ‘ceased circumstances’ Cessation Clauses”, UNHCR, 31 December 2011.

337 United Nations Secretary-General, Assistance to refugees, returnees and displaced persons in Africa, report to the General Assembly, A/61/301, 29 August 2006.


may be assisted to obtain naturalisation.\textsuperscript{340} In Africa, only Malawi and Lesotho have explicit measures in their nationality law, providing for registration of stateless persons in some circumstances.\textsuperscript{341}

Even where the law appears to provide for naturalisation, it is not always interpreted as doing so: for example, Uganda adopted a groundbreaking new Refugee Act in 2006 to replace the tellingly named 1960 Control of Alien Refugees Act. Whereas the former legislation had excluded any period spent in Uganda from counting as residence for the purposes naturalisation, the new version simply stated that the normal law applied to the naturalisation of a refugee.\textsuperscript{342} While the 1995 constitution excludes refugees from the easier process of registration as a citizen for those born before independence, it delegates the provision of terms for naturalisation to legislation.\textsuperscript{343} The Uganda Citizenship and Immigration Control Act of 1999 provides no exclusion for refugees from the provisions on naturalisation, though the residence period required for anyone to naturalise is very long, at 20 years, and other conditions apply.\textsuperscript{344} Nevertheless, some remaining ambiguities (including the fact that persons born in Uganda of refugee parents or those who did not themselves “legally and voluntarily” immigrate to Uganda are excluded from the non-discretionary process of registration), have led Ugandan officials to interpret the law to mean that refugees may not naturalise. Forms and procedures used as of 2011 still referred to the long-repealed 1964 Citizenship Act.\textsuperscript{345} In 2015, the Constitutional Court confirmed the interpretation that refugees were not eligible for the easier process of registration, though it stated (but for technical reasons did not give a formal ruling) that they were eligible for naturalisation.\textsuperscript{346}

In 2007, Sierra Leone adopted a new Refugees Protection Act, which provides explicitly for the “facilitation of lasting solutions” and local integration of refugees but stops short of providing for naturalisation of long-term refugees and speaks, rather, of promoting voluntary repatriation or resettlement in

\textsuperscript{340} For example, Nigeria’s National Commission For Refugees, etc. Act, 1989, Article 17 states that “[s]ubject to the provisions of relevant laws and regulations relating to naturalisation, the Federal Commissioner shall use his best endeavours to assist a refugee, who has satisfied the criteria relating to the acquisition of Nigerian nationality, to acquire the status of naturalisation under such relevant laws and regulations”. Ghana has a provision that “[s]ubject to the relevant laws and regulations relating to naturalisation, the Board may assist a refugee who has satisfied the conditions applicable to the acquisition of Ghanaian nationality to acquire Ghanaian nationality”. Ghana Refugee Law, 1992 (PNDCL 305D), section 14.
\textsuperscript{341} Lesotho Citizenship Order 1971, Article 10; Malawi Citizenship Act 1966 (as amended to 1992), Section 18.
\textsuperscript{342} Control of Alien Refugees Act 1960, Art 18; Refugee Act 2006, Art. 45.
\textsuperscript{343} Uganda Constitution, 1995, Article 12(1), 12(2)(b) and 13.
\textsuperscript{344} Uganda Citizenship and Immigration Control Act 1999, section 16.
\textsuperscript{345} Walker, From refugee to citizen? Article 14 of the Citizenship and Immigration Control Act 1999, as amended 2009, provides for various categories of person to be registered as a citizen on application, including a person born in Uganda who has lived continuously in Uganda since 1962 unless neither parent nor any grandparent had diplomatic status or was a refugee; and a person who has legally and voluntarily migrated to and has been living in Uganda for at least ten years. The “legal and voluntary” caveat does not apply to naturalisations under Article 16, but in that case 20 years’ residence is required.
\textsuperscript{346} Centre for Public Interest Law Ltd and Salima Namusobya v. Attorney General, Constitutional Petition No. 34 of 2010, Judgment of 6 October 2015.
third countries.\textsuperscript{347} Ghana allows for refugees to naturalise according to the usual provisions of the law,\textsuperscript{348} though studies of long-term Liberian refugees in Ghana showed many difficulties in practice.\textsuperscript{349} Guinea-Bissau’s 2008 law provides for naturalisation of refugees to be facilitated.\textsuperscript{350} Other longer-standing laws that provide for naturalisation include Lesotho’s 1983 Refugees Act, which allows a refugee to apply for naturalisation after six years (the 12 months prior to the application and another five years). In Mozambique, the 1991 Refugee Act explicitly provides for naturalisation of refugees on the same terms as other foreigners.\textsuperscript{351} In Kenya, a Refugee Act adopted in 2006 finally brought Kenyan law largely into line with international standards of refugee protection, but the act did not give refugees the right to work, nor did it contain any explicit right to naturalise as a Kenyan citizen.\textsuperscript{352} Although a new constitution and citizenship Act adopted in 2010 and 2011 placed no barriers on access to citizenship, in practice Kenyan nationality remains virtually impossible to obtain for refugees.\textsuperscript{353}

Egypt, host to at least 250,000 refugees and asylum seekers in 2015,\textsuperscript{354} excluding approximately 70,000 Palestinians,\textsuperscript{355} fails to make any serious provisions for refugee integration. Refugees and their children do not qualify for Egyptian nationality, regardless of the length of their residence in the country, unless they are married to or have a parent who is an Egyptian national (see also the section on partial reforms on gender equality in North Africa on page 69). After the Palestinians in Egypt and elsewhere, the 150,000 Western Saharan refugees in Algeria constitute one of the largest and longest standing populations of unintegrated long-term refugees. They live in isolated refugee camps in Algeria, with no possibility of naturalisation; although they can obtain documents from the institutions of the Sahrawi Arab Democratic Republic, these give few rights and are not recognised by many countries. Those who remained in their homes face significant

347 Sierra Leone Refugees Protection Act, No. 6 of 2007, Part V, Article 23. However, the Act also annexes (among others) Article 34 of the UN Refugee Convention relating to naturalisation, which requires states parties to “facilitate the assimilation and naturalisation of refugees” and “ expedite naturalisation proceedings”. 348 “Subject to the relevant laws and regulations relating to naturalisation, the Board may assist a refugee who has satisfied the conditions applicable to the acquisition of Ghanaian nationality to acquire Ghanaian nationality.” Ghana Refugee Law (No. 305D of 1992), section 34(2). 349 Shelly Dick, Responding to protracted refugee situations: A case study of Liberian refugees in Ghana, UNHCR Evaluation & Policy Analysis Unit, EPAU/2002/06, July 2002. US Committee for Refugees and Immigrants, World Refugee Survey 2008. 350 The law reduces the period of residence required for naturalisation in Guinea-Bissau from 10 years to 7 years. Lei No. 6/2008, Estatuto do Refugiado, Article 34. 351 Jonathan Klaaren and Bonaventure Rutinwa, “Towards the Harmonisation of Immigration and Refugee Law in SADC” Migration Dialogue for Southern Africa (MIDSA), Report No.1, 2004, pp. 90–91. 352 Refugee Act, No. 13 of 2006. 353 Constitution of Kenya, 2010, articles 15 and 18; Kenya Citizenship and Immigration Act No. 12 2011, section 15, where the conditions include “has been a resident under the authority of a valid permit” (which may well not be obtained by an asylum seeker) and “has been determined, through an objective criteria, and the justification made, in writing, that he or she has made or is capable of making a substantive contribution to the progress or advancement in any area of national development within Kenya”. 354 An increase of more than 100,000 in five years, largely made up of Syrians. UNHCR country operations profile – Egypt, 2015, available at http://www.unhcr.org/pages/49e486356.html, last accessed 24 September 2015. 355 US Committee for Refugees and Immigrants, World Refugee Survey: 2009.
restrictions on their civil liberties, sometimes including the right to identity papers and travel documents.\textsuperscript{356}

Former refugees from countries where the cessation clauses have been invoked may be at particular risk of statelessness: no longer entitled to documentation as a refugee by the UNHCR or the national authorities of the host country, they may also face difficulties in obtaining recognition of the nationality of the country from which they (or their parents) originally fled, and if naturalisation is not available in the country of current residence they are left with no recognised nationality. In West Africa, at least 1,000 former Liberian refugees find themselves in this situation, as well as some Sierra Leoneans and Rwandans.\textsuperscript{357}

Following its transition to democratic government in 1994, South Africa adopted both a new Refugees Act and a new Immigration Act. These laws draw a clear distinction between asylum seekers, refugees and other migrants, and establish a bureaucratic apparatus for dealing with applications for refugee status. There are difficulties in practice, but South Africa’s system does provide for a transfer of status from refugee to permanent residence and then to naturalisation. After five years of continuous residence in South Africa from the date that asylum was granted, the Immigration Act allows for the granting of permanent residence to a refugee if the Standing Committee for Refugee Affairs provides a certificate that he or she will remain a refugee indefinitely.\textsuperscript{358}

The system has, however, struggled to cope. By 2012, around 65,000 people had been granted refugee status in South Africa; but there was a backlog of almost a quarter of a million people who had applied for asylum.\textsuperscript{359} Dual nationality restrictions introduced in 2010 for counties not permitting dual nationality could also pose problems for refugees seeking to naturalise, as did the requirement that the Standing Committee must confirm that the refugee will need asylum for the foreseeable future.\textsuperscript{360}

Ultimately, the countries that deal most effectively and humanely with long-term refugees are those with the most liberal naturalisation regimes for foreigners in general, in which special measures for naturalisation of refugees are not required because the existing system works and refugees can access this system. At the same time, especially for refugees who have been held in camps or settled in particular areas, there is often the need for specific measures to facilitate access to naturalisation procedures.


\textsuperscript{357} Manby, \textit{Nationality, Migration and Statelessness in West Africa}.

\textsuperscript{358} Immigration Act (No. 13 of 2002), section 27(d), read with the Refugees Act (No. 130 of 1998), section 27(c).

\textsuperscript{359} UN High Commissioner for Refugees, \textit{Statistical Yearbook 2012} (annexes, table 1).

NATURALISATION AS A "DURABLE SOLUTION" FOR REFUGEES

Burundian refugees in Tanzania

Tanzania is one of the African countries that has made the most positive efforts to grant citizenship to refugees, especially refugees it has received from Rwanda and Burundi over the years. In 1980, refugees who had come to Tanzania from Rwanda and Burundi in 1959 and during the 1960s were given the right to Tanzanian citizenship on a group basis in which normal application procedures and fees were waived. The large influxes of refugees to Tanzania from both Rwanda and Burundi in the mid-1990s, however, put a strain on this policy of integration. In 1996, as Rwandan refugees were driven back to their country from DRC, the Tanzanian army also herded more than 500,000 Rwandan refugees back across the border and the Rwandan border remained closed until 1998.

In 1998, a new Refugee Act was passed, incorporating the UN and OAU refugee definitions into national law, though still requiring refugees to live in designated sites; and, in 2003, a National Refugee Policy was adopted, which, however, still cast "local settlement" as a temporary solution. In May 2005 the government granted citizenship to the first 182 of around 3,000 Somali refugees of Bantu origin in Chogo settlement in the north-eastern part of Tanzania.

In 2007, Tanzania offered naturalisation to Burundian refugees resident in the country since 1972 and their descendants; of those eligible, 80 per cent, or 172,000 people, expressed their desire to remain in Tanzania, and the remaining 20 per cent were to receive assistance with repatriation from March 2008. However, the naturalisation procedure was then stalled when almost complete, leaving thousands in limbo; while thousands of others who had not applied for citizenship were expelled from Tanzania in 2013, even though many of them were likely entitled to recognition as citizens, based on their birth in the country. In 2014, the process of issuing naturalisation certificates resumed, with most of those who had been approved receiving their new documents during 2015.361