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EXPLORING THE MULTIPLE PARADOXES AND CHALLENGES OF UGANDA'S REFUGEE LAW, POLICIES AND PRACTICE

J. OLOKA-ONYANGO*

Abstract

Uganda has garnered considerable international praise for its 'open-door' policies on refugees. This is particularly the case against the backdrop of a global context of the growing phenomenon of states constructing physical and metaphorical walls against the phenomenon of migration, whether forced or voluntary. Nevertheless, such praise conceals a much more complex context of opportunistic strategizing, donor politics and regional geopolitical balancing. In sum, what is lauded as 'progressive' is much more problematic and nuanced, especially with respect to the issue of local integration (particularly for long-term refugees), voluntary repatriation and the management and funding of refugee support.

I. INTRODUCTION

Uganda occupies a prominent position in contemporary debates on forced migration. In a 2018/2019 *Global Appeal* to humanitarian actors, major donors and the international community, the United Nations High Commissioner for Refugees (UNHCR) made the following assertion:

The Government of Uganda has maintained open borders and has one of the most progressive refugee policies in Africa, promoting self-reliance of refugees and peaceful co-existence with host communities. However, it needs urgent and large-scale support to respond to this critical situation.¹

The statement encompasses several important elements, the most critical being the considerable praise heaped on the Government of Uganda (GoU). Underlying this statement are significant paradoxes or challenges, and even some silences. However, my concern in this paper is with

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¹ UNHCR, *Global Appeal, 2018-2019*, Geneva at 66 online: <<https://www.unhcr.org/publications/fundraising/5a0c05027/unhcr-global-appeal-2018-2019-full-report.html>>.

four elements which require deeper examination, both with regard to Uganda and in their relevance to the broader global migration context. The four core elements include: (1) the notion of keeping ‘open borders’ in a global context of consolidating geopolitical and conceptual barriers to migration, both voluntary and forced; (2) the paradox of pursuing ‘progressive refugee policies’ within a framework of regressive laws and state practices around the world; (3) the impact of striving for refugee ‘self-reliance’ and ‘peaceful co-existence’ with host communities against a backdrop of economic strife and structural violence; and (4) the challenge of securing ‘large-scale support’ in a context of donor dependency and endemic corruption.

This paper sets out to unpack these four paradoxes and challenges, especially when placed against the backdrop of the international legal regime that governs this area of scholarship as well as the recognition of the ‘durable solutions’ which Refugee Law offers as a palliative to the crisis of displacement. It also sets out to examine Uganda’s broader political economy.

In a bid to comprehensively address the refugee situation in the country, the GoU has introduced a slew of policies—variously described as ‘progressive’ by UNHCR and other observers. What exactly are these policies? And why are they described as ‘progressive?’ How do these policies relate to the broader political economy of African state reform and development in the 21st Century?² Finally, how can these policies be linked to the global issues of concern about migration and the treatment of refugees exemplified by the debates around the adoption of the Global Compact on Safe, Orderly and Regular Migration (GCM) and the Global Compact on Refugees (GCR)? All of these questions are particularly relevant to the present inquiry which seeks to understand not simply the genesis of these policies, but the wider context (and contradictions) within which these policies are sought to be implemented.

On first inspection, there is no doubt Uganda’s policies reflect a generally open-door approach to the plight of persons who are compelled by adverse circumstances to seek refuge outside their countries of origin. Yet, these policies also elicit many contradictions, paradoxes and challenges. Indeed, there has recently been much talk in government circles of abandoning some

² For a summary account of the development of Uganda’s refugee policies, see Lucy Hovil, *Uganda’s refugee policies: The history, the politics, the way forward*, (International Refugee Rights Initiative, October 2018), online: <<http://refugee-rights.org/wp-content/uploads/2018/10/IRRI-Uganda-policy-paper-October-2018-Paper.pdf>>.

of these policies.³ This threat reflects the heavy burden Uganda carries by hosting such a large population of displaced persons, but this threat needs to be tempered by the benefits (financial, reputational and in terms of regional and international political clout) that the Ugandan government accrues by playing this role.

In getting to better grips with these varied dimensions of the Ugandan paradox, this paper begins in Section II by outlining some of the international and regional aspects of the legal regime governing the situation of refugees. It supplements that background by addressing some of the most pertinent issues affecting refugee migration at the global scale, particularly the growth of restrictive and exclusionary practices aimed at stemming the flow of migrants especially from the geographical South. Turning more specifically to the case of Uganda, the examination probes the following specific policies and practices which have been enacted by the GoU in order to address the refugee situation in the country: (a) the policy of refugee settlement—incorporating the goal of refugee self-sufficiency and peaceful co-existence with the host communities; (b) the practice on urban (*self-settled*) refugees; and (c) the issue of long-term refugees. The paper concludes with an investigation of the challenges faced by the GoU in securing the resources necessary to address the situation, against the backdrop of the attendant vice of corruption and international *real politik* which has afflicted these efforts.

II. KEEPING BORDERS ‘OPEN’ IN THE CONTEXT OF INCREASING CLOSURE: UNDERSTANDING REFUGEE LAW IN AN AGE OF CLOSURE

Refugee Law is a branch of international law mainly enshrined in the 1951 Convention Relating to the Status of Refugees (the ‘Geneva Convention’), and with respect to the vast majority of countries in Africa, the 1969 Organization of African Unity (OAU) Convention Governing the Specific Aspects of Refugee Problems in Africa (the ‘OAU Convention’). Under the Geneva Convention, a refugee is defined as an individual who has a well-founded fear of being persecuted in their home country due to reasons of *race, religion, nationality, political opinion, or membership in a particular social group*.

While recognizing and adopting the same definition, the OAU Convention extends this individually-focused approach to embrace a much broader criterion that not only looks at the

³ See Franklin Draku, “Govt sets conditions for refugees” (September 5, 2019) Daily Monitor at 9, and Franklin Draku, “Uganda scraps ‘blanket’ refugee policy” (September 4, 2019) Daily Monitor at 6.

objective conditions of flight (*‘external aggression, occupation, foreign domination, or events seriously disturbing public order in either part or all of their country of origin or nationality’*), but also at the large numbers involved in such situations of exodus which ultimately militate against assessing the claims of each individual applicant seeking to enter the country. Hence, aside from situations which may involve the determination of the circumstances of a single individual, the OAU instrument acknowledges and accepts persons who may flee persecution or the broader situation in a country as a group.⁴ This is known as the *prima facie* approach to the determination of the status of a refugee, ‘... where an individual’s refugee status is recognised on the basis of a presumption of inclusion within the relevant refugee definition.’⁵

The law also provides three main solutions to the refugee situation. The first (and most desirable) is the *voluntary return* of a refugee to his/her/their country of origin (repatriation). It is premised on the idea that refugees are temporary migrants, only forced to move out of their home countries on account of the specific conditions of disruption which have taken place. Once those conditions have been resolved, it is expected the refugee will go back. The second is *resettlement in a 3rd country* different from the one in which they were originally hosted. The third is *local integration* into the host community, implying that the refugee becomes fully incorporated into the country to which they have fled extending up to the grant of full citizenship on an equal standing with the ‘natives’ of the host country. These three solutions appear straightforward and self-explanatory. However, each solution presents various tensions and contradictions that require deeper exploration.

The tensions and contradictions generated by forced displacement today are taking place against the backdrop of renewed international attention to the phenomenon of migration across borders and its varied implications for security, public health, employment and social protection.⁶ Two global compacts adopted at the end of 2018 exemplify this concern, *viz.*, the GCM and the

⁴ Marina Sharpe, *The Regional Law of Refugee Protection in Africa* (Oxford: Oxford University Press, 2018).

⁵ Tsion Tadesse Abebe, Allehone Abebe and Marina Sharpe, “After 50 years, Africa’s refugee policy still leads” (June 20, 2019) ReliefWeb, online: <<https://reliefweb.int/report/world/after-50-years-africa-s-refugee-policy-still-leads>>.

⁶ Although many today are concerned about the refugee/migration ‘crisis,’ this is a longstanding fear, one that resurges periodically. For the manner in which the ‘crisis’ was characterized in the 1980s/1990s, see Deborah Anker, “The Mischaracterized Asylum Crisis: Realities Behind Proposed Reforms” (1994) 9:4 AUILR 29 at 31-34.

GCR.⁷ Preceded by the 2016 New York Declaration on Refugees and Migrants,⁸ (sub-titled a ‘Comprehensive Refugee Response Framework’ or CRRF), the two documents represent the most recent attempt to develop consensus on a global action-plan to address an issue which has come to significantly impact international politics in the first quarter of the 21st century.

The GCM is largely devoted to increasing security by strengthening border controls, improving travel documents, collecting and sharing data, and using new technologies such as biometrics in order to track population movements and address criminal activities.⁹ On its part, the GCR is designed to ease pressures on countries that host large numbers of refugees; build refugee self-reliance; expand access to third countries for refugees through resettlement and other pathways of admission, and support conditions that enable refugees to return to their countries of origin.¹⁰

Although heralded as an ‘unlikely achievement’¹¹ and a major break-through in the area, both instruments are largely informed by an approach much more sensitive to the sovereign interests of nation-states and the desire to manage and contain what are perceived to be the ‘crises’ of refugees and migration than they are focused on the rights and interests of the migrants and the refugees themselves.¹² They also add nothing new in terms of the legal obligations of states, and yet so many countries are in abject violation of them. In fact, some commentators have argued that the Compacts positively undermine those obligations.¹³ According to Jubilut and Casagrande ‘... it seems that the Compacts were not designed to develop and/or expand international protection for forced migrants, not even as an indirect result; as it would require the adoption of different approaches from those chosen by the Compacts, especially a true grounding in human rights.’¹⁴

⁷ *Global Compact for Safe, Orderly and Regular Migration*, GA Res 73/195, UN GAOR 73rd sess, 60th Plen Mtg, UN Doc A/Res/73/195 (19 December 2018); *Intergovernmental Conference to Adopt the Global Compact for Safe, Orderly and Regular Migration*, UN Doc A/Conf.231/3 (30 July 2018), online: <<https://undocs.org/A/CONF.231/3>>; UNHCR, *Global Compact on Refugees* (2018), online: <<https://www.unhcr.org/5c658aed4.pdf>>. For broad commentary on the GCR and the GCM, see the special issue of the *IJRL* (2018) 30:4, online: <<https://academic.oup.com/ijrl/issue/30/4>>.

⁸ *New York Declaration for Refugees and Migrants*, GA Res 71/1, UN Doc A/Res/71/1 (19 September 2016).

⁹ Rey Koslowski, “International Travel Security and the Global Compacts on Refugees and Migration” (2019) 57:4 *International Migration*, 1-15, online: <<https://onlinelibrary.wiley.com/doi/full/10.1111/imig.12639?campaign=wolibraryview>>.

¹⁰ See UN Newsservice, “Global Compact on Refugees: How is this different from the migrants’ pact and how will it help people forced to flee?” *Reliefweb* (December 14, 2018), online: <<https://reliefweb.int/report/world/global-compact-refugees-how-different-migrants-pact-and-how-will-it-help-people-forced>>.

¹¹ Kathleen Newland, “The Global Compact for Safe, Orderly and Regular Migration: An Unlikely Achievement” (2018) 30:4 *IJRL* 657, online: <<https://academic.oup.com/ijrl/article/30/4/657/5281364>>.

¹² Fabio Perocco, “The potential and limitations of the Global Compact for Safe, Orderly and Regular Migration: A Comment” (2019) 29:1 *Torture*, online: <<https://tidsskrift.dk/torture-journal/article/view/112217>>. Despite that bias, the United States refused to sign on.

¹³ Emily E. Arnold-Fernández, “National Governance Frameworks in the Global Compact on Refugees: Dangers and Opportunities” (2019) 57:1 *International Migration*, online: <<https://doi.org/10.1111/imig.12643>>.

¹⁴ Liliana Lyra Jubilut and Melissa Martins Casagrande, ‘Shortcomings and/or Missed Opportunities of the Global Compacts for the Protection of Forced Migrants,’ (October 2019) *International Migration*, online: <<https://onlinelibrary.wiley.com/doi/epdf/10.1111/imig.12663>>.

What then were these Compacts designed to achieve? This is the question that will be the focus of attention in the following sub-section of the paper.

A. UNPACKING THE MORAL PANIC OVER INTERNATIONAL MIGRATION

The above recent developments on the international scene expose the considerable moral panic engulfing contemporary international relations. Migration is the time-tested bogeyman of not only national chauvinists, populist movements and conservative commentators and pundits in Western Europe and the USA,¹⁵ but also of moderate and left-leaning scholars, politicians and activists.¹⁶ Even African countries—governments and citizens alike—are not immune to these attitudes. Words such as ‘inundated,’ ‘crisis,’ and ‘burden,’ are much more likely to be deployed to describe the situation than ‘empathy,’ ‘sharing,’ or ‘inclusiveness.’ Furthermore, there is a tendency to collapse issues relating to migration with those concerning refugee movement. Needless to say, there is a clear distinction between the two concepts not only in law, but also in the conditions under which migrants and refugees decide to leave their homes and seek relief elsewhere. Regardless of these differences, the perception of the migration bogeyman is a self-fulfilling prophecy. Instead of invoking empathy, the stories and pictures of boatloads of migrants leads to a tightening of the measures to stop them from coming. As much as possible (and through whichever means deemed necessary) migration should be curtailed, especially that which moves in a northerly direction.

The net effect of the panic is to produce a veritable ‘race-to-the-bottom’ among many countries in terms of introducing asylum and immigration policies which grow increasingly restrictive.¹⁷ And the dominant perception today is that the crisis has reached breaking-point, with some scholars even projecting an ‘end’ to Refugee Law.¹⁸ Fortified physical borders signified by the construction of walls and electrified metal fences are being further circumscribed by legal and

¹⁵ Nayla Rush, “Avoiding the Quicksand of the Global Compact on Refugees: A nesting doll of international Commitments” (December 4, 2018) *Centre for Immigration Studies*, online: <<https://cis.org/Report/Avoiding-Quicksand-Global-Compact-Refugees>>.

¹⁶ Christian Dustmann, Francesco Fasani, Tommaso Frattini, Luigi Minale & Uta Schönberg, *On the Economics and Politics of Refugee Migration*, Discussion Paper No. 10234 September 2016, IZA DP No. 10234, online: <<http://ftp.iza.org/dp10234.pdf>>.

¹⁷ See Mathias Czaika, *The Political Economy of Refugee Migration*, University of Freiburg Department of International Economic Policy Discussion Paper Series Nr. 7 (January 2009), online: <<https://www.econstor.eu/obitstream/10419/47899/1/608199192.pdf>>.

¹⁸ David James Cantor, ‘The End of Refugee Law?’ (2017) 9:2 *J. Hum. Rights Pract.* 203-11. This is obviously not a new claim and has been made intermittently by several scholars across the board. See e.g., Carl Levy, ‘The Geneva Convention and the European Union: A Fraught Relationship’ in Joanne Van Selm, Khoti Kamanga, John Morrison, Aninia Nadig & Sanja M Spoljar-Vrzina, eds, *The Refugee Convention at Fifty: A View from Forced Migration Studies* (Lanham: Lexington Books, 2003) 129 at 131.

conceptual boundaries. For example, the Dublin Regulation adopted by the European Union (EU) in 1990,¹⁹ which is responsible for what has become ‘Fortress Europe’, and more recent developments in US law and policy under President Donald J. Trump.²⁰ Together, these actions have transformed the arena of immigration and refugee law into sites of contestation between individual human rights and state insecurities. Moreover, there is a marked inflection towards treating the phenomenon of migration (whether forced or voluntary) as belonging within the ambit of criminal law enforcement. These developments have produced ‘virtual’ borders that strive to ensure forced migrants remain largely in the regions from which they originate.²¹ Even for those who make it across the deserts and seas, the regime of rights, benefits and entitlements that they previously accessed are fast being demolished.²² Governments are even pulling back from rescuing migrants in perilous situations and accusing NGOs that step in of ‘colluding with smugglers.’²³

The migration bogeyman simply doesn’t hold up when subjected to critical scrutiny. Although the impression is given that migrants from the global South are ‘flooding’ the more affluent countries of the global North in search of improved economic opportunities and ‘free’ social services in Western Europe and North America in particular, the fact is much more movement takes place within the respective regions than across them. In other words, there is much more movement from south-to-south than there is across continents, i.e., south-to-north.²⁴

In terms of refugee ‘burdens,’ the vast majority of displaced populations do not leave their primary regions of origin, and indeed, a significant majority of them have no intention to do so. Nor are the numbers hosted by the countries in the South in any way comparable with those accommodated by Northern countries.²⁵ For example, countries of the global South hosted 21

¹⁹ Marit Bugge, “Obedience and Dehumanization: Placing the Dublin Regulation within a Historical Context” (2019) 4 J. Hum Rights Soc. Work 91, online: <<https://link.springer.com/article/10.1007/s41134-019-0090-v>>.

²⁰ See also Todd Scribner, “You are Not Welcome Here Anymore: Restoring Support for Refugee Resettlement in the Age of Trump” (2017) 5:2 JMHS 263. The most recent enactment by the Trump government denies migrants who cannot afford healthcare entry into the USA. See Agencies, “US immigrants will be denied entry if they can’t afford health care” (October 5, 2019) *The Guardian*, online: <<https://www.theguardian.com/us-news/2019/oct/05/us-immigrants-will-be-denied-entry-if-they-cant-afford-health-care>>.

²¹ See Chimène Keitner, “The Law and Politics of the ‘Shifting Border’” (September 2, 2019), Forthcoming, in Ayelet Shachar, *The Shifting Border: Legal Cartographies of Migration and Mobility*, Ayelet Shachar in Dialogue, Critical Powers Series, Manchester UP, 2020, online SSRN: <<https://ssrn.com/abstract=3446897>>.

²² Thalif Deen, “Treaty Violators Make Mockery of Refugee Convention” (July 23, 2019) InterPress Service, online: <<http://www.ipsnews.net/2019/07/treaty-violators-make-mockery-refugee-convention/>>.

²³ See ‘Blaming the Rescuers: Criminalising Solidarity, Reinforcing Deterrence,’ at: <https://blamingtherescuers.org/>

²⁴ Peter J. Croll, “Preface” in Clara Fischer and Ruth Vollmer (eds.), *Migration and Displacement in Sub-Saharan Africa: The Security-Migration Nexus II* (Bonn International Center for Conversion February 22-23, 2008) at 4, online: <https://www.bicc.de/uploads/tx_bicctools/brief39.pdf>.

²⁵ International Organization of Migration, *World Migration Report 2018* (IOM, 2018), online: <https://www.iom.int/sites/default/files/country/docs/china/r5_world_migration_report_2018_en.pdf>.

million refugees or asylum seekers in 2017, representing 83 per cent of the world's total number. The table below provides a more detailed snapshot of this reality:

TABLE 1
GLOBAL DISTRIBUTION OF REFUGEE POPULATIONS, 2017

REGION	REFUGEE NUMBERS	PERCENTAGE
Africa	6,300,000	24.26
Asia	14,700,000	56.62
Europe	3,500,000	13.48
Latin America and the Caribbean	420,000	1.61
Northern America	970,000	3.73
Oceania	70,000	0.26
GRAND TOTAL	25,960,000	100.00

*Source: United Nations Division of Economic and Social Affairs, Population Facts (December 2017; No.2017/15 at 3).*²⁶

Taken as a distinct category, 'developed countries' (which make the most noise about having to host refugees and conversely place the highest restrictions on their admission) accommodate only 16 percent of the global total, while 'Least Developed Countries' carry the burden of more than 33 percent.²⁷ Quite clearly, a 'burden' of only 970,000 refugees (representing 3.73% of the total) for a continent as large as North America is miniscule. Moreover, the resources which the countries of this region possess are much greater than those where the numbers taken in are much higher. However, this refugee 'bogeyman' is not improved by the media in much of the developed world where the general tendency is to be unsympathetic at best and outrightly hostile and xenophobically alarmist at worst.²⁸ There is also a manifestly racist impulse that feeds into these reactions. Thus, one needs to contrast the enthusiastic manner in which Ukrainian refugees were welcomed into European countries following the Russian invasion in early-2022, while simultaneously rejecting refugees of colour (mainly African) from the same country clearly

²⁶ UN Department of Economic and Social Affairs, "Population Facts" (December 2017) No.2017/5, online: <https://www.un.org/en/development/desa/population/publications/pdf/popfacts/PopFacts_2017-5.pdf>.

²⁷ UNHCR, *Global Trends: Forced Displacement in 2018*, online: <<https://www.unhcr.org/globaltrends2018/>>.

²⁸ See Jingrong Tong & Landong Zuo, "Othering the European Union through constructing moral panics over 'im/migrant(s)' in the coverage of migration in three British newspapers, 2011–2016" (2018) 81:5 *International Communication Gazette* 445.

demonstrated that the claims of a ‘flood’ are animated by an exclusionary bias.²⁹

The most visible result of the panic is the adoption of the strong-arm measures of curtailment, externalization and deterrence designed to prevent migrants from crossing over the seas and the borders and pouring into the northern ‘Nirvanas.’³⁰ Crowning these efforts has been suggestions of recourse to extra-legal means, such as the suggested shooting of migrants in the legs, and the construction of moats filled with alligators and snakes.³¹ The less visible but nevertheless similarly-motivated measures of containment find expression in the new financial initiatives in the global South, such as the Africa-Europe *Alliance for Sustainable Investment and Jobs* funded by the European Union.³² A charitable view of these measures will contend that they are designed to improve the business environment and conditions for investment on the continent.³³ Shorn of all subtlety, the gist of these efforts is the need to ensure that migrants and refugees remain ‘there’, and are convinced (read ‘coerced’) not to come over ‘here.’

B. UGANDA: A BACKGROUND NOTE

Against the preceding account of global angst about the issue of migration and the treatment of refugees, the lavish praise showered on Uganda by UNHCR is thus not misplaced. Indeed, the view of the country as one with ‘progressive refugee policies’ has long been the perception of a host of independent observers,³⁴ from humanitarian agencies to media houses including the BBC.³⁵ On the issue of refugee accommodation and protection, Uganda stands out in stark contrast to the vast majority of countries around the world as well as on the African continent.³⁶ With a total population of 1,331,565 in 2018, Uganda was host to the largest number of refugees on the continent and third-largest in the world.³⁷ The following table gives the top-ten refugee-hosting

²⁹ Phillip S.S. Howard, Bryan Chan Yen Johnson & Kevin Ah-Sen, “Ukraine Refugee Crisis Exposes racism and contradictions in the definition of human” (March 22, 2022) *The Conversation*, online: <<https://theconversation.com/ukraine-refugee-crisis-exposes-racism-and-contradictions-in-the-definition-of-human-179150>>.

³⁰ Bill Frelick, Ian M. Kysel & Jennifer Podkul, “The Impact of Externalization of Migration Controls on the Rights of Asylum Seekers and Other Migrants” (2016) 4:4 *JMHS* 190, online: <https://www.hrw.org/sites/default/files/supporting_resources/jmhs.pdf>.

³¹ See Michael Shear and Julie Davis, *Border Wars: Inside Trump's Assault on Immigration*, New York: Simon & Schuster, 2019.

³² European Commission, *Africa—Europe Alliance: A Political Declaration for a Stronger Partnership in Agriculture, Food and Farming*, (June 21, 2019), online: <https://ec.europa.eu/info/news/africa-europe-alliance-political-declaration-stronger-partnership-agriculture-food-and-farming-2019-jun-21_en>.

³³ Kandeh K. Yumkella, “How to end migration, unemployment in Africa” (September 24, 2019) *Daily Monitor* at 30.

³⁴ Moses Crispus Okello, ‘There are no refugees in this area’: Self-settled refugees in Koboko, Refugee Law Project Working Paper No.19, November 2005, at 3.

³⁵ See ‘The African Country that Welcomes Refugees,’ (September 23, 2019) *BBC News*, online: <<https://www.bbc.com/news/av/world-africa-49745896/the-displaced-the-african-country-that-welcomes-refugees?fbclid=IwAR0HfzOCKP593zNgxtdH7xI5ek7UyuyGyqzmrIEFjpRYasP3OrRlbGLP0fU>>.

³⁶ Hovil, *supra* note 2.

³⁷ Last updated August 31, 2019, online: <<https://ugandarefugees.org/en/country/uga>>.

countries in the world:

TABLE 2
TOP-10 REFUGEE HOSTING COUNTRIES IN THE WORLD (2018)

COUNTRY	NUMBERS
1. Turkey	3,700,000
2. Pakistan	1,400,000
3. Uganda	1,300,000
4. Sudan	1,100,000
5. Germany	1,100,000
6. Iran	980,000
7. Lebanon	950,000
8. Bangladesh	910,000
9. Ethiopia	905,000
10. Jordan	715,000

Source: UNHCR, *Global Trends: Forced Displacement in 2018*; Figure 6 and pp.17-20.³⁸

Simply going by the numbers, there is no doubt that Uganda's borders are relatively more 'open' than those of other countries in the region and around the world. The country has also produced a fairly bulky assortment of refugee and internally-displaced policies over the years, many of which have been adopted as international best-practice.

These circumstances are a result of both default and design. Uganda has had a long history of both receiving refugees as well as generating them. In the late 1930s and through the duration of the Second World War, the country resettled refugees from Poland, Italy, Germany, Austria, Romania, Bulgaria, Hungary, and Yugoslavia.³⁹ But despite the global acclaim for the country, Uganda has had a conflicted and complicated response to the phenomenon of forced displacement

³⁸ UNHCR, *Global Trends: Forced Displacement in 2018* (UNHCR 20 June 2019), online: <<https://www.unhcr.org/5d08d7ee7.pdf>>.

³⁹ S. Lwanga-Lunyiigo, 'Uganda's Long Connection with the Problem of Refugees: From the Polish Refugees of World War II to the Present,' Paper presented at the Makerere Institute of Social Research (20 December 1993), online: <<https://opendocs.ids.ac.uk/opendocs/bitstream/handle/123456789/5693/lwanga-lunyiigo-MAK-res.pdf?sequence=1&isAllowed=y>>.

in general and to the situation of refugees in particular.⁴⁰ As is the case in many countries around the world, the issue of the rights of refugees and especially their relationship to the notion of citizenship (in the widest possible definition of the term) has been a sharply contested one.

Uganda lies at the epicenter of the African crisis of displacement in more ways than one. This is because the country stands at the crossroads of a particularly volatile and conflict-prone region of the continent, with the two Sudans, the Democratic Republic of Congo, Somalia, Rwanda and Burundi all being major contributors to the large numbers of displaced in the region.⁴¹ Geography and location explain why the larger proportion of refugees in Uganda are ‘OAU refugees,’ i.e., those displaced by conditions of armed conflict and social disturbance involving the movement of large numbers within a fairly short span of time. And even though Uganda is now a prominent refugee-receiving country, in the 1970s and 1980s it was a major generator of them.⁴² Less than ten years ago, Uganda also had one of the largest populations of Internally Displaced Persons (IDPs) in the world, and although the numbers have decreased significantly,⁴³ the fault lines which produced them remain a significant element in the political economy of the country.⁴⁴ Such tensions come to the fore at different points in time and challenge the ostensibly ‘open’ approach of the country to the reception and accommodation of refugees and other categories of displaced individuals.⁴⁵

For several decades the country’s laws and policies governing refugees were mired in a framework dictated much more by restriction and ‘Otherness’ than by accommodation and inclusion.⁴⁶ That policy was amply reflected in the name of the law which was first enacted during the waning years of colonial rule. The 1960 Control of Alien Refugees Act (*a.k.a.* the ‘CARA’), whose name spoke volumes about its primary objective, pandered to a much-touted

⁴⁰ For a background see Z. Lomo, A. Naggaga and L. Hovil, *The Phenomenon of Forced Migration in Uganda: An Overview of Policy and Practice in an Historical Context*, Refugee Law Project Working Paper No. 1, June 2001, online: <<http://repository.forcedmigration.org/pdf/?pid=fmo:5898>>.

⁴¹ Zachary Lomo, Angela Naggaga & Lucy Hovil *The phenomenon of forced migration in Uganda: An overview of Policy and Practice in an Historical Context*, Working Paper No.1, June 2001, at 1-7.

⁴² Emmanuel Bagenda, ‘Uganda,’ in Zachary A. Lomo (ed.), *Marginalisation: The Plight of Refugees and Internally Displaced Persons in East Africa* (Kampala: Fountain Publishers, 2012) at 250-256.

⁴³ As at December 31, 2018, IDMC put the number of IDPs in Uganda at 32,000, down from a high of nearly 2 million at the peak of the war in the north of the country in the early-2000s. See Internal Displacement Monitoring Centre (IDMC), *Uganda*, online: <<http://www.internal-displacement.org/countries/uganda>>.

⁴⁴ Refugee Law Project, *Compendium of Conflicts in Uganda: Findings of the National Reconciliation and Transitional Justice Audit* (2014), online: <https://www.refugeelawproject.org/files/others/Compendium_of_Conflicts_final.pdf>.

⁴⁵ See Sián Herbert & Iffat Idris, *Refugees in Uganda: (In)Stability, Conflict and Resilience (Rapid Literature Review)*, (Birmingham, UK: GSDRC, University of Birmingham, April 2018), online: <http://gsdrc.org/wp-content/uploads/2018/07/Refugees_in_Uganda-Instability_conflict_and_resilience.pdf>.

⁴⁶ For an overview see William Onzivu, *The Basic Justifications for Protection of Refugees/Aliens under Ugandan National Law (Primary and Subsidiary Legislation), Policy and Practice*, (unpublished).

supposition that the closer the proximity of host communities to migrants the greater the hostility to their integration, especially to the grant of citizenship.⁴⁷ Uganda's constitutions of 1962 and 1967 affirmed the idea that citizenship was not available to any person who was the child of a refugee. This position was altered somewhat with the adoption of the 1995 Constitution, although the rule that a refugee can eventually become a citizen was hemmed in with numerous conditions, and by the continued reliance on the CARA as the main legislative frame of reference. Since 2006, Uganda's laws and policies have been progressively adjusted to become much more reflective of the general policy of open reception to refugees with the adoption of a new law on the issue followed by comprehensive regulations enacted in 2010.⁴⁸ As at the present writing, a new comprehensive refugee policy framework is under design.

In contrast to the CARA which so dominated Uganda's post-colonial regime, the 2006 Act ostensibly moved Ugandan refugee law from the 'archaic' to the 'modern.'⁴⁹ The new Act realigned the law to match regional and international instruments to which Uganda is party, overhauled the governing structures relating to refugees and '... injected new blood into the veins of the administrative policies and procedures for refugees.'⁵⁰ It also incorporated new principles with respect to gender-discriminatory practices and inserted several new provisions that are sensitive to female refugees and the rights of refugee children.⁵¹ Adopted in 2017, the main policy in operation today is the Comprehensive Refugee Response Framework (CRRF) encompassing five mutually reinforcing pillars, *viz*, (i) Admission and Rights; (ii) Emergency Response and Ongoing Needs; (iii) Resilience and Self-reliance; (iv) Expanded Solution and (v) Voluntary Repatriation.⁵²

In total, Uganda's laws and policies on refugees are indeed 'progressive' and forward-looking and the policy of self-supporting refugee assistance pioneered in the country has now been adopted globally (at least on paper if much less in practice).⁵³ Within certain limits

⁴⁷ Y-Y Xho, "How Refugees Drive Preferences for Citizenship Exclusion: Evidence from sub-Saharan Africa" *APSA 2014 Annual Meeting Paper*, online: <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2454409>.

⁴⁸ Statutory Instrument No.9/2010.

⁴⁹ Jamil Ddamulira Mujuzi, "From archaic to modern law: Uganda's Refugees Act 2006 and her International treaty obligations" (2008) 14:2 East Afr. J. Peace Hum. Rights 399.

⁵⁰ *Ibid.*, at 404.

⁵¹ Frank Ahimbisbwe, 'The Legal Status of Refugee Protection and State Obligations in Uganda,' (2016) 13:10 *US-China Law Review* 730 at 743-745.

⁵² Office of the Prime Minister, *The Comprehensive Refugee Response Framework (CRRF): What is the CRRF?*, online: <<https://opm.go.ug/comprehensive-refugee-response-framework-uganda/>>.

⁵³ After more than a decade of operation, the Refugee Act has also come under criticism. See Refugee Law Project, *Critique of the Refugees Act 2006* (June 7, 2019), online: <https://www.refugeelawproject.org/files/legal_resources/RefugeesActRLPCritique.pdf>.

refugees are allowed to work, they are given access to land, and they enjoy some freedom of movement within and outside their settlements.⁵⁴ The openness of Uganda's borders today can thus be explained by a combination of historical and geographical factors, undergirded by a heavy dose of *real-politik*. Political calculations are never far below the surface and sometimes these may undermine the otherwise progressive position the country has adopted towards what can only be described as an acute humanitarian crisis. Against this background, it is now possible to turn to a more critical assessment of the specific policies which Uganda has designed in its approach to the situation of refugees, revealing the paradoxes and contradictions that lie beneath them.

III. THE PARADOX OF MAINTAINING 'PROGRESSIVE' REFUGEE LAWS AND POLICIES

This section of the paper provides a more detailed examination of the progressive policies adopted by the GoU, the first of which relates to refugee settlements. This paper then evaluates the policy (or lack thereof) with respect to the situation of urban refugees, the majority of whom live in the capital city, Kampala, and concludes with the situation of long-term (so-called 'protracted') refugees.

A. SETTLEMENTS VERSUS CAMPS: ACHIEVING 'SELF-RELIANCE' AND 'PEACEFUL CO-EXISTENCE'

In contrast to the rather more typical 'camps' which are the dominant mode of housing refugees around the world, Uganda has chosen to accommodate refugees in 'settlements.' In the former (such as the famous Dadaab refugee complex in Eastern Kenya), severe restrictions are placed on the freedom of movement. Refugees are prevented from leaving the precincts of the area designated as a camp with severe penalties imposed for infractions. Coupled with such restrictions on movement, the livelihoods of the refugees are almost totally dependent on the host government and agencies providing humanitarian assistance. Lastly, the infrastructure of social services such as schools, hospitals and water are constructed within the camp boundaries and

⁵⁴ International Rescue Committee, *A New Response to the Protracted Refugee Crisis in Uganda: A Case Study of World Bank Financing for Refugee-Hosting Nations* (November 2018), online: <<https://www.rescue.org/sites/default/files/document/3286/ugandacasesstudyoct262018final-final-update.pdf>>.

largely oriented towards the exclusive use of the displacees.⁵⁵ As Ben Rawlence has pointed out in reference to his critique of Dadaab, 'Everything in Dadaab is 'donated by' or 'provided by' or 'funded by', as if to remind the refugees they have nothing of their own.'⁵⁶

Uganda's refugee settlements are designed to promote self-sufficiency distinct from the dependency that conditions in a camp will invariably nurture. As part of the efforts to achieve self-sufficiency, refugee families are allocated a plot of land (50 x 100 decimals) on which they are allowed to construct a shelter and engage in agricultural activities. Services relating to health, education, water and sanitation are brought nearer to the refugees and shared with the host communities. This strategy is designed to ensure that refugees can sustain themselves, and provides them with a higher degree of agency than if they were to be wholly dependent on humanitarian supplies, on the one hand, or on the largess of their hosts, on the other.

While the above scenario reflects the theory informing the establishment of settlements as opposed to camps, the practice is quite different especially when compared to the situation of self-settled refugees, i.e., those who decide not to go into the settlements and to forge individual solutions to their predicament. Hence, although not as severe as in the case of camps, settlement refugees are subjected to significant restrictions on their rights to free movement.⁵⁷ Those restrictions result from the combination of bureaucracy (securing permission from the settlement commandants in order to be allowed to leave the area); initial dependency on humanitarian support for daily sustenance which declines over time, and limited information regarding developments outside the settlements especially on account of their relative isolation, remoteness and distinct location.⁵⁸ Available resources are resultantly spread thin. The inevitable consequence is that refugees are faced with inadequate resources as well as unsupervised, and sometimes even absent, services. It also means refugees are left at the margins of assistance provision and protection as they may not be able to make the same demands on the authorities in the event of crop failure or

⁵⁵ Barbara Harrell Bond, one of the pioneer scholars of Refugee Studies described these as 'settlements' but they are more appropriately called 'camps.' See B.E. Harrell-Bond, *Imposing Aid: Emergency Assistance to Refugees*, (Oxford/New York/Nairobi: Oxford University Press, 1986) at 8-10.

⁵⁶ Ben Rawlence, *City of Thorns: Nine Lives in the World's Largest Refugee Camp* (London and New York: Picador, 2016).

⁵⁷ Nicholas Maple, *Rights at Risk: A thematic investigation into how states restrict the freedom of movement of refugees on the African Continent*, (2016) 281 Research Paper UNHCR: New Issues In Refugee Research <<https://www.refworld.org/pdfid/5857eb794.pdf>>.

⁵⁸ Refugee Law Project, *Refugees in Kyangwali Settlement: Constraints on Economic Freedom*, Working Paper No.7 (May 2002), at 6.

similar calamity.⁵⁹

The policy of self-reliance is undergirded by the goal of peaceful co-existence between the visitors and their hosts.⁶⁰ Through the provision of land, refugees are able to produce enough food for subsistence and in some cases even churn out a surplus.⁶¹ Others are touted as ‘model farmers’ acclaimed for turning the adversity of their circumstances into a boon. According to the minister in charge of disaster preparedness, refugees have been empowered to develop themselves since the adoption of the Comprehensive Refugee Response Framework (CRRF): ‘By the time they return to their countries, they should be useful human beings.’⁶²

However, the achievement of the GoU policy goal of ‘self-reliance’ on the part of refugees is not always followed by the ‘peaceful co-existence’ which is the desired end result of the same policy. While it is quite clear that self-sufficiency should be balanced with ‘peaceful coexistence’ the ends are not always what are initially envisaged. A particular problem arises when the refugees are perceived to be enjoying a marked advantage over the host community. As far back as 2003 (a point in time when the refugee population was less than one-tenth of what it is today), tensions over resource-sharing were already manifest.⁶³ More recently, politicians have called for a review of the open-door policy, arguing that it has left many Ugandans poor.⁶⁴ The government has not helped by sending out mixed signals on whether or not the policy is still in place or alternatively that it has been abandoned.

The problems in the policy of self-reliance are numerous. The first is the heightening of tensions between refugees and host communities. Such tensions are the direct result of the general poverty and vulnerability of both groups. Yet given the main resource over which they are fighting is land, increased competition met by scarcity of the resource on account of its finite nature can only produce such a result.⁶⁵ Furthermore, it was easier to allocate land when the numbers of refugees were relatively lower, but with more than a 10-fold increase in the numbers over an

⁵⁹Refugee Law Project, ‘UPR Uganda 2011: Refugees, Internally Displaced Persons & Transitional Justice Issues for inclusion in the Universal Periodic Review Report under the Refugee and forced migrants cluster,’ online: <<https://lib.ohchr.org/HRBodies/UPR/Documents/session12/UG/RLP-RefugeeLawProject-eng.pdf>>. [UPR Uganda 2011]

⁶⁰ *Supporting Uganda, ‘A Country of Open Door Policy for Refugees’: A Step Towards Humanitarian-Development Nexus* (June 20, 2018) JICA.

⁶¹ John Unzima, “Refugees feed citizens” (May 25, 2017) *New Vision* at 14.

⁶² Agnes Nantambi, “Refugee turns into model farmer at Panyadoli Camp” (May 21, 2019) *New Vision* at 12.

⁶³ See Emmanuel Bagenda, Angela Naggaga & Eliot Smith, *Land Problems in Nakivale Settlement and the Implications for Refugee Protection in Uganda*, Working Paper No.8, May 2003.

⁶⁴ Isabella Yvonne & Prossy Kisakye, “Oulanyah calls for review of open door policy on refugees” (July 19, 2019) *Daily Monitor*, online: <<https://www.monitor.co.ug/News/National/Oulanyah-calls-review-open-door-refugee-policy/688334-5201680-q9ci7az/index.html>>.

⁶⁵ Thijs Van Laer, *Understanding conflict dynamics around refugee settlements in northern Uganda*, (August 2019) IIRRI, online: <<http://refugee-rights.org/wp-content/uploads/2019/08/Understanding-conflict-dynamics-around-refugee-settlements-in-northern-Uganda-August-2019.pdf>>.

extremely short period of time, it is clear that such a generous policy is no longer feasible. The GoU's promises of compensation for the land allocations to the host community are not met. Intra-refugee conflicts are also a problem, some of them related to the tensions which led to their exodus in the first instance.⁶⁶ And of course cases of sexual and gender based violence abound, as does sexual abuse and exploitation. Even officialdom has not been spared, with reports being made of refugee attacks on the local police.⁶⁷

Finally, there are huge issues related to climate change and environmental despoliation.⁶⁸ The rates of forest depletion are much higher in the settlements and the surrounding territories than elsewhere.⁶⁹ Indeed, the source of most conflicts between refugees and host communities is the collection of firewood as described in a recent conflict-assessment report of the situation in one settlement:

Collection of firewood around Bidi Bidi is ad hoc, with undefined access rights to both communities. The daily negotiation triggers hostilities, tensions and perceptions of insecurity. Refugees must negotiate daily for access to gather firewood and biomass in the surrounding land. There are no formal land rights granted to the refugees, so there is a constant risk of violence, assault and extortion on an already traumatised population.⁷⁰

Numerous attempts have been made at reforestation and tapping alternative energy sources.⁷¹ However, the numbers and resources involved place severe limitations on the achievement of much change.⁷²

Social services such as health, education and water/sanitation are constructed in such a manner as to ensure that they are shared between the refugees and the host communities.⁷³ Nevertheless, equality of access does not always guarantee equality of outcome. A telling example

⁶⁶ See Bagenda *supra* note 43 at 272.

⁶⁷ Felix Wrom Okello, "South Sudan refugee shoots police officer" (October 14, 2019) Daily Monitor at 6.

⁶⁸ Tharanga Yakupitiyage, "Why Environmental and Humanitarian Action Must Be Linked" (September 27, 2019) IPS News Agency, online: <http://www.ipsnews.net/2019/07/environmental-humanitarian-action-must-linked/?fbclid=IwAR18UyoFM43T_zKFBY14kPDHhd3oNioD7S2yT2lQuSjGYJ8RIhJdhK5W-00>.

⁶⁹ Thijs van Laer, "Uganda needs more support to fight environment abuse at refugee camps," (June 20, 2019) Daily Monitor at 13.

⁷⁰ Irene Dawa, "Conflict Dynamics in the Bidi Bidi refugee Settlement in Uganda" (February 11, 2019) ACCORD, online: <<https://www.accord.org.za/conflict-trends/conflict-dynamics-in-the-bidibidi-refugee-settlement-in-uganda/>>.

⁷¹ See John Unzima, "Refugee turns to briquettes to curb conflict" (October 2, 2019) New Vision at 10, and Owen Wagabaza, "Refugees restore lost forest cover" (June 2, 2019) New Vision at 38.

⁷² Lalisa Duguma, Charles Ariani, Cathy Watson, Clement A Okia, Judith Nzyoka, *State of biomass resources in refugee hosting landscapes: The case of Rhino Camp and Imvepi Refugee Settlements in West Nile, Uganda*, Nairobi: World Agroforestry Working Paper No. 297.

⁷³ Wilson Asiiimwe, "Govt equips communities hosting refugees" (August 5, 2019) New Vision at 16.

can be drawn from the area of education. GoU policy on the area is designed to ensure that refugee children achieve at least a basic (primary) level of education.⁷⁴ However, such a goal has proven problematic, both on account of the numbers involved, but also of the capacity to provide literacy to refugee children in their mother tongues, many of which are not spoken in Uganda. It is not enough to make the policy stipulation of equal treatment of refugee children in terms of education when you are not addressing issues such as linguistic inclusion and post-traumatic stress. As a consequence, ‘... many would-be productive refugees are [forced] out of the education system, thereby condemning them to a miserable life of perpetual poverty in areas where they have no relatives to depend on. In the long run, these refugees become a burden to their host communities as they are forced into criminality and prostitution.’⁷⁵ Ultimately, therefore, the generality of the adopted policy leads to marked problems upon implementation. But what about when the policy is either deficient or non-existent, as is the case with self-settled or urban refugees?

B. GOU (NON)POLICY ON URBAN REFUGEES

Although urban refugees are relatively fewer than their rural counterparts (estimates put them at 8% of the total) the manner in which they are treated provides useful information and indicators as to the extent GoU’s progressive policies are universally-applicable. Uganda’s refugee policy is primarily directed towards rural refugees and refugee settlements. Indeed, all the refugee settlements in Uganda are located in the rural parts of the country. Both the location of the settlements and the agrarian means by which they are supposed to principally achieve self-sufficiency, feeds the assumption that most refugees come from rural areas and are thus much more comfortable in carrying out activities of an agricultural nature than they are towards commerce, the Arts or other intellectual endeavours. Such an assumption severely neglects the situation of urban (or self-settled) refugees.⁷⁶ Consequently, the absence of a cohesive government policy on urban refugees reflects on the broader bias of the government and humanitarian agencies that view the refugee crisis as a temporary one.⁷⁷

This mistaken assumption means refugees in urban centres, such as Kampala, are expected

⁷⁴ See Section 29(e), *Refugee Act*, 2006.

⁷⁵ Gonzaga Mbalangu, “Refugees: A giant sleeping under the weight of policy confusion” (August 7-13, 2019) *The Observer*, online: <https://observer.ug/viewpoint/61570-refugees-a-giant-sleeping-under-the-weight-of-policy-confusion-2>.

⁷⁶ Jesse Bernstein and Moses C. Okello, “To Be or Not to Be: Urban Refugees in Kampala” (2007) 24:1 *Refugee* 46.

⁷⁷ Michael Addaney, “A step forward in the protection of urban refugees: The legal protection of the rights of urban refugees in Uganda” (2017) 17:1 *AHRLJ* 218.

to be self-sufficient.⁷⁸ There is an absence of a policy framework by which the situation of urban refugees is guided. As a result, urban refugees are provided with only minimal protection by the state even if the Refugees Act 2006 does not categorize refugees according to location.⁷⁹ Essentially, if a refugee is not housed in a settlement, they are generally not entitled to any kind of assistance.⁸⁰ While field studies report that self-settled refugees enjoy a higher degree of agency and freedom than settlement-based ones, they continue to face numerous problems.⁸¹

Not being a resident in the settlement means self-settled refugees may encounter obstacles related to their personal identification documentation. They may also be the victims of official harassment.⁸² Services such as health care in the main referral hospitals and primary education in government schools are subsidized by the state and made largely available in the settlements. However, self-settled refugees and asylum seekers have to fend for themselves in this regard. Discrimination and poverty compound the difficulties they face. As a consequence, their children drop out of school at the primary level and many are unable to proceed up the educational ladder because of prohibitive costs.

Urban refugees tend to be individuals who have fled their home countries on account of circumstances peculiar to their individual attributes. In sum, they tend to be ‘Geneva’ (individual) as opposed to ‘OAU’ (group) refugees. These refugees also constitute the majority of applicants who apply for individual refugee status determination (RSD), placing them in a situation of limbo as they await conclusion of the process. Such category of refugees suffers considerably from the delays and the bureaucratic hurdles involved in this process. A number are thereby exposed to arrest, detention and even deportation as illegal immigrants if found without proper legal documents.

For urban refugees, the most important requirement is finding a means of livelihood in order to sustain themselves and their families. This would require being availed with the opportunity to work, and indeed, as one recent report points out, they are an ‘untapped source of

⁷⁸ Eveliina Lyytinen, “Congoese refugees’ ‘right to the city’ and urban (in)security in Kampala, Uganda” (2015) 9:4 J. East. Afr. Stud. 593-611.

⁷⁹ This situation is confirmed by the UNHCR six ‘Priority Outcomes,’ viz. 1. Refugee protection; 2. Emergency response; 3. Education; 4. Environment; 5. Livelihoods, and 6. Urban refugees. See UNHCR, *Country Refugee Response Plan of January 2019 to December 2020*, online: <<http://reporting.unhcr.org/sites/default/files/Uganda%20Country%20RRP%202019-20%20%28January%202019%29.pdf>>.

⁸⁰ See Refugee Law Project, ‘A Drop in the Ocean’: Assistance and Protection for Forced Migrants in Kampala, Working Paper No.16 (May 2005).

⁸¹ Refugee Law Project, *Free to Stay, Free to Go? Movement, Seclusion and Integration of Refugees in Moyo District*, Working Paper No.4 (May 2002) at 8-12.

⁸² Deborah Mulumba, “African Refugees: Challenges and Survival Strategies of Rural and Urban Integration in Uganda” (2010) 9:1 Mawazo at 220-221.

labour.’⁸³ Although allowed to remain and reside in the country while pursuing their applications for refugee status, asylum seekers’ right to work and to gainful employment is not automatic.⁸⁴ Unlike refugees in the settlements who require no formalities in order to engage in productive labour, their urban counterparts are required to obtain work permits from the Immigration Department as though they are simply aliens or economic migrants. Consequently, they face particular difficulties in accessing services such as education, healthcare, shelter and water.⁸⁵ Many employers are either reluctant to employ refugees and/or asylum applicants, and if/when they do, it is on extremely exploitative terms. On this basis, urban refugees are completely outside the loop of protection and support provided by the state.

C. THE PLIGHT OF LONG-TERM (PROTRACTED) REFUGEES

Although one of the most preferable solutions to the refuge situation is voluntary return to the country of origin, this may simply be impossible in certain instances. Resettlement opportunities for one reason or another may also not be available. This leads to a situation of long-term (or protracted) refugee caseloads.⁸⁶ Increasingly, the de facto situation of most refugees is that they are unlikely to be able to return home within a short period of time.⁸⁷ Two phenomena combined in Uganda to make the issue a problematic one. The first is the country’s long engagement with refugee populations given the history already recounted. The second is the common ‘once-a-refugee-always-a-refugee’ belief which has dominated policy considerations in Uganda for a considerable part of that history.

The consequences of that belief were first examined by a national commission established to reform Uganda’s constitution in the late-1980s/early-1990s. The Benjamin Odoki Commission Report observed that many refugees had come to Uganda in the late 1950s and not been able to return home, and had begun to regard Uganda as their country. Many children of these refugees were born in Uganda and only knew Uganda. Finally, the report pointed out that:

Among the children of refugees who have been longest here, there are some who

⁸³ See World Bank, *Informing the Refugee Policy Response in Uganda: Results from the Uganda Refugee and Host Communities 2018 Household Survey* (October 1, 2019), online: <<http://documents.worldbank.org/curated/en/571081569598919068/pdf/Informing-the-Refugee-Policy-Response-in-Uganda-Results-from-the-Uganda-Refugee-and-Host-Communities-2018-Household-Survey.pdf>.

⁸⁴ Refugee Law Project, ‘UPR Uganda 2011,’ *supra* note 60.

⁸⁵ *Ibid.*

⁸⁶ UNHCR regards protracted caseloads to be those of people who have stayed more than five years outside their home countries.

⁸⁷ See Arnold-Fernández, *supra* note 14.

may, in the broad sense, be classified as 'Stateless persons.' They are born here and their refugee parents died here. These people can claim, only in theory, their parent's citizenship on the grounds of descent. They are neither known nor their parents remembered in their countries of origin. In Uganda, however, they continue to be classified as refugees.⁸⁸

A new Constitution was adopted largely following the Odoki recommendations and a Constituent Assembly debate in 1995. Article 12(2)(c) of the 1995 Constitution now stipulates that citizenship by registration is available to '...every person who, on the commencement of this Constitution, has lived in Uganda for at least twenty years.' This provision was a compromise, as there were many in the Assembly who opposed this formulation because of the departure it made from the earlier position of never permitting a refugee to gain citizenship. Nevertheless, the compromise still reflected a latent chauvinism and xenophobia in the inordinate amount of time (20 years) for this category of individuals to qualify for citizenship.

Aside from individual refugees, there are groups of refugees who have lived in Uganda for decades. The archetypal representatives of this category are those who fled the Democratic Republic of Congo following the 1961 assassination of the country's first Prime Minister, Patrice Lumumba. Known as the 'Lumumbist Refugees' they have lived in the Kyaka Settlement of the western part of the country for nearly 60 years.⁸⁹ In addition, Uganda still has refugees from waves of armed conflicts in the Sudan, who arrived in the mid-1980s and in Rwanda, who came in the 1950s and 1960s as well as the early-1990s and have refused to go back. Despite the positive change towards the accommodation of refugees in Ugandan Constitutional Law, the struggle for the practical recognition of their rights under Article 12 has been a long one yet to be resolved. Persons who qualify under these provisions are routinely turned away for lack of passports and identification papers.

A 2011 petition⁹⁰ seeking an interpretation of the provisions of Articles 12 and 13 with respect to the eligibility of refugees to apply for and acquire Ugandan citizenship by registration

⁸⁸ Republic of Uganda, *The Report of the Uganda Constitutional Commission: Analysis and Recommendations* (Entebbe: UPPC, 1993) para 6, 101; p. 126.

⁸⁹ Charles Bafaki, *The Question of Protracted Refugee Case Loads in Uganda: A Case Study of the Lumumbist Refugees at Kyaka-2 Refugee Settlement*, Unpublished Master of Laws (LL.M) thesis, Makerere University, Kampala, 2015.

⁹⁰ *In re: Centre for Public Interest Law & Salima Namusobya v. Attorney General*, Constitutional Petition No.34 of 2010, online: <https://refugeelawproject.org/files/others/constitutional_court_ruling_on_refugees_eligibility_to_become_Ugandans.pdf>.

and/or naturalization was finally decided on October 6, 2015.⁹¹ The Constitutional Court declared that refugees were not entitled to citizenship by registration, but could apply for the grant of naturalization. The Court refused to compel the GoU to expedite the handling of outstanding applications for naturalization because there was no evidence they had been rejected or unprocessed. Needless to say, this presents eligible refugees with a veritable Catch-22. There are no formal written rejections issued by the authorities. Instead, applicants are simply turned away on being told they do not qualify to receive the application forms. In a court of law this presents a significant evidentiary problem and limits the chances of success because the case is based primarily on the failure of the state authorities to carry out a function they are mandated to do by law. In addition, citizenship by naturalization gives greater discretionary power to government officials, whose actions are still based on the old biased idea that once a refugee always one.⁹² To compound it all, Section 16 of the Uganda Citizenship and Immigration Control Act outlines the criteria which must be met in order for one to secure naturalization. This includes knowledge of a prescribed vernacular language or English, being of good character and the intention to permanently reside in Uganda. These are criteria which some refugees who meet the residency requirement may not be able to achieve.⁹³ Lastly, even though the 1995 Constitution allows both Ugandan women and men to confer citizenship on their children (which would be of benefit to the children of refugees who are married to nationals) the Equal Opportunities Commission has documented clear discrimination against this category of mixed-nationality individuals.⁹⁴

From the above, it is clear that the ghost of the 1960 CARA still hovers over the ability of refugees to acquire citizenship in Uganda.⁹⁵ Refugees simply can't seem to wash the mark of 'alien' off their foreheads. In effect, it means that several of those refugees who have lived in Uganda for more than 20 years have been rendered stateless given they are unable to access either the citizenship of the host country (Uganda), or be welcomed in their home countries having been

⁹¹ CREA, 'The Eligibility for Refugees to Acquire Ugandan Citizenship,' (March 22, 2016) Citizenship Rights in Africa Initiative Newsletter, online: <<http://citizenshiprightsfrica.org/the-eligibility-for-refugees-to-acquire-ugandan-citizenship/>>.

⁹² Samuel G. Walker, 'From Refugee to Citizen? Obstacles to the Naturalisation of Refugees in Uganda,' RLP Briefing Paper, online: <https://www.refugeelawproject.org/files/briefing_papers/Naturalisation_Of_Refugees.pdf>.

⁹³ Tigranna Zakaryan, *Report on Citizenship Law Uganda*, Robert Schuman Centre for Advanced Studies/Edinburgh University Law School, Country Report 05/2019 (May 2019) 21-22, online:

<https://cadmus.eui.eu/bitstream/handle/1814/62485/RSCAS_GLOBALCIT_CR_2019_05.pdf?sequence=1&isAllowed=y>.

⁹⁴ *Yasin Omar v. Attorney General*, February 15, 2016, The Equal Opportunities Commission, EOC Ref No. EOC/CR/010/2016.

⁹⁵ G. Cole, "'Refugees' Integration in Uganda Will Require Renewed Lobbying" (2014) 48 FMR 69, online: <<http://www.fmreview.org/faith/cole>>.

away for so long.⁹⁶ Needless to say, Uganda is quite reluctant to pursue the local integration of refugees, preferring to leave them in limbo or (in the event that there are willing takers) to support their resettlement to a third country. This problem is heightened by the recent introduction of national identity cards which has in effect created a whole category of *San Papier*, i.e., individuals-without-papers.⁹⁷ The absence of legal documentation has severely curtailed the kind and scope of legitimate activities in which refugees can engage, including owning a mobile phone which has evolved to become an essential commodity in the 21st century as it provides access to many amenities and services. In sum, of the three internationally-recognized solutions, i.e., voluntary return, resettlement and local integration, Uganda has remained obdurately hostile to the last of these. And yet, the first two are not always the most viable options on the table.⁹⁸ Resettlement is a solution driven as much by claims that are ‘humanitarian,’ as it is by considerations of *real-politik*.⁹⁹ In any event, it is an option which is largely outside the control of the Ugandan authorities.

But even with respect to the most-preferred option of voluntary return, the Ugandan government is not free of blemish, having been involved in incidents of expulsion and/or forcibly returning refugees and asylum seekers, particularly those of Rwandese origin.¹⁰⁰ Such returns have been conducted by the military and employ excessive force, coercion and deceit in order to get the refugees assembled in a single area. A number of deaths resulting from such forced repatriation have been reported.¹⁰¹ The forcible returns only came to a halt following the serious deterioration in the relationship between the two countries which recently culminated in the closure by Rwanda of its border. While talks have been underway seeking a resolution to the problem, they have been only partially successful and the forcible return of refugees by the Ugandan government has been put on hold. In the meantime, retaliatory actions involving expulsions and

⁹⁶ Bronwen Manby, *Statelessness and Citizenship in the East African Community*, (UNHCR, September 2018) 70-71, online:

<<http://citizenshiprightsafrika.org/wp-content/uploads/2018/11/Statelessness-and-citizenship-in-the-East-African-Community.pdf>>.

⁹⁷ See J. Oloka-Onyango, “From Expulsion to Exclusion: Revisiting Race, Citizenship and the Ethnicity Conundrum in Contemporary Uganda” (2017) 12:1&2 Mawazo 1 at 14-15.

⁹⁸ Lucy Hovil and Zachary A. Lomo, “Forced Displacement and the Crisis of Citizenship in Africa’s Great Lakes Region: Rethinking Refugee Protection and Durable Solutions” (2015) 31:2 *Refuge* 39, online: <<https://refuge.journals.yorku.ca/index.php/refuge/article/view/40308/36350>>.

⁹⁹ For a good analysis of these issues see Kristin Bergtora Sandvik, “On the Social Life of International Organisations: Framing Accountability in Refugee Resettlement” in Jan Wouters, Eva Brems, Stefaan Smis and Pierre Schmitt (eds.), *Accountability for Human Rights Violations by International Organisations* (Antwerp/Oxford/Portland: Intersentia, 2010) at 290-292.

¹⁰⁰ Frank Ahimbisibwe, *Rwandan Refugee Physical (In)Security in Uganda: Views from Below*, Working Paper/2017.03, University of Antwerp. Also see Frank Ahimbisibwe, *Voluntary Repatriation of Rwandan Refugees in Uganda: Analysis of Law and Practice*, University of Antwerp, Working Paper/ 2017.08, DOI:10.13140/RG.2.2.25363.37926.

¹⁰¹ See Refugee Law Project, ‘UPR Uganda 2011,’ *supra* note 60.

counter-expulsions of alleged ‘spies’ and ‘illegal immigrants’ continues.¹⁰²

IV. THE CHALLENGE OF SECURING ‘URGENT AND LARGE-SCALE SUPPORT’

Aside from the social, environmental and political costs which Uganda has assumed on account of its open-door refugee policy, there is a heavy financial outlay. In 2017, it was estimated that the cost for the protection and management of the refugee population in the country stood at US\$323 million a year.¹⁰³ The 2019 projections shot up to US\$927 million as a result of the revised budgeting after a change in planning assumptions and the increased influx of refugees in 2018 following resumed hostilities in South Sudan.¹⁰⁴ There are 110 organizations that provide services in the area including; 23 national NGOs, 74 international NGOs, 11 UN agencies and 2 bilateral development partners.¹⁰⁵ Funding is also required to deliver fundamental human rights to Ugandan refugees. Table 3 below provides a percentile break-down of the different sectors funded in the program, and the respective percentage outlays for each:

¹⁰² Charles Etukuri, “32 Rwandans Deported” (September 14, 2019) *New Vision* at 4.

¹⁰³ United Nations Development Program, *Uganda’s Contribution to Refugee Protection and Management*, UNDP (2017), online: <<https://data2.unhcr.org/en/documents/download/64687>>.

¹⁰⁴ Government of Uganda, *2019-2020 Uganda Refugee Response Plan: Coordination of the Refugee Response* (May 2018).

¹⁰⁵ *Ibid.*

TABLE 3
PERCENTAGE SECTORAL FUNDING OF REFUGEE NEEDS [2019-2020]

SECTOR	PERCENTAGE
Food Security	21
Livelihood & Resilience	15
Protection	14
Health & Nutrition	13
Education	12
Water Sanitation Hygiene (WASH)	9
Shelter, Settlement and non-food items (NFI)	8
Environment & Energy	7
Others	1
Total	100

Approximately 80 percent of this budget is met by external actors and development partners since the GoU is handicapped in meeting many of the needs involved in hosting such large numbers.¹⁰⁶ Although high-profile events have been held in which the issue of financing has been paramount, the results have not been particularly edifying; voluble promises are often met with strikingly-impecunious results.¹⁰⁷

However, beyond the question of resources *per se* there are two dimensions to the issue of financing the refugee crisis in Uganda which raise serious questions. The first of these is the manner in which such financing has been the subject of administrative vice and corruption. The second relates to an even more insidious problem, the GoU's policy with respect to third-country expellees.

A. CRISIS- AND HUMANITARIAN-RELATED CORRUPTION

Since President Yoweri Kaguta Museveni came to power in Uganda in 1986 he has pursued a double-pronged strategy of neo-liberal economic reform and strong-arm political control over a

¹⁰⁶ Moses Walubiri, "Refugees host communities receive sh555b" (July 15, 2019)New Vision, online: <https://www.newvision.co.ug/new_vision/news/1503573/refugee-host-communities-receive-sh555b>.

¹⁰⁷ See Monitor Report, "Kadaga slams donors over refugee cash" (August 8, 2019) Daily Monitor at 6.

country that witnessed years of instability during the decades of the 1970s and 1980s.¹⁰⁸ More than 30 years later, Uganda is a relatively secure haven of stability in a conflict-ravaged region of the continent. Uganda has also been a prominent actor in the War-against-Terror especially against the Al-Shabaab led rebellion in Somalia. The pursuit of such policies has provided particularly important leverage for Uganda in relation to its donors.¹⁰⁹ With only occasional criticism, Uganda's main donors turn a blind eye to the many democratic deficits which abound in the country. Among them are the various actions of both covert and institutionalized corruption in which agents of the government have been strongly implicated.

A major location of corrupt practices has been the Office of the Prime Minister (OPM) which is the main government agency designated with handling funds relating to humanitarian and emergency interventions by the government and its donor partners. The significant resources directed towards the refugee emergency over the years provide a particularly soft entry-point for graft and corruption. This is because of the large amounts and the emergency contexts in which such funds are released. Regular reports of vice and corruption in the office abound, and refugee funds have not been spared the caprice. Thus, in the most recent refugee-related scandal, US\$320,000 was misspent on a parking lot at the OPM. Another US\$11 million was spent to execute a recount of South Sudanese refugees in Uganda in a bid to weed out potentially hundreds of thousands of so-called 'ghost' refugees.¹¹⁰ Refugee numbers provide a prime target as they form the basis of all financial projections. Since the numbers are usually large and the influx happens in a situation of considerable chaos, the counting can be mired in serious confusion resulting in inflation and the creation of ghosts. Also targeted are funds for food, interpretation and sundry other requirements that come with the need to address any kind of humanitarian emergency. Despite the government condemnation and subsequent interdiction of the alleged culprits, very little has been done to bring them to book, confirming a mode of operation which has become a characteristic response to these kinds of issues; prosecutions have stalled and some of the interdicted officers have simply been transferred.¹¹¹

¹⁰⁸ Joshua B. Rubongoya, "'Movement legacy' and neoliberalism as political settlement in Uganda's political economy" in Jörg Wiegratz, Giuliano Martinello & Elisa Greco (eds.), *Uganda: The Dynamics of Neoliberal Transformation* (London: Zed Books, 2018).

¹⁰⁹ See Moses Khisa, 'Shrinking democratic space? Crisis of consensus and contentious politics in Uganda,' (2019) 59:3 *Commonw. Comp. Politics* 343, online: <<https://www.tandfonline.com/doi/full/10.1080/14662043.2019.1576277?src=recsys>>.

¹¹⁰ Rodney Muhumuza, "Uganda: As Refugee Influx Persists, UN Cites Funding Gap" (September 12, 2019) Associated Press, online: <<https://news.yahoo.com/uganda-refugee-influx-persists-un-111650347.html>>.

¹¹¹ Benjamin Jumbe, "Refugee Cash: Donors ask government to punish culprits" (October 31, 2019) Daily Monitor, online: <<https://www.monitor.co.ug/News/National/Refugee-cash--Donors-ask-government-to-punish-culprits/688334-5330664-w0ed26/index.html>>.

While the corruption of the state is a major factor in the debacle, this does not mean that UNHCR (as with many other international agencies) is free from any vice.¹¹² Indeed, veritable claims have demonstrated that the agency is overly bureaucratic and wasteful and that its objectives are often overlapping and uncoordinated.¹¹³ Individual officers have been implicated in scams over procurements, the resettlement of refugees, sexual harassment and other forms of sexual and gender based violence, as well as blatant conflicts of interest.¹¹⁴ And yet, the monies need to continue flowing given that Uganda is such a key player in the overall framework of success stories in this area.

In this respect, external humanitarian assistance occupies a prominent position in the overall trajectory of the governance and corruption paradigm in Uganda. The fact is donor support operates to subsidize governmental inefficiency.¹¹⁵ Over ten years ago Mwenda and Tangri argued that the high levels of donor support to the country provided the government with public resources used in unaccountable and nontransparent ways to sustain patronage, a crucial factor in the political longevity of the Museveni regime.¹¹⁶ Such calculations have a critical role to play with respect to a recent development within the refugee conundrum in Uganda, the case of deported third-country asylum seekers and rejected refugees.

B. RIDING ON THE BACKS OF THIRD-COUNTRY EXPELEES

This paper has already unpacked the global context and the way the migration bogeyman has been deployed in the countries of Western Europe and North America to justify the adoption of more restrictive and even discriminatory policies to stem the flow. There are two dimensions to this issue. The first is the rise in financial and investment schemes on the continent designed to ensure prospective migrants change their minds about crossing the oceans. Related to this is the emergence of so-called ‘first country of asylum’ policies wherein refugees are refused entry into a country on account of having passed through another country before arriving in the final country where they apply for consideration. Both of these raise a number of problematic issues with

¹¹² Rose Ampurira, “OPM, UNHCR Abused Refugee Funds—Report” (June 26, 2019) Red Pepper 6-7.

¹¹³ Awira Anthony, *Analysis of the Performance of United Nations High Commission for Refugees (UNHCR) in Uganda, 1995-2000*, Unpublished Bachelor of Statistics (B.Stat) dissertation, Makerere University, 2003 at 36.

¹¹⁴ Cecilia Okoth, “Government queries donors over refugee funds” (September 4, 2019) New Vision at 3.

¹¹⁵ See Jonathan Fisher, *International Perceptions and African Agency: Uganda and its donors 1986-2010*, unpublished University of Oxford Doctor of Philosophy (DPhil) degree, 2011.

¹¹⁶ Andrew M. Mwenda & Roger Tangri, “Patronage Politics, Donor Reforms, and Regime Consolidation in Uganda” (2005) 104:416 *African Affairs* 449, online: <<https://doi.org/10.1093/afraf/adi030>>.

respect to the obligations of states towards refugees, and especially with respect to the doctrine of *non-refoulement*—the binding legal obligation that each state undertakes not to forcibly return a person who has fled persecution to their country of origin.

However, there is a much more odious development taking place which involves clandestine agreements that developed countries are entering into with governments in the global South to take on asylum seekers who have been denied refuge in their countries. In these agreements, African governments accept rejected asylum seekers even if they are not their citizens, usually for a fee or for some other kind of material incentive. One of the best-known, but least edifying actions on the part of the Ugandan government has been the agreement to take in refugees from other African countries (mainly Somalia, Eritrea and Sudan) who initially fled to Israel seeking refuge. However, on reaching Israel these individuals who have well founded fears of persecution not only encountered a hostile reception, but they are also denied refugee status.¹¹⁷ The Israeli government had found a novel solution to upholding their non-refoulement obligations; instead of sending these refugees back home, deport them to another African country. As a consequence, Uganda received at least 1,749 of these kinds of deportees from Israel between 2014 and March 2018.¹¹⁸ Although the Ugandan government initially vigorously denied these transfers and the receipt of any monetary incentive for playing host to these kinds of refugees, government officials eventually acknowledged that such a deal was actually in place. Money is paid as part stipend for the deportee and part ‘resettlement costs’ for the government. There are also others who according to one report ‘... are being brought into the country in a method akin to trafficking.’¹¹⁹

In this situation, an individual may ask: What’s the problem with this arrangement, since at the end of the day, the asylum rejects from Israel are eventually given refuge? The problems associated with the practice are numerous. In the first instance, Uganda is acting as an accomplice in a clear illegality because Israel is violating the first principle of voluntary repatriation, which is that they must actually be *voluntary*. Stories abound of refugees being forcibly loaded onto planes, shackled down and transported to third countries. But even where they have ‘voluntarily’ agreed

¹¹⁷ International Refugee Rights Initiative, *I was left with nothing’: ‘Voluntary’ Departures of Asylum Seekers from Israel to Rwanda and Uganda* (September 2015) online: <<https://www.refworld.org/pdfid/55ee8c3a4.pdf>>.

¹¹⁸ Although denied by the government, allegations point to the receipt of between US\$2,000 and 3,000 per refugee. See “Uganda Finally Accepts to Resettle Sudanese, Eritrean Refugees Deported from Israel” (April 13, 2018) *Softpower News*, online: <<https://www.softpower.ug/uganda-finally-accepts-to-resettle-sudanese-eritrean-refugees-deported-from-israel/>>.

¹¹⁹ Bart Kakooza, & Emmanuel Mutaizibwa, “Stateless: Eritreans secretly moved to Uganda” (July 8, 2019) *Daily Monitor* at 32.

to leave, the premises on which they depart turn out to be false. As Amnesty International has reported,¹²⁰ once in Uganda they discover that the promises of the Israeli government are empty: ‘Instead of being granted a residence permit, as promised, they were in an irregular migration status, leaving them at risk of detention and forcible return to their country of origin and without the possibility to work.’¹²¹

Israel’s motives on this matter are clear, even if patently racist, xenophobic and fed by the migration bogeyman that we have argued is the bane of international relations in the 21st century. Uganda’s reasons are more complex. On the face of it they would seem to be a reflection of the country’s well-established practice as a liberal and accommodating host country for refugees far and wide. A deeper examination of the reasons why GoU accepts to be an accomplice to what is a manifestly illegal and ethically dubious practice will demonstrate that they are primarily designed to bolster Uganda’s stature as a friendly and reliable partner in addressing the security and safety concerns of Western countries plagued by the migration bogeyman.¹²² By absorbing unwanted refugees (expellees) from countries like Israel, the Ugandan government leverages the political capital thereby gained in order to ensure it remains in power. It also doesn’t hurt that there are financial incentives to boot even though many Western donors are wary about direct subventions to the government. Thus, the Uganda government has specifically complained about the diversion of external donor assistance from OPM to non-governmental organizations in the wake of the many corruption scandals which have affected the office.¹²³

V. CONCLUSION

The preceding analysis provided a very broad overview of the various policies the Government of Uganda has adopted in addressing the influx of refugees into the country. On the whole (and particularly in comparison to several other countries around the world) Uganda’s policies are generous, accommodating and respectful of the international and regional legal instruments to which the country has ascribed. Nevertheless, the heavy burden in terms of finances,

¹²⁰ See Amnesty International, *Forced and Unlawful: Israel’s Deportation of Eritrean and Sudanese Asylum Seekers to Uganda*, 18 June 2018, Index number: MDE 15/8479/2018, see Table 5 at 27-28, online:

<<https://www.amnesty.org/download/Documents/MDE1584792018ENGLISH.PDF>>.

¹²¹ *Ibid.*, at 28.

¹²² Jonathan Fisher, “When it pays to be a ‘fragile state’: Uganda’s use and abuse of a dubious concept” (2014) 35:2 TWQ 316.

¹²³ Cecilia Okoth, “Government queries donors over refugee funds” (September 4, 2019) *New Vision* at 3.

infrastructure and environmental destruction have seen the rise of a backlash that calls into question whether those policies are sustainable.

Indeed, there have been several official expressions of dissatisfaction with the open-door policy of the GoU. At the end of the day, such discontent would amount to the GoU wielding its own Damocles' sword—threatening to be much less altruistic unless there is a material benefit to be made from the hosting of refugees. Of course, in this fight between the two elephants (i.e., the GoU and its developed country benefactors) it is the 'refugee grass' which suffers.