

DOI: <https://doi.org/10.23810/1345.UGANDA AHIMBISIBWE-BELLONI>  
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# The 2006 Refugees Act in Uganda: Analyzing the Gap between Law and Practice

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## Abstract

By April 2020, Uganda was one of the top refugee hosting countries in the world and the largest in Africa with over 1.4 million refugees. Uganda has been generally described as being friendly to refugees and in 2006 passed a law, the Refugees Act, which has internationally been recognized as a progressive law. However, there is a discrepancy between the provisions of the Act and the country's practice. This article analyzes this discrepancy and the factors behind it by focusing on specific provisions of the Act. It further situates the Act within the broader constitutional context and analyzes the legal framework and practice of naturalization of refugees. In particular, the analysis shows that diplomatic relationships between Uganda and the countries from which refugees flee play a crucial role in determining how refugees are treated and to what extent they are allowed to access their rights.

**Keywords:** forced migration, refugee protection, diplomatic relationships, refugee law, Uganda

## Introduction

In the last ten years, Uganda has been praised as a generous and friendly country for refugees. In 2006 the country passed a refugee law, internationally recognized as progressive and meeting the highest protection standards. While Uganda formally looks like "a paradise" for refugees, this paper argues that this has not been the case in practice. Drawing on the theoretical work of authors like Rutinwa (2002), Milner (2009) and Loescher (1993), this article systematically illustrates how the application

of different provisions in the 2006 Act have been influenced by diplomatic relationships and foreign affairs considerations which involve Uganda and different countries of origin. By doing so, we aim to contribute to the growing number of studies that have highlighted the important role that diplomatic relationships and foreign affairs play in understanding refugee reception and protection.

After a brief history of refugee law and reception in Uganda, this paper focuses on specific provisions of the 2006 Act, i.e. freedom from persecution, cessation of refugee status, application and grant of refugee status, naturalization and voluntary repatriation. Based on field research in some of the key refugee settlements in Uganda as well as on systematic review of media and political discourse in the country, the article illustrates the practical shortcomings of the implementation of the Refugee Act for different nationalities. In particular, the article addresses the challenges faced by Rwandans, Burundians, South Sudanese and Eritreans anguished by continuing fears of persecution and forced repatriation, the problems of acquiring the refugee status and the possibility to gain naturalization. While analyzing the discrepancy between law and practices, the article points to the diplomatic considerations that intervene in each case and influence the protection and reception of refugees. Based on this case study, the article finally concludes highlighting the need for a wider comparative work looking at the intersection between African reception policies and diplomacy.

### The role of diplomacy in refugee reception: a brief overview from an African perspective

According to Rutinwa (2002:12), "the evolution of refugee policy in Africa may be divided into two periods. The first is the period between the early 1960s and the mid-to late 1980s. The second is the period between the late 1980s and early 1990s to today". The period between the early 1960s and 1990s may be described as the 'golden age' of asylum in Africa of open-door policy. African states were motivated by the struggle against (neo)-colonialism, apartheid and pan-africanism. Refugee issues were seen as serving ideological and diplomatic interests. However, "since the late 1980s onwards, there has been a marked shift in refugee policies in Africa, which became particularly pronounced in the 1990s" (*ibid.*). While the refugee problem has on the whole increased, African states have become less committed to asylum, and "instead of opening their doors to persons fearing harm in their own states, African countries now prefer refugees to receive protection in 'safe zones' or similar areas within their countries of origin" (*ibid.*). He further notes that "refugees who manage to enter and remain in the host countries receive 'pseudoasylum'. Their physical security, dignity and material safety are not guaranteed" (*ibid.*). As for solutions, African states are less interested in offering local settlement or resettlement but prefer repatriation regardless of the conditions in the country of origin. This shift in asylum policies is partly related to insecurity both internal and external. He argues that "some refugee hosting

countries have encountered serious external relations problems with the countries of origin, which in some cases have led to armed conflagration" (*ivi*: 13). African states will therefore limit refugee rights like expression and movement and resort to drastic measures like expulsion in order not to endanger regional relations and security.

Other commentators have highlighted that asylum policies – and their implementation – are greatly influenced by regional and bilateral diplomatic relations. In his analysis of politics of asylum in Africa, Milner argues a state may adopt either restrictive or open asylum approaches depending on a number of factors of domestic, historical, quantitative, burden sharing, security, international and regional nature. Diplomatic relations are crucial in his analysis to understand the attitudes of certain states towards specific groups of asylum seekers. For instance, he states that in the case of Guinea "the granting of asylum was used both as a means of highlighting the failure of neighboring regimes and as a cover for providing support to elements opposed to the neighboring regime" (Milner 2009: 178). He further argues that "in other cases, like Tanzania, changing relations between the host state and the country of origin (Rwandan and Burundi) resulted in the prioritization of regional relations over the needs of refugees" (*ivi*: 178-179). In all these cases, he notes that "as such, it is important to more critically understand the role that relations between neighboring African states have played in formulating particular asylum policies" (*ivi*: 179).

Relatedly, Loescher (1993) shows the relevance of diplomatic relations between countries of origin and asylum in determining how refugees are treated in host states. He argues that in some cases refugees are welcomed by asylum countries as a way of discrediting their rivals- countries of origin. He writes: "refugees are seen as symbols of foreign policy, to be exploited as part of a continuing propaganda campaign" (*ivi*: 21). For example, "Western governments encouraged the flow from East to West in order to weaken their rivals ideologically and to gain political legitimacy in their Cold War struggle (*ivi*: 59). In other cases, "governments are extremely reluctant to offer asylum to refugees from neighboring countries, for fear of endangering political relations" (*ivi*: 8). "Conversely –he writes– a decision not to accord refugee status to certain national groups often implies support for the sending government" (*ivi*: 21). In other cases, the host state will welcome refugees because of sympathy with the country of origin due to political, diplomatic and security calculations.

Drawing on the above considerations, this article shows that the diplomatic and security concerns of both Uganda and countries of origin (Rwanda, Burundi, Sudan, South Sudan and Eritrea) play a crucial role in determining who among the refugee population can access protection. In particular, we show that Rwandan and Ugandan close political relationship in the past<sup>2</sup> has hugely affected the safety of Rwandan refugees. A similar observation applies for Burundians and South Sudanese whose safety (though not to the level of Rwandans) is at times compromised by the diplomatic relations and security concerns of Uganda and the countries of origin. Agents from the countries of

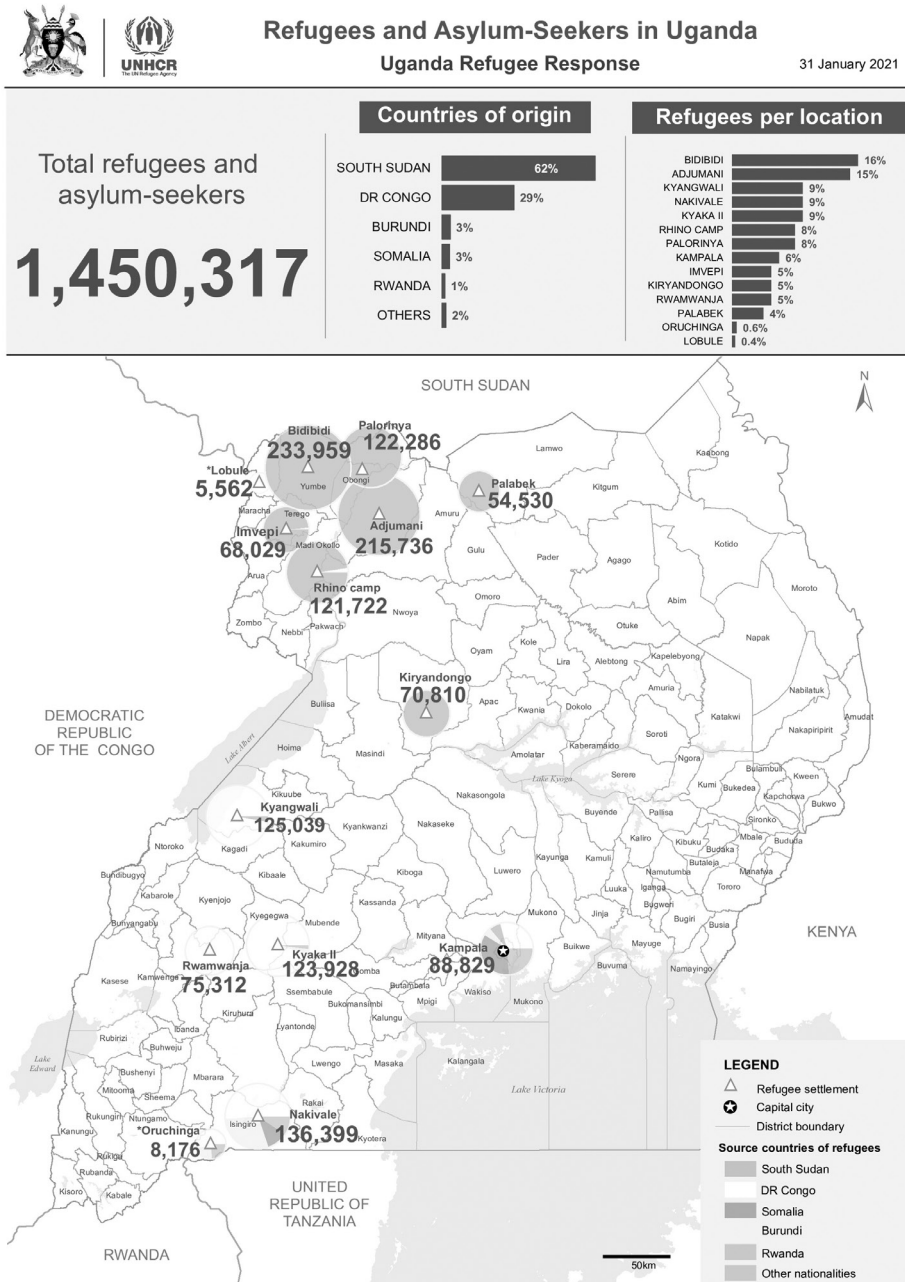
origin have used the existing diplomatic relations to harass refugees on Uganda's soil. Alternatively, Uganda has restricted and compromised refugee protection because of the need to promote good relations. On the other hand, certain refugee nationalities are welcomed in order to discredit the country of origin. For example, Sudanese refugees were warmly welcomed in Uganda in the 1980s to 2000s due to the poor relationship between the two countries. Uganda did this to discredit Sudan in their diplomatic feud. The mending of relations between Eritrean and Uganda in 2011 and 2012 onwards may be partly responsible for the poor reception of Eritrean refugees.

## Methodology

This paper is the result of a study based on four research visits carried out at different intervals from 2010 to 2019. The first three visits were carried out in Nakivale and Oruchinga settlements in south western Uganda and focused on Rwandan new caseload refugees.<sup>3</sup> In these visits the first author together with two research assistants spoke to over 200 Rwandan refugees. The fourth visit partly covered Nakivale, Oruchinga and Kampala. It looked at Rwandans, Burundians, Eritreans, Ethiopians and Congolese (see Figure 1. Map of refugee settlements in Uganda).

While the first visit lasted one month, the rest took two weeks each. Semi-structured interviews were used to collect data from refugees and local hosts in the study sites. The first author organized key informant interviews with the Office of the Prime Minister (OPM), UNHCR and NGO officials. Focus Group Discussions (FGDs), each one ranging between 6 to 12 refugees were organized. Direct observation was crucial to understand issues like living conditions, forced repatriation operations, victims of human rights violations, refugee-host relations among others. The study also used documentary evidence like text books, journal articles, magazines, newspapers, government and UNHCR policy documents, and legal instruments like the 2006 Refugees Act. Purposive criterion sampling was used to select the study respondents, namely the refugees and asylum seekers, Ugandan government officials, UNHCR and NGOs officials, as well as local hosts around Nakivale and Oruchinga settlements, Isingiro District and Kampala. In addition, 'recyclers' were identified through snowball sampling. Recyclers are Rwandan refugees who have been repatriated to Rwanda but have returned to Uganda claiming human rights violations, insecurity, persecution and inability to recover land and property in Rwanda. Their views helped in triangulating information got from refugees in Uganda. In the first three study visits, the Rwandan refugees and other categories of respondents answered questions on themes like refugee physical security, refugee rights and obligations, voluntary and forced repatriation, local integration, resettlement, the so-called cessation clause and refugee-host relations. In the fourth visit, refugees responded to these themes and the implementation of the 2006 Refugees Act.

Fig. 1: Main refugee settlements in Uganda



Source: UNHCR<sup>4</sup>

Thematic and content analysis were used in data analysis. The analysis further made use of secondary data, both scholarly articles and grey literature. The study was cleared by the Office of the Prime Minister and Isingiro District in Uganda. During the data collection exercise, the respondents were briefed on the purely academic purpose of the study and participated voluntarily. Their confidentiality and anonymity have been protected all along the research process.

### **The enactment of the 2006 Refugees Act**

The UNHCR's annual global trends report notes that by the end of 2018 Uganda was hosting 1.2 million refugees and it was the third largest refugee hosting country in the world (after Turkey and Pakistan) and the largest in Africa (UNHCR 2019: 3). As of 30 April 2020, the number stood at 1,423,740 refugees.<sup>5</sup> The majority of these refugees comes from neighbouring countries and the wider region: South Sudan, Democratic Republic of Congo, Burundi, Somalia, Rwanda, Kenya, Ethiopia and Eritrea among others. The Ugandan government started the process for the enactment of a new refugee legal regime in 1998. Overcoming the old colonial provisions pertaining refugee reception (Mujuzi, 2008), in 2003 the First Deputy Prime Minister and Minister of Disaster Preparedness and Refugees tabled the Refugees Bill in Parliament.<sup>6</sup> The Refugees Bill was passed into an Act, and assented to by the President of Uganda on 24 May 2006.<sup>7</sup> It came into force in 2008 and regulations to operationalize it were passed in 2010 (Sharpe, Namusobya 2012).

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The Act seeks to make new provisions relating to refugees in line with the 1951 Geneva Convention, to establish the office of refugees – that is to say the government agency/department responsible for refugee management –, and to repeal the Control of Alien Refugees Act (CARA), 1960. As Mujuzi (2008: 404) commented: "the Act has injected new blood into the veins of the administration policies and procedures for refugees and which not only contains international law components but is also reflective of Uganda's determination to uphold the principles relating to human rights and freedoms in the Constitution, as well as in relevant international and regional human rights instruments". The Act reflects Uganda's international obligations (Sharpe, Namusobya 2012).

### **The gap between law and practice**

The Act is organized in six parts, the first is on preliminary matters. Part II covers the determination of refugee status and includes refugee definitions based on the 1951 Geneva Convention and 1969 OAU Refugee Convention and adds as an additional ground for persecution to "conform to gender discriminating practices" [Section 4(d)]. Part II also deals with exclusion and cessation. Part III deals with administrative matters relating to refugees and establishes the Refugee Eligibility Committee (REC), the Appeals Board and their functions, the Office of Refugees and creates the Commissioner for

refugees. Part IV sets out the procedures for refugee status determination. Part V deals with refugee rights and obligations and lastly, Part VI is about miscellaneous matters. The discussion below looks at four specific provisions of the Act and shows how these have not been adhered to in the context of Uganda's practice.

### *Freedom from persecution*

Section 2 explains the meaning of persecution in the context of the Act. Persecution here includes individual persecution as well as human rights violation and systematic target violence towards a group based on account of race, religion, nationality, sex, political opinion or membership of a particular social group. Although the Act provides for protection of refugees from persecution, there is evidence showing that refugees are persecuted by agents of country of origin and at times with the cooperation of agents of the country of asylum. There are cases of refugees who have been extradited and returned without due legal process. The persecution, harassment, abduction and kidnapping of Rwandan and Burundian refugees show the extent of this practice.

To begin with, Rwandan refugees have faced physical insecurity in Uganda (Ahimbisibwe 2017). For example, in September 2019, UNHCR raised a concern for inadequate security in Uganda's settlements where refugees were being threatened by foreign elements (Gyagenda 2019:12). This harassment was more pronounced in settlements in South-Western Uganda (Gyagenda 2019). It is important to note that the majority of Rwanda refugees are hosted in Nakivale, Oruchinga and Kyaka II settlements - all located in South-Western Uganda.

The government of Rwanda infiltrated Uganda police force then led by Kale Kayihura from 2005 to 2018 and was using it to systematically conduct abduction and illegal repatriations of Rwandan refugees and nationals seeking asylum in Uganda (Gyagenda 2019). In August 2018, Kale Kayihura was charged with failure to protect war materials, supervise arms, and aiding and abetting the kidnapping of Rwandan refugees from Uganda (*ibid.*). Six Ugandan police officers, one Rwandan security officer and one Congolese national were also on trial for their involvement in the abduction and forced return of Rwandan refugees (International Refugee Rights Initiative - IIRI 2018).<sup>8</sup> One would call these actions as failure to protect refugees by the Ugandan government. Examples of refugees that have been abducted and returned to Rwanda include: Lt. Joel Mutabazi,<sup>9</sup> Jackson Karemera, Sgt. Innocent Karisa, Oliver Sebakara, Protais Hakizimufura.<sup>10</sup> At the time, there was no binding extradition treaty between Rwanda and Uganda. Others have been executed on Uganda's soil and they include Charles Ingabire and Jerome Ndagijimana to mention but a few.<sup>11</sup> These abductions and executions of Rwandan refugees continue to be reported by Ugandan newspapers.<sup>12</sup> The Rwandan Patriotic Front (RPF), in collaboration with Ugandan military and police, has been engaged in abductions of any Rwandan suspected of collaborating with the Hutu militia, the Interahamwe (Harrell-Bond 2011).

The above insecurity is due to the fact that Rwandan agents operate a spy network on Rwandan refugees in Uganda (Ahimbisibwe 2015). The Rwandan government regards all the refugees outside its territory as either enemies or potential ones given the history of the RPF's struggle that started in refugee camps in Uganda (Ahimbisibwe 2019; - IRRRI *et al.* 2010). President Kagame, formerly a refugee in Uganda, knows very well these refugees can be mobilized by people opposing his government (Ahimbisibwe, 2019; IRRRI *et al.* 2010). The operations of Rwandan agents have been favored by the close relationship between Uganda and Rwanda before the border dispute and other tensions erupted in 2018 and 2019. The Uganda police and military have closely worked with Rwandan agents in spying, abducting and kidnapping Rwandan refugees on Ugandan soil (Ahimbisibwe 2017; Harrell-Bond 2011).

Another category of refugees facing kidnaps, disappearances and murder are the Burundian refugees in Nakivale and Oruchinga settlements. A report by IRRRI reveals complaints of insecurity and lack of safety by the Burundian refugees in Nakivale settlement. The refugees accused the Burundian government and its militia, the Imbonerakure, of following them up in the settlement. The report further notes that many refugees "said they had seen individuals who they suspected of belonging to the Imbonerakure in the settlement".<sup>13</sup> During interviews and focus groups with Burundian refugees in Oruchinga and Nakivale settlements, the first author collected several stories of threats of Imbonerakure operations, kidnaps and attacks. As a result of insecurity, the refugees had formed a community protection group called "La Défense".<sup>14</sup> Burundian refugees are regarded by their country of origin as enemies, political liability or security threat. There is a history of recruitment of Burundian refugees in neighboring countries (Mogire 2006). The current government in Burundi understands this reality and sees the need to monitor and neutralize the activities of refugees abroad. The Burundian government enjoys a fairly good working relationship with Uganda. This has favored the operations of Burundian agents on Uganda soil (Ahimbisibwe 2020b).<sup>15</sup>

Lastly, South Sudanese refugees are another group faced with physical insecurity in Uganda. According to International Refugee Rights Initiative, "in most settlements, the presence of individuals involved with the armed conflict in South Sudan, from government forces and from opposition armed groups, is undeniable" (IRRI 2019: 35). Uganda's newspapers reported on murder cases of South Sudanese refugees in the settlements.<sup>16</sup> In fact IRRRI (2019: 36) reported cases of abductions, arrests, forced returns and recruitment of refugees by South Sudanese military agents. While this insecurity has been facilitated by the porous long borders between Uganda and South Sudan, it is well known that the two have enjoyed good relations making it possible for the South Sudanese military to operate in the settlements with ease. It is also a fact that the Ugandan military has supported South Sudanese government forces in the conflict (Kasaija 2014; Rolandsen *et al.* 2015).



### *Cessation of refugee status*

Section 6 of the Act establishes that refugees would lose their status if they return to the country of nationality, if they gain Ugandan citizenship or citizenship from another country and if circumstances that led one to be a refugee are not taking place any longer. However, discrepancy between law and practice is clear when looking at the Rwandan refugees. In 2011, the UNHCR established the Comprehensive Strategy for the Rwandan Refugee Situation to bring their status to a proper closure (UNHCR 2011: 1). The strategy comprised four components: (i) enhancing promotion of voluntary repatriation and reintegration of refugees in Rwanda; (ii) pursuing opportunities for local integration or alternative legal status in countries of asylum; (iii) continuing to meet the needs of those individuals unable to return to their country of origin for protection-related reasons; and, (iv) elaborating a common schedule leading to the cessation of refugee status foreseen to commence as of 31 December 2011 (UNHCR 2011). However, this recommendation did not apply to Rwandan refugees that fled after 1998. The Comprehensive strategy targets refugees who fled between 1959 and 1998. Unlike refugee flows from Rwanda after 1998, the above-mentioned period shares the character of group or large-scale forced population movements as a result of armed conflict, events seriously disturbing public order and/or the presence of a consistent pattern of mass violations of human rights including genocide (UNHCR 2011). In 1959 and the early 1960s, Rwandans fled because of the mass killings and violence that targeted Tutsi. The majority of these refugees returned to Rwanda in and after 1994. The other caseload of refugees includes the Hutu who fled the civil war in the early 1990s, the genocide in 1994 and the insecurity that followed up to 1998. It is argued that all these conditions have since stopped and "Rwanda has now normalized and is a secure country" (Ahimbisibwe 2015: 212).

The practice of the cessation clause for Rwandans has been mismanaged. Uganda implemented the cessation of refugee status for Rwandan refugees before declaring it (Harrell-Bond 2011). Their food rations were reduced, access to social services denied, cultivation activities banned, and plots of land given away to Congolese refugees (Amnesty International 2011). The rejection rate increased (cf. next section). All these were based on the assumption that Rwandans "no longer had any reason of being refugees" (Ahimbisibwe 2020a: 18). Although Rwandans fled generalized violence and conflicts of 1959, early 1960s, the civil war, genocide in 1994 and the insecurity that followed up to 1998 which have since stopped, the structural violence in present day Rwanda is a new ground for well-founded fear of persecution for many Rwandans (Ahimbisibwe 2015). In fact, Rwandan asylum seekers continue to come to Uganda claiming persecution, human rights violations and dictatorship in Rwanda.<sup>17</sup> Researchers, NGOs and International organizations have argued that conditions in Rwanda cannot be called a fundamental, durable and stable change (Reyntjens 2013, Thomson 2011, Human Rights Watch 2011). It is not clear whether refugees will be

assured of protection when they return (Ahimbisibwe 2015). In fact, scholars have argued that Rwanda is an active volcano waiting to erupt (Reyntjens 2015).

One of the explanations for cessation of Rwandan refugee status is the concern for Rwanda's public image abroad (IRRI *et al.* 2010). Rwanda wants to be seen as a peaceful country whose population has reconciled twenty-six years after the 1994 genocide. Rwanda finds it hard to promote this image and narrative with hundreds of thousands of its citizens still living outside as refugees. It has aggressively pursued the cessation clause in its foreign policy towards countries hosting Rwandan refugees. Uganda has found itself with the dilemma of maintaining diplomatic relations amidst the pressure of implementing the cessation clause (IRRI *et al.* 2010; Ahimbisibwe 2015), thus sacrificing the rights of Rwandan refugees at the altar of diplomacy with Rwanda (Ahimbisibwe 2016).

### *Application and grant of refugee status*

Section 20(1) provides rule over the procedure of the refugee status determination. It is here stated that refugees should be able to apply within 30 days of their arrival in the country and their application should then be considered within 90 days and assessed in the next 14 days. This timeline however is rarely respected. A study done by the Norwegian Refugee Council (NRC) found that "non-*prime facie* asylum claims both in Kampala and settlements experienced delays" (Norwegian Refugee Council 2018: 17). There were delays of over a year to have an initial decision on refugee status determination (Norwegian Refugee Council 2018: 17; IRRI 2018). These delays were also experienced in the settlements especially in the West Nile area since the Refugee Eligibility Committee (REC) was not prioritizing this area due to few asylum seekers on non-*prime facie* basis (*ibid.*). Delays were also a result of having one REC responsible for the whole country and being an inter-ministerial committee, coordinating all members of REC to sit is a challenging task (*ibid.*). During meetings with asylum seekers both in Nakivale and Kampala, the first author was told of stories of delays in responding to their applications for refugee status: "These days it is taking long before one is recognized as a refugee. We were told that we will get a decision within three months. It is now a year since I applied and up to now I have not gotten any decision. I want to know the result of my application so that I get the way forward, whether to stay here or go to another country".<sup>18</sup> "There is late determination of refugee status these days for the new arrivals from Rwanda. We are not even assured whether we shall be recognized as refugees".<sup>19</sup>

These delays in refugee status determination left asylum seekers more vulnerable to 'brokers' claiming they could speed up the process for a fee as the first author was told by refugees in Kampala.<sup>20</sup> According to NRC: "Each focus group discussion raised the problems faced by asylum seekers in having to pay brokers or bribes to progress their case." (Norwegian Refugee Council 2018:17). The use of brokers exposes these persons

to exploitation, cheating and leaves them in a worse situation (*ibid.*).

Another challenge experienced by asylum seekers was the high rejection rate for some nationalities. The NRC has observed that "the rate of acceptance of asylum seekers from Eritrea in Uganda is well below acceptance rates in other countries" (*ivi*: 14). Eritrean asylum seekers voiced their concerns about the high rate of rejection by OPM. A respondent concurred: "The rejection rate for Eritreans is high. Uganda does not want Eritreans to be here as refugees. We submitted my application to REC and it was rejected. We appealed to REC and later Refugee Appeals Board (RAB) but my appeal did not succeed".<sup>21</sup> An OPM official stated: "Why should Eritreans cross a number of countries and seek refugee status here in Uganda. We expect them to apply for refugee status in neighboring countries like Ethiopia, Sudan or at least Kenya. Besides the reasons they present in REC interviews are not convincing as people with well-founded fear of persecution".<sup>22</sup>

As regards Eritreans, "The OPM has used the 'first country of asylum' principle when assessing refugee claims" (IRRI 2018: 4). According to this principle, Uganda expects Eritreans to apply for refuge in neighboring countries that include Sudan, Ethiopia and Djibouti.<sup>23</sup> This partly explains the high rate of rejection for the Eritrean asylum seekers, whereas diplomatic relations between Uganda and Eritrea can contribute to understand the context of such a high rejection rate. Despite the bad relations in the past, the two countries have since mended their frosty relations with both presidents exchanging visits in 2011 and 2012 (Jonathan 2012).<sup>24</sup> The improvement of relations could be partly responsible for the poor reception of Eritrean refugees in Uganda. Eritrea is opposed to its nationals fleeing the country as this paints a bad picture and it is not in the country's interest (Cole 2018).

Rwandans also experience a high rejection rate. During visits to Nakivale and Oruchinga settlements, the refugees expressed their concern that it was becoming difficult to get refugee status in Uganda. They noted that the new arrivals are told that they do not have any well-founded fear of persecution since their country is peaceful.<sup>25</sup> One of the refugee respondents complained that: "we did interviews and out of 1500 only 100 passed. I am one of the many who did not make it as a refugee. I call myself a refugee but legally I am not yet a refugee".<sup>26</sup> Another refugee stated that: "the first time I came as a refugee I was accorded refugee status but when I went home and came back the second time it has been hard to get refugee status. I have now spent 11 months without refugee status. I now live on my own".<sup>27</sup> Another respondent in a subsequent FGD said: "I was so lucky because when we arrived we were 160 people who were subjected to an interview but only 20 passed and were given refugee status. Those who were rejected have either been returned or live on their own without any support from UNHCR or OPM".<sup>28</sup>

In interviews with OPM officials, it was confirmed that the government no longer recognizes Rwandans as refugees except for few special cases. One official noted that

the Rwandans are running away from Rwanda because they are looking for free land in Uganda.<sup>29</sup> One of the government officials who participated in Refugee Eligibility Committee (REC) interviews in 2010 noted that: "In 2010 we interviewed Rwandan asylum seekers and found that they had no genuine reasons for being refugees. They claimed that they don't have land in Rwanda but the issue of land has never been a reason for granting refugee status. These Rwandan refugees are just economic migrants seeking economic opportunities".<sup>30</sup> The high number of rejection rates is rooted in the argument by the Rwandan government that the country is "now peaceful" and "there is no need" for anyone to flee or stay as a refugee (Whitaker 2013: 148). This view influenced UNHCR's decision to recommend the cessation of refugee status for Rwandan refugee case load in 2011. Due to friendly relations between the two countries in the past, Uganda has adopted the same view that there was no reason for them to claim or remain as refugees (Ahimbisibwe 2019).

On the contrary, Uganda provided an 'open-door policy' to South Sudanese refugees in the 1980s to the 2000s when South Sudan gained independence in 2011. This open reception was part of the diplomatic spat between the countries. For a long time, the South Sudanese were engaged in the armed struggle against the Khartoum government with support from the Uganda government. In exchange, Khartoum supported the Lord's Resistance Army rebels fighting Uganda. Uganda faced direct security threats as a result of hosting Sudanese refugees mixed with the Sudanese People's Liberation Movement/Army (SPLM/A) fighters. These fighters used Ugandan refugee settlements for military training, recruitment of soldiers, launching of cross border attacks, rest and recuperation of combatants (Kaiser 2008). As Kaiser (*ivi*:149-150) puts it, "direct threats included serious tensions during the 1990s between the governments of Sudan and Uganda, each of which supported insurgent movements in the other's country. Diplomatic relations between the two states were reduced to a minimum during the period of hostility and military activity did occasionally transpire". This is evidenced by the bombing of Ugandan towns including Adjumani and Moyo in 1998 by the Sudanese Military Antonov aircraft (Kaiser 2008: 151). The bilateral relations were later restored in the early 2000s.

However, since 2019, Uganda's rhetoric towards South Sudanese refugees started to change. The Ugandan Minister for Refugees called on South Sudanese to return home after the signing of a powerful agreement between Riek Machar and Salva Kiir's government.<sup>31</sup> He also argued that their country is "now peaceful".<sup>32</sup> This coincided with South Sudanese government's call for South Sudanese refugees in Uganda to return.<sup>33</sup> Uganda's call for South Sudanese to return was reinforcing South Sudanese government's stance even when it is not yet the right time (Interview, Protection Officer, Centre for Refugee Rights, Mbarara, 30 November 2019). The two countries enjoy cordial relations and Uganda supports the view that refugees should return to their country and this is the same view shared by South Sudan (Interview, Protection Officer, Centre for Refugee Rights, Mbarara, 30 November 2019).

### *Voluntary repatriation*

Section 46(1) of the Act notes that the decision to be repatriated shall be voluntary and will be expressed in writing to the Commissioner or UNHCR who will make arrangements for the repatriation of refugees. Despite the provision for voluntary repatriation in the Act, there are cases which show that Uganda has instead practiced forced repatriation. For example, in March 2019, the Minister of Disaster Preparedness and Refugees, Mr. Hilary Onek, said that refugees from stable countries such as Rwanda, Burundi, and South Sudan have to return home.<sup>34</sup> He was addressing delegates at the Intergovernmental Authority on Development (IGAD) high-level experts and a ministerial meeting on jobs, livelihoods, and self-reliance for refugees, returnees and host communities at Speke Resort Munyonyo in Kampala.<sup>35</sup> This was interpreted as a stance by the Uganda administration of forcing the repatriation of refugees hosted there.<sup>36</sup> It was reported that the minister also complained that some of the refugees, instead of reciprocating the hospitality afforded by the government and Ugandan hosts, had turned into enemies.<sup>37</sup> It is also not clear what the minister meant by calling the above three countries "stable". On the contrary, these countries still generate refugees and asylum seekers into Uganda and the region.

There have been incidences of forced repatriation of refugees and asylum seekers especially to Rwanda. The case of forceful repatriation of Rwandans was particularly disturbing as a number of the victims got life in jail.<sup>38</sup> They have been issued with several deadlines to return in 2009, 2011, 2013 and 2017. Issuing of deadlines against refugees is tantamount to refoulement because refugees are put in a situation where they have to make a decision to return for fear of being arrested and imprisoned (Ahimbisibwe 2020a). Although Uganda has not been strict with these deadlines, a number of Rwandan refugees chose to return for fear of consequences. Also, in October 2007 and July 2010, Uganda organized operations that involved her own and Rwandan security forces which forcefully returned Rwandan refugees and asylum seekers contrary to the principle of non-refoulement (Ahimbisibwe 2020a). Uganda's forced repatriation of Rwandans was also a result of her domestic security and diplomatic concerns. There was fear that Rwandan refugees were a security threat in Uganda. The constant complaints and threats of attacks by Rwanda were a source of insecurity and diplomatic burden (Human Rights First 2004; Ahimbisibwe 2015, 2016). Also, Rwandans' involvement in crimes in Uganda was another area of concern. In fact, the Minister of Disaster Preparedness and Refugees is on record to have said "that group [the 2010 deported Rwandan asylum seekers] had become a source of insecurity in the settlement" (Ahimbisibwe 2015: 12, 2016: 876).

### **The intersection between the Refugees Act, the Constitution and Citizenship law: can refugees become citizens?**

The Act is implemented within a national constitutional context. It makes reference

to the 1995 Constitution and other laws specifically on the issue of naturalization of refugees. This section analyzes the Act within the broader constitutional, citizenship and immigrations legal framework and later looks at how diplomatic and political concerns have affected the country's practice on some refugee nationalities.

The Ugandan municipal law provides grounds on how a person can acquire Ugandan citizenship. They include citizenship by birth, registration and naturalization. Refugees can acquire citizenship only through registration and naturalization. The law provides for citizenship by registration. Article 12 (2) (c) of the Uganda Constitution and the Uganda Citizenship and Immigration Control Act (hereinafter referred to as UCICA) Ch. 66, article 14(2) (c) provides for citizenship for "every person who, on the commencement of this Constitution, has lived in Uganda for at least twenty years." However, other parts of the legislation deny refugees citizenship by registration. Article 12(1)(ii) of the Constitution and Article 14(1)(ii) state that every person born in Uganda is eligible for citizenship by registration but only if, "neither of his or her parents and none of his or her grandparents was a refugee in Uganda." In addition, Articles 12(2)(b) of the Constitution and 14(2)(b) of UCICA, which enable citizenship by registration for migrants who live in Uganda for more than 10 years according to the Constitution, 20 years according to the UCICA, provided they migrated "legally and voluntarily." Since refugees are forced to flee, the requirement of voluntariness would appear to exclude refugees (Citizenship Rights in Africa Initiative 2016).

The Constitution (Article 13) stipulates that "Parliament shall by law provide for the acquisition and loss of citizenship by naturalization". Accordingly, the individual requests for citizenship are made directly to the Directorate of Citizenship and Immigration, Ministry of Internal Affairs. But as Parliament has yet to pronounce itself on the issue of naturalizing refugees, no refugee has been given a positive response until now. Section 45 of the Act adds that: "The Constitution and any other law in force in Uganda regulating naturalization shall apply to the naturalization of a recognized refugee" The UCICA is the operative law with respect to the naturalization of refugees. Five criteria must be met under Section 16(5) of UCICA. The applicant: (a) has resided in Uganda for an aggregate period of twenty years; (b) has resided in Uganda throughout the period of twenty-four months immediately preceding the date of application; (c) has adequate knowledge of a prescribed vernacular language or of the English language; (d) is of a good character; and (e) intends, if naturalized, to continue to reside permanently in Uganda. Therefore, as Walker (2008: 4) suggests, "nothing in Ugandan law would seem to prohibit a recognized refugee from being considered to 'reside' in Uganda for purposes of naturalization under section 16 of the UCICA". Interesting to note however is that a number of long staying refugees within Uganda have approached the Department for Immigration to apply for naturalization and have been denied it.

On 30 August 2010, a petition was filed in court to secure an interpretation of the 1995 Uganda Constitution with regard to the possibilities of citizenship for the refugees by

registration and naturalization in Uganda. The Constitutional Petition No. 34 of 2010 filed by the Centre for Public Interest Law and Salima Namusobya versus Attorney General in the matter of a petition for the interpretation of the Constitution under Article 137 (1) of the Constitution, sought an interpretation of provisions of articles 12 and 13 of the Constitution of Uganda (and, in that regard, sections 14 and 16 of the UCICA, Cap.66 and sections 6 and 45 of the Refugees Act 2006). The interpretation concerns the the eligibility of refugees to apply for and acquire Ugandan citizenship by registration or naturalization. The petition asked the court to declare that a refugee who qualifies for citizenship by registration or naturalization under the laws of Uganda should be able to apply and acquire it. Also, it was argued that the relevant government departments and/or agencies should process applications for citizenship by refugees who qualify.<sup>39</sup>

In the October 2015 Constitutional Court ruling, the judges declared that refugees could not access citizenship on the basis of registration. However, court ruled that refugees were eligible for citizenship under naturalization. The judges refused to grant the petitioners' request that court orders the government to start considering applications for citizenship under naturalization. The judges argued that the petitioners had not presented evidence that government departments or agencies had failed to do so to date. The court was of the view that the petitioners should bring forward persons whose applications for citizenship had been rejected or not processed.<sup>40</sup>

It is not clear whether the petitioners will go back to the Constitutional Court with evidence of refugees who have been denied citizenship or appeal this ruling in the Supreme Court of Uganda (Citizenship Rights in Africa Initiative 2016). But what is clear is that for now refugees are not able to apply for citizenship until the legal ambiguities have been resolved. In an interview with an official from Refugee Law Project, he noted that: "We are still studying the Court ruling and will see the way forward. We shall advise our clients, the refugees, to present their applications for citizenship to the government. If they are denied citizenship, we shall use this evidence and go back to the Constitutional Court with a stronger case. If they are granted well and good. Our interest is to see that refugees are able to get naturalization according to the existing laws in Uganda".<sup>41</sup>

On the legal contradictions of granting citizenship to refugees, it has been argued that the decision to exclude refugees as a category for citizenship under the 1995 Constitution was influenced by the RPF taking over power in Rwanda. This is the same time when the Constituent Assembly was debating the 1995 Constitution in Uganda. The debate aimed at the exclusion of refugees as a category to be registered for Ugandan citizenship.<sup>42</sup> The feeling was that there was no need to grant Rwandan refugees citizenship since they were returning back home. The other argument is that government has always looked at refugees as a distinct group soon to leave back to their countries of origin (Alenyo 2014). These considerations made Uganda not to

consider the issue of citizenship for refugees in its laws.

UNHCR (2016: 5) notes that "during the 60th Commemoration of the 1951 Convention, the Government of Uganda pledged to explore opportunities for the local integration of protracted refugee groups". These refugee groups include: "Rwandans who fled the genocide and who now would fall within the scope of the Cessation Clause, (1959-1998); Congolese who fled after the assassination of Prime Minister Lumumba in 1961; and the South Sudanese who fled the previous civil strife and who never returned in 2005 after the attainment of self-determination in South Sudan" (*ibid.*). Despite the legal obstacles mentioned above, the Government in cooperation with UNHCR "has identified a group of 15,000 refugees who have been in Uganda for over two decades and that have developed strong social and family links with little if any links with their country of origin" (*ibid.*). In fact, "the Government has endorsed an alternative legal status such as long-stay resident permits would be explored for the group as a pathway towards eventual naturalization" (*ibid.*). However, government has been slow on this matter. One would have expected it to have taken a step in working on this pledge, nine years on. It remains to be seen whether the Government will remain committed and implement this pledge of facilitating the process of naturalizing the above categories of refugees.

## Conclusion

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This article has argued that much as the 2006 Refugees Act has been praised worldwide as being generally progressive and meets international protection standards, there is a gap with its implementation. This paper has analyzed this discrepancy by focusing on specific provisions of the Act. As argued by other authors before (Loescher 1993; Rutinwa 2002; Milner 2009), implementation of refugee law is affected by various political, economic, social, humanitarian and diplomatic factors. In the case of Uganda, politico-diplomatic and security factors related to foreign politics regarding Rwanda, Eritrea, Sudan and Burundi have clearly affected the implementation of the Act.

We have illustrated how refugees from different backgrounds are faced with persecution, harassment, abductions and kidnaps despite the provision of freedom from persecution in the Act. On cessation of refugee status, Uganda has implemented the cessation clause for Rwandan refugees before legally declaring it. This has been done in the name of promoting friendly relations with Rwanda, the country behind this cessation clause drive. It has also been noted that the procedure for application and grant of refugee status as provided for in the Act is rarely respected, such as in the case of Eritreans. Also, despite the provision for voluntary repatriation, there are cases which show that Uganda has instead practiced forced repatriation. This is as a result of security and diplomatic concerns with certain refugee caseloads. Lastly, despite the possibility of refugees to acquire citizenship political and diplomatic considerations have hindered this process in practice.



There is need for future research on other African countries' refugee laws and their implementation. This would help us compare Uganda with other African countries. Such a comparative study is justified since developing countries, including African states, host the majority of the world's refugees. Such experiences can help us understand the plight of refugees and also be used as lessons for other states in the world.

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## NOTES:

1 - Milena Belloni collaborated in this article within the frame of a larger research project entitled "Exiled and separated: a multi-sited ethnography of separated refugee families" (<https://uantwerpen.be/en/projects/exiled-and-separated/>). This project is financed by the FWO (Research Foundation – Flanders) (ref. 12Z3719N).

2 - Although the relations between the two countries were poor around 1999 to the early 2000, they have since improved at least on the surface. From 2018 onwards, the two countries have again found themselves at loggerheads and tensions.

3 - Rwandan new caseload refugees refer to Hutu that came during and after the 1994 genocide. By May 2020, Uganda hosted around 17,483 Rwandan refugees. Before them, Uganda hosted old case load Rwandan Tutsi refugees who arrived in 1959 and the early 1960s. The majority returned to Rwanda after the genocide while a significant number stayed in Uganda.

4 - *Uganda Refugee Statistics Map January 2021*, "UNHCR", January 2021: <https://data2.unhcr.org/en/documents/details/84724>.

5 - See *Uganda Comprehensive Refugee Response Portal*, Office of the Prime Minister, UNHCR, 2020: <https://ugandarefugees.org/en/country/uga>.

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

7 - *Ibid.*

8 - *Abuses Against Rwandan Refugees in Uganda: Has Time come for Accountability?*, "IRRI", 31 August 2018, <https://reliefweb.int/report/uganda/abuses-against-rwandan-refugees-uganda-has-time-come-accountability>.

9 - He was a former body guard of the Rwandan President, Paul Kagame. He was abducted and returned to Rwanda by Ugandan military and police officials. He was sentenced to life imprisonment by a Rwandan court.

10 - See *Open letter to the president on the treatment of Rwandan asylum seekers and refugees living in Uganda*, "Amahoro People's Congress, Rwanda National Congress Et FDU-Inkingi", 7 November 2013, <http://www.fdu-rwanda.com/wp-content/uploads/2013/11/Letter-to-President-Museveni-on-Rwandan-refugees.pdf>.

11 - *Ibid.*

12 - F. Musisi, R. Kasasira, *Police foil kidnap of another Rwandan refugee*, «Daily Monitor», 12 April 2014, <http://www.monitor.co.ug/News/National/Police-foil-kidnap-of-another-Rwandan-refugee/-/688334/2275862/-/15gcw6uz/-/index.html>; R. Mujuni *Rwanda Denies Kidnapping Refugees in Uganda*, «New Vision», 16 April 2014, <http://www.newvision.co.ug/news/654615-rwanda-denies-kidnapping-refugee-in-uganda.html>.

13 - A. Plotkin, *"There is no security here": Fears of Burundian Refugees in a Ugandan Refugee Settlement*, "IRRI", 16 March 2018: <http://refugee-rights.org/there-is-no-security/>.

14 - A. Plotkin, *cit.*

15 - See also A. Plotkin, *cit.*

16 - S. Iceta, *Gunman Kills Refugee Linked to South Sudan Rebels*, «Daily Monitor», 24 July 2018: <https://www.monitor.co.ug/News/National/Gunman-refugee-South-Sudan-rebels--Moyo-Palorinya/688334-4677812-b0acn4/index.html>.

17 - This is based on the first author's interviews, observations and interactions with new Rwandan Asylum seekers in Mbarara, Kampala, Oruchinga and Nakivale refugee settlements during the period June-August 2010, August 2016, September-November 2019. Rwandan asylum seekers include government officials, genocide survivors, journalists, students and ordinary people.

18 - Interview, female Ethiopian asylum seeker, Old Kampala, 14 December 2019.

19 - Interview, refugee man, Juru zone, Nakivale settlement, 2 July 2016

20 - Interviews with asylum seekers in Kampala, 13 to 17 December 2019. See also Cole's and Jourdan's papers in this Dossier.

21 - Interview with female Eritrean asylum seeker, Old Kampala, Kampala, 14 December 2019.

22 - Interview with a Protection Officer, OPM Offices, Kampala on 14 December 2019.

23 - For a more detailed review of Eritrean migration trajectories see Belloni (2019).

24 - Cfr. *President begins 2-day State Visit to Eritrea*, "The State House of Uganda", 29 May 2012: <https://statehouse.go.ug/media/news/2012/05/29/president-begins-2-day-state-visit-eritrea>

- 25 - Focus Group Discussion, Juru zone, Nakivale settlement on 30 July 2016; Focus Group Discussion Oruchinga settlement on 29th August 2016; Interviews with Rwandan refugees, Nakivale settlement, November 2019; Interviews with Rwandan refugees, Oruchinga settlement, September 2019.
- 26 - Interview, refugee woman, Kigali village, Nakivale settlement, 23 June 2010.
- 27 - Interview, refugee man, Sangano Base Camp, Nakivale settlement, 24 November 2019.
- 28 - Focus Group Discussion, Sangano Base Camp, Nakivale settlement, 24 June 2010.
- 29 - Interview, Uganda Government Official, OPM, Mbarara, 30 July 2010.
- 30 - Interview, Refugee Desk Officer, OPM, Mbarara, 27 August 2016.
- 31 - *Uganda asks Rwandan, Burundian and South Sudanese refugees to go home*, «Daily Monitor», 29 March 2019: <https://www.theestafrican.co.ke/news/ea/Uganda-asks-Rwandan-Burundian-refugees-to-go-home/4552908-5047554-hl7fiv/index.html>.
- 32 - *Ibid.*
- 33 - *South Sudan urges refugees to return home*, «The Observer», 17 January 2019, <https://observer.ug/news/headlines/59670-south-sudan-urges-refugees-to-return-home>.
- 34 - *Uganda Tells Burundian and Rwandan Refugees to Return Home*, «Region Week», 29 March 2019: <https://regionweek.com/uganda-tells-burundian-and-rwandan-refugees-to-return-home/>; *Uganda asks Rwandan, Burundian refugees to go home*, «Daily Monitor», 29 March 2019: <https://www.theestafrican.co.ke/news/ea/Uganda-asks-Rwandan-Burundian-refugees-to-go-home/4552908-5047554-hl7fiv/index.html>.
- 35 - *Uganda Tells Burundian and Rwandan Refugees to Return Home*, *cit.*; *Uganda asks Rwandan, Burundian Refugees to Go Home*, *cit.*
- 36 - *Uganda Tells Burundian and Rwandan Refugees to Return Home*, *cit.*; *Uganda asks Rwandan, Burundian Refugees to Go Home*, *cit.*
- 37 - *Uganda Tells Burundian and Rwandan Refugees to Return Home*, *cit.*; *Uganda asks Rwandan, Burundian Refugees to Go Home*, *cit.*
- 38 - *Rwanda; Cessation of refugee status is unwarranted – Memo of Fact and Law*, "Fahamu Refugee Programme", September 2011: <http://www.refugeelaidinformation.org/sites/srlan/files/fileuploads/Memo%20of%20Fact%20and%20Law.pdf>
- 39 - See Centre for Public Interest Law Ltd and Salima Namusobya v Attorney General, Constitutional Petition No. 34 of 2010, Constitutional Court of Uganda, Kampala.
- 40 - See Uganda Constitutional Court Judgment, 6th October 2015 in the case of Centre for Public Interest Law Ltd and Salima Namusobya v Attorney General, Constitutional Petition No. 34 of 2010, Constitutional Court of Uganda, Kampala.
- 41 - Interview with a Refugee Law Project official, Mbarara on 9 August 2016.
- 42 - Committee on Legal Affairs, *Hansard Records: Constituent Assembly Debates Committee on Legal Affairs Debating Draft Chapter Three on Citizenship*, 1994.

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