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From Expulsion to Exclusion: Revisiting Race, Citizenship and the Ethnicity Conundrum in Contemporary Uganda

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Abstract

Post-independence Uganda history is pock-marked with the expulsion of both citizen and non-citizen minority and migrant communities. While the best known of such was the Asian expulsion of the early-1970s, large numbers of Kenyan Jaluo and Rwandese indigenous and migrant communities suffered a similar fate. Although the phenomenon of expulsion has ceased to be deployed as a tool of government policy and action since accession to power by the National Resistance Movement (NRM) government in 1986, this article argues that various forms of exclusionary practice have been subtly deployed as a means to achieve similar objectives, that is, the marginalization and discriminatory treatment of communities who allegedly have no claim to indigeneity. Such exclusion is manifest in the very manner in which a citizen of Uganda was defined in the 1995 Constitution and its relevant schedules as well as in recent developments around the recognition of dual citizenship, the treatment of long-term refugees, and the law and practice on national identity cards.

Key Words: Citizenship; expulsion; exclusion; migration; indigeneity; identity.

Introduction: A Political and Etymological Exploration

The word "expulsion" has several synonyms. A simple Thesaurus search will give you the following among them: "eviction," "removal," "ejection," "discharge," "throwing out," or "kicking out". For each of the three decades after independence Uganda witnessed large-scale expulsions of different ethnic communities all of whom could lay legitimate claim to citizenship rights (Manby, 2009: 96-108). First were the Luo-Ugandans of Kenyan origin in the late-1960s expelled by

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the Obote I government on account of nationalization policies adopted as part of the "Move-to-the-Left" strategy of the time (Ryan, 1973; Kashambuzi, 2013).

Following in its wake and given much more attention, in the Media and in scholarly works, was the forced mass departure of Asian-Ugandans compelled to leave by Idi Amin in 1972 (Twaddle, 1975; Singh, 2012). Finally, the second Obote government expelled Banyarwanda – both indigenes and migrants – in the 1980s (Mamdani, 2001: 160-170; Mushemeza, 2007).[1] In each instance, the expulsions were a political attempt to re-define the notion of citizenship in direct response to a specific crisis.

Since the National Resistance Army/Movement's (NRA/M) accession to power in 1986, Uganda has not witnessed any expulsions of a similar scale in the last three decades. Nevertheless, there is one other synonym for the word "expulsion" relevant to the inquiry in this article. It is the word "exclusion," which also means the same thing as the words "distinction," "restriction," "segregation," or "preference". Although Uganda has stopped expelling those entitled to citizenship, the phenomenon of exclusion is very much alive and well. And even though several attempts have been made to resolve the 'National Question' in the country since 1986, Uganda's citizenship waters remain highly troubled. While the mechanism of expulsion may have been eliminated from the scene, Uganda has instead moved to a systemic embrace of various elements of exclusion as policy.

In light of the above developments, this article sets out to explore the manner in which exclusion from the full benefits of citizenship has marked out the framework for the assertion of social and political entitlements in post-1986 Uganda. To achieve this goal, the article begins by deconstructing the citizenship paradigm as it has been developed in Uganda's varied constitutional instruments. It then moves on to focus in particular on the issue of citizenship-by-birth and the phenomenon of "indigenousness" which was introduced by the 1995 Constitution. This article examines naturalization and dual citizenship in detail, while the remaining parts of the paper consider the impact of the introduction of national identity cards and concludes with a consideration of the situation of refugees.

Unpacking the Citizenship Conundrum

Following several years of research, the compilation of a report and a draft constitution which was extensively debated in a Constituent Assembly (CA), Uganda's 1995 Constitution ostensibly represented a final resolution of the citizenship issue (Barya, 2000). Although the topic of citizenship subsequently moved off the radar of political debate in the country, over the years

it has become clear that the 1995 Constitution simply added another dimension of complexity to the matter. Two recent events returned the citizenship question to a more prominent position in the discussion about the character and the future of the country. The first was the passing of a law which introduced compulsory national identity (ID) cards for the first time in Ugandan history. The second consisted of a process of attempted constitutional amendment directed, in the main, at elections scheduled for 2016 but drawing in additional matters during the course of the debate. The question of citizenship was especially of concern in the case of those Ugandan minority communities such as Ugandan Asians and Ugandans of Somali origin who have lived on the margins of vulnerability and discrimination for decades (AAA, 2015; Mulondo, and Sekanjako, 2015:7). The omission of migrant minorities from the general state polity continued to be a matter of concern, not simply as a question of identity, but more importantly as a matter of inclusion and non-discrimination.

But what exactly do we mean by the term "citizenship?" Uganda's 1995 Constitution – particularly the interpretation section in Article 257 – does not actually have a definition of the word. Nevertheless, in political science and legal scholarship, the phenomenon of citizenship has been defined as pertaining to a person who under the constitution and the laws of a particular state is a member of the political community with corresponding rights and duties (Mowoe, 2008: 257). General international law basically recognizes two routes to citizenship, namely the *Jus soli* (or the "right of the soil"), which is, the right of any person born within the territory of a state to the nationality or citizenship of that state. The second is the *Jus sanguinis* (or the "right of blood"), which is, the right to citizenship retraceable to one's parents, racial origins or ethnicity.

Over the last few decades we have seen the emergence of a third, so-called stakeholder *Jus nexi* principle otherwise described as the 'rootedness' or the 'earned citizenship' principle (Bauböck, Perchinig, and Sievers, 2007; Bauböck, 2006; Shachar, 2009). In many respects this is a combination of the first two principles. For example, in Germany, and elsewhere in Europe, migrant workers can become German citizens if they have worked for five years or more in Germany and have satisfactorily passed citizenship and language tests and other requirements. However, requirements differ from one country to the next and continue to change over time.

What the above summary indicates is that despite the above broad categorizations, there are no universal laws for citizenship. Instead, each country determines the specific manner in which it confers the right to citizenship, although in most cases it is a combination of soil and blood. The determination of citizenship is thus contingent on the socio-cultural,

political economy, and geographical location of a country. Needless to say, citizenship is also related to history. Thus, citizenship in Britain today is a far cry from what it was under the British Empire, or even what it was a bare twenty years ago (Karatani, 2003).[2] The only universal rule in the law governing citizenship – although not a rule universally observed and upheld – is that nobody should be rendered stateless, that is, no person should be deprived of a citizenship that they legitimately possess (Milbrandt, 2011). Given that the global number of stateless persons currently stands at 10 million, it is quite alarming how badly this principle is observed in the breach (Milbrandt, 2011: 75-104). The number of such persons listed as residing in Uganda is put at zero (0) by UNHCR (2015) although this is a government estimate, and needs to be treated with some degree of skepticism.

In an age of globalization and transculturalism, it is necessary to adopt an entirely new mode of looking at citizenship which takes into account the dynamic transformations taking place within a specific polity and within the wider economy. Redie Bereketeab argues that most African states are in a situation of transition where the fixed identities and features of statehood and nationality are undergoing fundamental change: "The characterizing features of the state of transition are rural (traditional), urban (modern) and transnational (post-modern), which require a complex set of approaching and perhaps defining citizenship and identity in a more complex and nuanced manner" (Bereketeab, 2012: 34).

For the above reasons, a second look at the issue of citizenship is necessary, surfacing its varied complexities and offering some pointers as to what needs to be done in order to address the prevailing situation of exclusion and discrimination. In the case of Uganda those complexities are apparent in the debate about citizenship by birth.

Citizenship by Birth and the Story of 'Schedule 3'

Uganda's independence Constitution adopted in 1962 provided that one could become a citizen if born in Uganda before independence day (9 October 1962) and was a citizen of the United Kingdom or a British protected person, provided that at least one of his/her parents was born in Uganda (Article 7.1). It also made provision for those born outside Uganda if their father (not mother) was a citizen (Article 7.2). The instrument also provided for citizenship by registration (Article 8) and citizenship through marriage by a non-Ugandan woman to a Ugandan man but not the reverse (Article 11). It barred dual citizenship (Article 12). Persons born in Uganda after independence day were entitled to citizenship provided that they were not the child of a diplomat or the son or daughter born of "… an enemy alien and the birth occurs in a place then under occupation by the enemy"

(Article 9). The 1967 Constitution basically continued with the same formulation.

Matters changed considerably with the 1995 Constitution which established the following categories: (i) citizenship by continuation; (ii) citizenship by birth; (iii) citizenship by presumption (covering the case of foundlings, that is, children with no parents); and (iv) citizenship by registration or naturalization. Unlike the previous instruments, the 1995 Constitution attempted to link citizenship by birth to the concept of indigenousness, which could be regarded as a reformulation of the connection between citizenship and "the soil." Thus, 56 communities were listed in Schedule 3, marking those communities that were "existing and residing" within the borders of Uganda as at 1 February 1926. The date signified that historical point in time when the current territory of the country was finally settled. Instead of simplifying matters, this reformulation made matters more complicated in several ways. To understand why the law changed, it is necessary to have an appreciation of the sociopolitical developments that led to the adoption of this new formulation.

The first radical change to the idea of citizenship emerged within the vortex of the civil war of the 1980s. It revolved around the question of rights of participation in Luwero triangle where the NRM/A set up its main base of operation. The central organ of the NRA/M was the resistance councils and committees (RCs) designed as structures of local governance consisting of elected (as opposed to appointed) representatives of the community charged with oversight of communal security and social well-being (Oloka-Onyango, 1989). The RCs were noted for two important developments, first, the elimination of the colonial office of chieftaincy and secondly, for the introduction of a formula of participation linked to residence as opposed to one based on descent. What mattered was not where one came from but whether one was making a contribution to the place in which they resided or laboured. In the words of Mahmood Mamdani, the NRA/M arrived at a new notion of rights that would, "…include within its fold the entire working population of Luwero, whether indigenous or immigrant. It did this in practice by redefining the basis of rights from descent to residence: all adult persons had the right to belong to a council in their place of residence" (Mamdani, 1996: 208).

Once the NRA/M came to power, it imposed a moratorium on the operation of political parties, preventing them from actively participating in the existing governance matrix, arguing that they were sectarian and had negatively contributed to Uganda's social and political turmoil. Instead, the NRA/M established what it described as a "no-party" system of democracy (Kasfir, 2000). The RC formula of elections to the lower levels of government was thus applied throughout the country in a

bid to expand the democratic franchise. Indeed, marginalized communities such as women, the youth and people with disabilities were given reserved places on the councils and committees conferring on them a sense of inclusion for the first time. Nevertheless, this act produced a backlash against migrant communities most prominent of whom were the Banyarwanda who had traditionally been the subject of exclusion and discrimination in earlier times, but were instrumental in aiding the NRA/M take power (Mushemeza, 2007). The 'Banyarwanda Question' was underscored in the debate when a large section of the NRA/M formed the Rwandan Patriotic Army/Front (RPA/F), invaded neighbouring Rwanda and triggered that country's worst genocide.

The growing backlash against the Banyarwanda and other marginalized migrant communities was reflected in the report of the Uganda Constitutional Commission established by the government in 1988, led by Justice Benjamin Odoki, to review the 1967 Constitution and make recommendations on a new instrument for democratic debate and adoption. During the course of traversing the country and collecting views of the broader population, the issue of citizenship was a matter of obvious concern. In considering matters to be taken into account when drafting the new constitution, the Odoki Commission pointed to the ethnic and religious diversity that was a "…dominant feature of Ugandan society," and as a consequence noted:

> The institutions and systems of governance that we evolve must be sensitive to this diversity. For governance to gain legitimacy, all social groups must feel they belong to and are involved in it. The new Constitution must ensure social participation. Differing social perceptions of governance must be accommodated. The peculiarities of communities should not be suppressed as long as they do not go counter to the essential principles of democracy and human rights (Republic of Uganda, 1993, para.3.73, at 70).

Specifically regarding qualifications for citizenship, the report isolated three broad categories of opinion, namely: (i) those who wanted it restricted to the indigenous people of Uganda, defined as one "… able to trace origins to the third or fourth generation of grandparents in Uganda and who can indicate ancestral burial grounds and land within Uganda"; (ii) those who favoured a definition which met "international standards" but defining it in such a way that "… ordinary people can understand them (the laws) well and be able to identify who is or is not a citizen"; and (iii) a "sizeable number" who wanted "… all people who have been in Uganda for a long time and wish to become citizens to be allowed to do so."

The report drew on the colonial determination of Uganda's ethnic composition in 1959 which listed 50 indigenous groups and their "core areas" of residence as the basis for draft article 41(a), which stated:

> The following persons shall be citizens of Uganda by

> birth – Every person born in Uganda either of whose parents or grandparents is or was a member of any of the indigenous communities existing within the borders of Uganda as at the first day of February, 1926 and set out in the Second Schedule of this Constitution.

But the draft constitution which was produced by the Odoki Commission and sent to the Constituent Assembly (CA) for debate introduced considerable confusion into the matter when it listed only 48 of the 50, leaving out the Barundi[3] and Tesio.[4] To further complicate matters, by the time the 1995 Constitution was promulgated, three other indigenous groups that had been listed in 1959, namely the Abwor (Labwor), Akwa (Nyakwai) and the Oropom had also been left out (meaning only 45 groups listed in the 1993 Draft Constitution made it to the Third Schedule of the 1995 Constitution). Furthermore, another eleven groups had been added to these 45, ultimately making a total of 56 indigenous groups listed in 1995. The additional eleven were the Babukusu, Babwisi, Bafumbira,[5] Bagungu, Banyabindi, Banyara, Baruli, Basongora, Batagwenda, Ethur and Nyangia. The basic reason for most of these later additions was their need (or wish) as minorities, to secure a separate identity from the larger nationalities they were originally a part of. The Basongora, for example, were carving their identity out from the larger Batoro, the Baruli from the Baganda[6] and the Bafumbira from the Banyarwanda (Barya, 2000). It is not clear whether the Batagwenda were carving their identity out from the Batoro or the Banyankore but in any case, they were also seeking to split away from a larger group they were perceived to be part of. The list was again expanded by the Constitutional Review Commission chaired by Prof. Ssempebwa which was set up in 2003 (Republic of Uganda, 2003, para.11.6.2 pp. 11-158), and yet again by Parliament in the debate over the amendment of the constitution between the years 2005 and 2006. Indeed, nine new groups made an appearance on the list, meaning that as of today, Uganda's constitution lists 65 so-called indigenous groups.[7] Not only are some of the groups listed still the subject of serious contestation, but the manner in which some of them were clearly manufactured raises many questions.[8] Undoubtedly, given this record, if there is a subsequent debate over the constitution, the groups in Schedule 3 will inevitably rise.

Related to the manner in which the list was compiled, the second problem with the list is that the words "indigenous communities" are not defined in the interpretation section of the constitution. Without a clear definition then it becomes a purely political matter.[9] And this is exactly what happened with a number of groups on the list. They were simply politically manufactured with no sound rationale, or indeed, previous recognized existence. There was really no objective basis on which Schedule 3 was constructed (Manby, *op.cit.*, 55-56).

The preceding analysis demonstrates a number of things, first of all, that the idea of indigenousness within the framework of the citizenship debate in Uganda was essentially a political invention or a social construction. The history demonstrates that the concept is indeterminate, highly selective and irrational. Furthermore, it undermines the fact of social pluralism and diversity which is the face that Ugandan society has embraced today. Indeed, the notion of indigenousness as enshrined in Schedule 3 simply serves to alienate and differentiate (Ndahinda, 2011: 55-116).

But, as if the process of recognition/determination of indigenous communities is not enough, there remain problems even for those groups, for example, the Banyarwanda and the Nubi who are included in Schedule 3 with individuals in both categories being denied some of the basic elements of citizenship such as a passport and more recently ID cards.[10] The treatment they receive is clouded by suspicion and differentiation from the other Schedule 3 groups, not simply in the disparaging language used to describe them, but also in the practice of the Ugandan state and society at large.

There is a further complication to Schedule 3 in that there are communities which are not listed but who actually meet the 1926 cut-off point of Ugandan state formation. These can be divided into two, *viz.*, those of "African" (continental) origin, such as the Somali, and those who come from outside the continent such as the Asian-Ugandans (Bayindi) as well as Arabs such as those from the Gulf of Aden, particularly Yemen. Members of both groups have been denied the benefits of citizenship because of their "suspect" origins. A third category consists of mixed-race Ugandans (so-called *Bachotara*). Irrespective of how these individuals seek to assert their birth-right (via father or mother), the issue of their citizenship is very often the subject of contention.

As the Constitutional Commission noted in its report and Barya (2000) reiterates, the majority of Ugandans tend to confuse citizenship, as a legal term, with its sociological connotation of nationality which is more concerned with ethnicity and race in relation to a particular place of abode of long habitation. There is consequently a widespread view that "core" citizenship (by birth) ought to be restricted to persons whose roots are anchored in the ethnic groups that have inhabited Uganda (as its present borders stand) since "time immemorial." Logically this means only black ethnic communities can be such citizens and this would make Ugandans of Asian, Arab, Somali, or mixed origin, "not Ugandan enough." In the words of the Constitutional Commission:

> From the views submitted it became clear that some Ugandans find it difficult to conceive the idea that a person from, for example, India or Germany or even any other African country can be considered truly as a

> Ugandan citizen. Such people believe that a citizen must be *a child of the soil, whose ancestors have lived in Uganda from time immemorial. They tend to associate citizenship with the country where one's umbilical cord was buried and where one's ancestors lived, died and were buried. It becomes difficult for them to believe that a person may choose to leave his/her country of origin and become a citizen of another country. In their view, such a person would be either a citizen of convenience or, for that matter, a temporary one.*[11] (Emphasis added).

A number of responses can be made to the above view. In the first instance, and as already noted, the concept of indigeneity as propounded by the 1995 Constitution is based on political considerations, and is irrational, not to mention discriminatory. The situation is made worse by the fact that citizenship is a critical pre-qualification in order for one to engage with different aspects of the social and political milieu in Uganda. Thus, only a citizen by birth may be President or Vice President according to the Constitution, and there are several other public offices reserved only to citizens by birth. Finally, there are varied ways in which different Ugandans are treated depending on the kind of citizenship you hold.[12]

Schedule 3 introduces a discriminatory aspect to citizenship that is dependent on indigeneity, race and ethnicity. It also increases the burden of proving one's "authenticity" especially if one falls outside the schedule or is the offspring of a mixed heritage. Hence, many mixed race Ugandans (so-called *'Bachotara'*) are still viewed with skepticism despite having some of the links of descent envisioned by the third schedule. If you have roots of descent in the third schedule then you have an inalienable right to be a Ugandan that does not accrue from favour or depend on the blessing of other people or the state. However, if your roots are elsewhere, any citizenship you may have is viewed more as a privilege or permission than a full right, or as the Constitutional Commission put it above, you are viewed as 'a citizen of convenience' or a 'temporary one'. The result is that citizens who have been alienated in this fashion must find ways of gaining "legitimacy".

To further complicate matters, not all those who fall within the same category are treated the same. Thus, there are people within the excluded communities who are able to access the benefits of citizenship without a problem (especially those with economic and political access) while others are not able to (primarily because of a lack of economic and political access). Such intra-group discrimination marks the emergence of the phenomenon that can only be described as "citizenship-by-investment" or "citizenship-by-corruption". Those who are economically or politically well-connected are enabled to access citizenship. If not, then the right is denied wholesale or the alternative is to pursue citizenship via naturalization, a process which has its own distinct set of challenges.

At the end of the day, the legal import of citizenship – which ought to be upheld for a variety of reasons – has largely been substituted with a biased sociological conception whose very foundation (misplaced notions of racial or ethnic identity) serves to discriminate and exclude rather than unite all who are collectively entitled to the bundle of rights which flow from being a part of the modern state of Uganda.

Naturalization and the Issue of Dual Citizenship

The second category of citizenship is provided by the routes of registration and naturalization. Article 12 of the 1995 Constitution provides that such citizenship is open to any person born in Uganda who is neither the child of diplomats or refugees and has continuously lived in Uganda since independence. It is also open to spouses (of at least three years) and legal voluntary migrants (of at least 10 years). Finally, Article 12(c) states that such citizenship shall be open to: "every person who, on the commencement of this Constitution has lived in Uganda for at least twenty years." There is a key difference between citizenship by birth and that acquired by registration or naturalization. It is that while the former confers irrevocable rights, the latter is laced with contingencies and disabilities. Citizenship by registration or naturalization is also revocable by the state.

However, by examining the process through which one becomes a naturalized citizen – from the documentation required to the bureaucracy that needs to be overcome – it becomes very clear that the process was calculated to frustrate rather than accommodate; to discriminate rather than incorporate. In short, it was designed to exclude rather than to include.

Against all the above-listed problems associated with citizenship-by-birth and naturalization, the issue of citizenship should have achieved better resolution with the adoption of the phenomenon of dual citizenship. This is because dual citizenship considerably reduces the previous questions of concern around allegiance and identity and represents an acceptance that possession of the citizenship of more than one country is not necessarily a contradiction (Sassen, 2000: 191-208). As Kapur points out: "In the closing years of the twentieth century, dual citizenship, once an anathema for nation-states, has become increasingly accepted as countries react to international migration and seek to maintain ties with their migrants, presumably to reap economic and political benefits" (Kapur, 2010: 268).

Despite vehement opposition to the idea in the Constituent Assembly debate in the early 1990s, by the time of the Ssempebwa Commission in 2001, opinions had changed, such that it became one of the main recommendations adopted on the issue of citizenship (Republic of Uganda, 2003; para.11.7 at 11-159). Following the constitutional

amendment in 2006, a law to give effect to the provision on dual citizenship was thus adopted.[13] In line with the recommendations of the Ssempebwa Commission, parliament passed the law outlining the circumstances under which such citizenship can be acquired.

Once again however, the ugly head of nationalism, chauvinism and outright discrimination found its way into the provisions of the law. Thus, the law contains a slew of conditions attaching to dual citizenship, among them, adequate knowledge of any prescribed vernacular language in Uganda or of English or Swahili; satisfaction of the Citizenship Board that the applicant has not been in Uganda as a refugee or as a diplomat, and that he or she possesses rare skills and capacity for technology transfer.[14] It also includes the stipulation that a person be of sound mind. To cap it all the cost of acquisition of such citizenship has been placed at US$400.

Although the rationale for the conditionality introduced in the law is quite clear, it flies in the face of contemporary realities existing on the ground. First of all, most countries around the world are generally moving towards the adoption of a dual track mode of citizenship, and most of them do so without any pre-conditions. Previous arguments around allegiance and security no longer hold much water where the concept has been adopted because it implies that one can have more than one allegiance unless the issue is put to the test such as in a situation of war (Sejersen, 2008: 523-549). However, to design policy on the basis of exceptional instances is simply wrong. Indeed, an empirical analysis conducted in 2009 demonstrates that most countries do not apply any restrictions for dual citizens in respect of political participation and the taking of political offices (Blatter et al., 2009). Only the radical Republican "Birther" movement in the United States had a problem with ex-President Barack Obama's dual Kenyan and American heritage, making the persistent claim that he was not born in the USA (Smith & Tau, 2011). Of course, several Ugandan leaders, most prominently Idi Amin and incumbent Yoweri Museveni have been alleged to have "foreign" roots. Despite these concerns, the bar against dual citizens holding certain public offices in Uganda is overly-broad and ultimately irrational.[15]

Secondly, the provisions of the law indicate that the notion of dual citizenship was clearly targeted at a certain category of Ugandan – diasporan (preferably domiciled in English-speaking Western countries); affluent or economically well-resourced, and skilled. Given the widespread nature of the Ugandan Diaspora and the conditions in which the exodus took place, many of them simply do not meet the conditions imposed by the law, and may have been raised in countries where they were unable to learn English or any of the "prescribed vernacular languages" that the law stipulates. Finally, the stipulation in the law

regarding possession of a "sound mind" is a clear violation of the rights of persons with disabilities.[16] It reflects an outdated perception of mental disabilities and also denies citizenship on grounds that are clearly discriminatory.

The Refugee Question

As is the case in many countries around the world, the issue of the rights of refugees and especially of their relationship to the notion of citizenship has been a sharply contested one in Uganda. While Uganda has been a country which has both hosted and produced considerable caseloads of refugees, it has had a conflicted and complicated response to the phenomenon.

International law provides for three durable solutions to the refugee situation. The first (and most desirable) is the voluntary return of a refugee to their country of origin (repatriation). The second is resettlement in a third 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. In contrast to Tanzania, for a long time Uganda adopted the position "once a refugee always a refugee." Such was the case in Uganda right from independence and was an attitude amply reflected in official policy, especially through the Control of Alien Refugees Act (the "CARA"). Although a 1960 enactment, this law remained on the statute books until 2006. It reflected a well-known fact that the closer the proximity of host communities to migrant refugees, the higher the degree of hostility to their integration, especially to the grant of citizenship by birth (Xho, 2014). Indeed, both the 1962 and 1967 constitutions affirmed the idea that citizenship was not available to any person who was the child of a refugee.

The first challenge to this notion came with the Odoki Commission Report. The report observed that many refugees had come to Uganda in the late 1950s and had not been able to return home, and had thus began to regard Uganda as their country. Furthermore, many children of these refugees had been born in Uganda and only knew Uganda. Finally, the report pointed out:

> Among the children of refugees who have been longest here, there are some who 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 (Republic of Uganda, 1993: para.6.101 p. 126).

Departing from the earlier constitutions, the provision was a compromise, although it reflected once again, a latent chauvinism and xenophobia in the inordinate amount of time (12 years) assigned to this category of individuals as opposed

to other migrants who would qualify for citizenship after having spent a shorter time in the country.

Leaving aside the case of individual refugees there is the issue of refugees who have lived in Uganda for decades, described in refugee law literature as protracted refugee case loads.[17] The archetypal representative of this category of refugees is the 'Lumumbist Refugees' from the Democratic Republic of Congo (DRC) who have lived in the Kyaka Settlement in the western part of the country for more than 50 years (Bafaki, 2015). The country still has refugees from Sudan who arrived in 1986, and Rwandese who came in the early-1990s.

Despite the positive change towards the accommodation of refugees in Ugandan constitutional law, the struggle for 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 passports and IDs. Decided after the 1995 Constitution, the case of *Tesfaye Shiferwa Awala v. Attorney General*,[18] demonstrated the precarious situation in which asylum seekers and refugees still find themselves in the Ugandan courts. In that case, the High Court refused to review the decision of the Refugee Eligibility Committee (REC) denying refugee status to the applicant and ordering his deportation, even though there were several manifest irregularities in the proceedings which led to the decision (Sengendo, 2005). In 2011 an interpretation of articles 12 and 13 of the Constitution of the Republic of Uganda 1995 was sought in relation to sections 14 and 16 of the Uganda Citizenship and Immigration Control Act Cap 66 and sections 6 and 45 of the Refugee Act (2006). The decision of the Constitutional Court in the case of *Center for Public Interest Law Ltd: Salima Namusobya v. The Attorney General*[19] clearly demonstrated the dilemmas which refugees face in accessing citizenship via these provisions of the law. The interpretation was in respect of the eligibility of refugees to apply for and acquire Ugandan citizenship by registration or naturalization, and focused on two issues, *viz*., whether refugees living in Uganda were eligible to apply for and acquire citizenship by registration under the provisions of Article 12(2)(c) of the Constitution and whether refugees living in Uganda were eligible to apply for and acquire citizenship by naturalization under Article 13 of the constitution. The court stated that Article 12 of the constitution related to one subject, namely citizenship by registration and created a right in favour of certain categories of people who would be entitled to registration as citizens of Uganda upon application.

The court also pointed out that Article 13 of the constitution had provided for another category or route to citizenship that people who do not qualify either under birth or registration can take, namely naturalization. Thus, while refugees could not apply for citizenship by registration they could apply for

citizenship by naturalization. While, the decision seemed to uphold the right of a refugee to apply for citizenship by naturalization, in practice, once a refugee approaches the Immigration Board expressing interest in applying for citizenship by naturalization, they are denied access to the application forms on the grounds that they do not qualify for them despite the existence of Section 16 of the Uganda Citizenship and Immigration Control Act which provides for citizenship by naturalization. Given that it is thus difficult to obtain evidence of rejection letters from the Immigration Board, even the evidentiary basis for a claim by a refugee for citizenship by naturalization is denied to the applicant (Cole, 2014: 69). In effect, this category of refugees have been rendered stateless given that they are unable to access neither the citizenship of the host country (Uganda) nor of their home countries from which they fled.

National Identity Cards and their Social and Political Implications

Unlike most of its neighbours, for the last five decades of independence, Uganda has never had a system of national identity cards. The introduction of national IDs in early 2015 added new dimensions to the Ugandan citizenship debate both conceptually as well as in practical terms. Whereas the debate over a passport could be regarded as an elite discussion,[20] that over IDs is not, especially because so much of daily life was made contingent on possession of a national ID. What is involved? First and foremost, without an ID one will be effectively excluded from the Ugandan socio-political and economic community, given that Section 66 of the Act makes it mandatory for every citizen to possess one.[21] Indeed, under the law, production of an ID has now been designated as *prima facie* evidence of citizenship.[22] Without the ID one can be legally excluded from the political community. Secondly, possession of an ID is now tied to access to a wide variety of public services. Section 66 requires the production of an ID with respect to the following services, *inter alia*: employment; voter identification; application and issuance of a passport; the opening of bank accounts; purchase of insurance policies; the purchase, transfer and registration of land; pension and social security transactions; all consumer credit; the payment of taxes; financial services; registration services, and statistical services. The full implication of the introduction of IDs was manifest in the government directive stipulating that all mobile phone SIM cards had to be registered. Aside from the national ID, no other form of identification – including a passport – was accepted for the purpose, which understandably plunged the country into chaos.[23]

Why is the issue of IDs problematic in a discussion about citizenship? In the first instance, the Registration of Persons Act places the duty of proving citizenship on the applicant and the

discretion of accepting or refusing to make the grant on the registration officer, reinforcing a grossly unequal relationship of power and arbitrary administrative discretion. Secondly, securing the items of authentication provided in Schedule 3, that is, birth certificate, voter's card, driving permit, passport or baptismal certificate can prove problematic in certain instances especially to those who were generally marginalized and thus unable to access such documentation. Lastly, it opens the arena of registration to corruption and the arbitrary exercise of discretion by the registration officer. Although there are provisions in the law for appeal against the decision not only are the procedures cumbersome and convoluted, they may also not favour those not possessed of the necessary tools to negotiate the law. By way of conclusion on this matter, it is important to point out that the term "stateless" is usually applied to people when they leave their home countries. In the case of the introduction of IDs in Uganda, by even penalizing the failure to register, the Act has rendered stateless people who are at home. In other words, the Act has created "Internally Stateless Persons" (ISPs), or "non-persons". Although presented as a measure to improve inclusion, the introduction of IDs has underlined yet another dimension to exclusion.

Exclusion Revived

Citizenship is not simply about the ownership of a passport, although in popular parlance this is the main indicia of such state. Indeed, possession of a passport may be the least important reflection of this status. That is because a passport is only a means to secure the freedom of movement outside a country, which for most Ugandans is much more of a privilege than a practical right. However, a passport has nothing to do with how an individual can enjoy rights *within* a country. Ultimately therefore, citizenship is about inclusion within the political community and the enjoyment of full membership within that community. It is about equality and most importantly it is about democracy. Any system based on exclusion and discrimination cannot be described as a democratic one. To complete the journey to full democracy the phenomenon of exclusion must be expelled from a country's political economy.

While there are very distinct issues that apply to each of the categories of individuals considered in the analysis made in this article, there are many broad factors that apply to all of them. The first is that they are all minorities. Article 36 of the 1995 Constitution provides that minorities, "… have a right to participate in decision-making processes, and their views and interests shall be taken into account in the making of national plans and programmes." This is an active ingredient of citizenship, that is, the right to participate. It is a right that should not be denied to any person simply on account of their origins – whether inside the African continent

or elsewhere. Schedule 3 consolidated a colonial-era discrimination between immigrants and so-called indigenes.

Coupled with the issue of respect for minority rights is the right to equality and the guarantees against non-discrimination that are enshrined as key elements of the constitution. Quite clearly the manner in which the different minorities have been treated under the law and by state authorities requires revisiting. There are a number of specific instances of arbitrary action. These include the refusal by Ministry of Internal Affairs officers to register citizens of non-indigenous extraction and thereby denying them national IDs and of immigration officers denying the same categories of individuals, passports. All such actions need to be challenged.

Underlying this disparate treatment is a pervasive racism that dates back to the days of colonial segregation which culminated in the Asian expulsion, but which has now been disguised in various forms of exclusion. Writing in the 1970s novelist and travel writer Paul Theroux put it thus:

> In East Africa nearly everyone hates the Asians. Even some Asians say they hate Asians. The British have hated the Asians longest. This legacy they passed to the Africans who now, in Kenya for example, hold the banner of bigotry high. Political scientists, anthropologists and sociologists in Africa largely ignore the Asian community. That students in East African universities hate Asians is a demonstrable fact. The Greeks and other European small traders in East Africa hate Asians, too. Racial insult against the Asians now approaches the proportions of a fashion; and when the pressure of fashion attracts Asians themselves to slander each other, I begin to worry and think it may be too late to do anything about it except talk.[24]

Although Theroux couched his remarks in a degree of hyperbole, the expulsion from Uganda in 1971 demonstrated that he was referring to a very real issue. And even though many of those expelled have since returned to Uganda and assumed an active role in the economy, the exclusion Theroux pointed to, still exists. It first reared its ugly head, under the NRM, in protests against the proposed allocation of part of the Mabira rainforest to an Indian sugar magnate. Three days of protests against the move witnessed physical attacks against Asians and the death of one, with racism as the obvious motive.[25] A more recent debate over whether to include the "Bayindi" among the Schedule 3 "tribes" brought this issue to even more prominence (Hansards, 2015, at 11-13). Raised as a query in parliament by Tororo Municipality MP, Sanjay Tanna (an Asian himself), the response of parliamentarians was sharp:

> **MR OKUMU:** Mr Speaker, we have all been in this country and we know what a tribe is all about. We also know that India is a whole sub-continent full of many tribes. The first tribes that came here, that this country knows very well and recognized were the Koli

> (*sic*!). They helped us build the railway line and later settled here.
>
> Is it, therefore, in order for the honourable member to claim that there is a tribe called Bayindi – (*Laughter*) – and yet we know that within the Indian community there are various tribes not only from India but also from other countries like Pakistan? Is he in order to mislead this House, which is full of knowledge of the origin of the communities from Asia and also sympathizes with them and acknowledges that they should be recognized as citizens of this country? (*Id.*, at 11).

When challenged, the Speaker ruled Tanna as being quite in order to raise the matter. However, the debate remained mired in the chauvinistic and exclusionary tone set by Hon. Okumu, exemplified in the following further excerpt:

> **MR NZOGHU:** Thank you, Mr Speaker. We appreciate that our colleague is in this House and yet he happens to be of Indian origin. We have not had any problem with him. However, the premise of what is defined as indigenous has a connotation of local perspective. When you look at it in that direction, it clearly shows that much as the Kolis were here as of 1926, they are not local because indigenous means local.
>
> Is the honourable member therefore in order to demean a real indigenous and local representative of the indigenous people as of 1926 in Uganda and imagine that he is the one who is right when he is not even local and indigenous? (*Id.*, at 12).

Hon. Amuge stated that while Tanna's issue was "fundamental," there was a risk of the House being misunderstood when there were "many other things to do". She urged that the matter be dropped (*Id.*, at 12). Tanna's allotted time for debate expired before a final conclusion could be made to the issue.

The brief parliamentary debate underscored the divide that has been written into the law via Schedule 3 between indigenes and those non-indigenous. While the possibility of expulsion has dimmed over the years, the sentiments expressed in the debate (and which are more prevalent in the street) demonstrate that Uganda is yet to lay to rest the ghosts of expulsion past.

Conclusion

The above presentation has clearly demonstrated that the citizenship question in Uganda remains an emotive and conflictual one. While on the face of it, the introduction of national IDs may simply appear to be a bureaucratic attempt to resolve outstanding issues of identification and security, its implications extend well beyond and into the core meaning of citizenship in the 21st century. The problematic treatment of long-term refugees and persons who arguably should be able to assert their rights as recognized citizens of the country implies that the debate over these issues needs to be taken to a more extended level of discussion. Many persons who are genuinely

entitled to the grant of citizenship are prevented from doing so by a skewed reading of the legal provisions and by bureaucratic hurdles that have no justification for their imposition.

Given these circumstances, there is a strong case to be made for constitutional reform, particularly if the country seeks to pursue a radical departure from its history of exclusion and discrimination. That reform can take either of two directions, namely, the inclusion of those groups which can legitimately lay a claim to indigenousness but were left out, for example, the Asian- and Somali Ugandans, or for the alternative, which is the removal of Schedule 3 entirely from the constitution (Okanya 2015: 6). The second course of action is obviously the more logical because Schedule 3 is internally contradictory, inconsistent and non-reflective of present-day conditions in the country.

If the constitution was to be internally consistent it is wrong to exclude the Bayindi and similar communities from Schedule 3. Ugandan courts have consistently made the point that the constitution needs to be read as a holistic document. Article 9 provides for the continuation of citizenship, that is, all those who were citizens before 1995 continue to be so, provided that they acquired that citizenship in accordance with the law. That provision covers many of the Bayindi, Somali and other members of communities who were recognized as citizens under the laws of Uganda before the 1995 Constitution came into effect, but it still leaves out others who can legitimately lay claim to the franchise.

Finally, the debate about citizenship in Uganda needs to take into consideration the move towards East African federation in which (presumably) there will be an equalization of the rights of all citizens of the region. If such is indeed to be the case, then the very notion of indigeneity has to be revisited because it would mean that citizenship would apply across the board to all those who are citizens of each of the five member-states that currently make up the community. In such a case, the tying of citizenship to the formation of Uganda's 1926 borders will in effect be rendered superfluous.

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Notes

[1] It is quite ironic that the Obote government spearheaded the expulsion of Banyarwanda – especially refugees – when in the Legislative Council (LegCo) debate in the late-1950s/early-1960s Milton Obote had been one of the most vociferous proponents of giving them refuge (Kashambuzi, 2013). The reasons for the shift can be found in the civil conflict led by Yoweri Museveni's National Resistance Army/Movement (NRA/M) which found strong support among the Rwandese refugees and indigenous Banyarwanda community.

[2] In the Foreword to this book, Guy Goodwin-Gill observes that, "For those steeped in the simplicity of a single, simple citizen-state relationship, the manner in which the British Crown and Parliament treated their peoples must have appeared strange, at times even devious and divisive, particularly over the last 40 years or so, when debate and legislation were often driven by crude immigration control arguments and racial considerations." (at vii).

[3] According to the Uganda Constitutional Commission Report's list of all tribes existing as at 1959, the Barundi, were said to be scattered within Buganda and Budaka. Left out by both the Draft Constitution, and the final 1995 Constitution, they were reinstated as an indigenous group by Section 48 of the 2005 Constitution (Amendment) Act.

[4] Like the Barundi, the Tesio appeared on the 1959 list of indigenous groups but were left out by both the 1993 Draft Constitution and the final 1995 Constitution.

[5] The 1959 list of indigenous groups had treated the Bafumbira as a part of the Banyarwanda group. The 1995 Constitution split them.

[6] Historically, the Baruli (and the Banyala) had become a part of Buganda via the 1900 Agreement. See Muruli, P. (2009) 'Banyala-Banganda Conflict Can Be Settled Peacefully', *The New Vision*, September 16, accessible at: http://www.newvision.co.ug/new_vision/news/1236323/banyala-bagnda-conflict-settled-peacefully

[7] Those nine new groups are Aliba, Aringa, Banyabutumbi, Banyaruguru, Barundi, Gimara, Ngikutio, Reli and Shana.

[8] A perennial question of contention has been the Banyarwanda ethnic group. See Republic of Uganda, 2003 at 11-157 to 11-158.

[9] See for example, Barya, 2000, *op. cit.*, on why the Bafumbira managed to have their separate identity (from the Banyarwanda) included in the Third Schedule but the Bahima failed to achieve the same.

[10] See for example; Habimaana, C., 2007, 'Who Are The Banyarwanda of Uganda?', *New Vision*, June 17, Available at: http://www.newvision.co.ug/new_vision/news/1162957/banyarwanda-uganda

[11] Republic of Uganda, 1993, The Report of the Uganda Constitutional Commission, Analysis and Recommendations, UPPC, Entebbe; Chapter 6.4, at 101-102

[12] See letter from Abbey Kibirige Semuwemba, 'Citizenship Certificates Odd,' *New Vision*, September 8, 2017 at 15.

[13] See the Uganda Citizenship and Immigration Control (Amendment) Act, No.5 of 2009.

[14] *Id.*, Section 19(2).

[15] See Section 19D and Schedule 5 of the Act.

[16] See especially Article12 of the Convention on the Rights of Persons with Disabilities (CRPD), and the case of *Centre for Health, Human Rights & Development and Iga Daniel v. The Attorney General*, Constitutional Petition No.64 of 2011.

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

[18] Miscellaneous Application No. 688 of 2003. For a comprehensive examination of the case see Sengendo, 2005: 301-322.

[19] Constitutional Petition No.34 of 2010.

[20] For a long part of Uganda's history a passport was regarded as a privilege conferred at the discretion of the State. Article 29(2)(c) of the 1995 Constitution transformed it into a right.

[21] See the Registration of Persons Act, 2015, and Ankunda, 2015.

[22] Registration of Persons Act, 2015 Section 68(2).

[23] The debate over the legality of the measure has been a protracted one. See Waiswa, 2017 at 16.

[24] Theroux, 1967, at 46.

[25] Bakayana, 2009 at 48-49.

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