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Beyond the Cessation Clause: Rwandan Refugees in Uganda—From Refugees to East African Citizens?

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Abstract

Since 2002, Uganda has been trying to find a durable solution to the Rwandan refugee issue without success. Despite various attempts at (in)voluntary repatriation, the majority refuse to return. Resettlement is not possible, and local integration is yet to be explored. Simultaneously, the recommendation for the cessation of refugee status by the United Nations High Commissioner for Refugees has not addressed the problem. We analysed the prospects and challenges of granting *East African citizenship* to Rwandan refugees by issuing East African Community (EAC) passports or *residence permits* that would give them freedom of mobility, residence, and employment in the EAC in accordance with the Common Market Protocol. Searching for a durable solution at the EAC level comes at a time when efforts to establish the East African federation continue. This has the potential to end one of the most protracted refugee situations, promoting the rights of Rwandan refugees, and enhancing people-centred regional integration.

Keywords: Rwandan refugees, cessation clause, durable solutions, East African community, mobility, citizens, Uganda, Rwanda

1. Introduction

According to the United Nations High Commissioner for Refugees (UNHCR), ‘by the end of 2020, 82.4 million individuals were forcibly displaced as a result of persecution, conflict, violence, human rights violations or events seriously disturbing public order’ (UNHCR 2021: 2). Out of 82.4 million, 26.4 million were refugees¹, 48.0 million were internally displaced persons, and 4.1 million were asylum seekers (UNHCR 2021: 2). Developing regions hosted 86 percent of the world’s refugees in 2020 under the UNHCR mandate (UNHCR 2021). Uganda hosted over 1.4 million refugees in 2020, the highest among all African countries and the fourth highest in the world (UNHCR 2021: 2). The Office of the Prime Minister (OPM) and UNHCR put the total number of refugees in Uganda at more than 1.5 million by the end of August 2021 (OPM and UNHCR 2021). The majority of these refugees come from neighbouring countries and the wider region comprising South Sudan, the Democratic Republic of Congo (DRC), Burundi, Somalia, Rwanda, Kenya, Ethiopia, and Eritrea, among others. By August 2021, around 19,010 of the 1.5 million refugees in Uganda were Rwandan, who arrived during and after the 1994 Rwandan genocide.

Rwandan refugees have settled in Nakivale, Oruchinga, Kyaka II, and Kyangwali refugee settlements in rural Uganda, while some others are in urban areas (Karoooma 2014: 11). Other Rwandan refugees are secondary movers – those who came from neighbouring countries such as Tanzania and DRC following the forced repatriations of 1996/1997, and were unable to return because they faced persecution on account of their first departure (ibid.). Rwandan asylum seekers (both Hutu and Tutsi) continue to come to Uganda claiming persecution, human rights violations, and dictatorship in Rwanda². These asylum seekers and secondary movers include ‘recyclers’³ who were repatriated to Rwanda but had to move back to Ugandan refugee settlements and urban areas (Amnesty International 2011).

This paper argues that despite various attempts to search for a durable solution, the Rwandan refugee problem has remained. Since 2002, Uganda has promoted (in)voluntary repatriation, but the majority of refugees refuse to return and continue to stay in the country. Resettlement is not available, and local integration is yet to be explored as a long-term solution. At the same time, the recommendation for the cessation of refugee status by the UNHCR has not addressed this problem. Using Long (2009); Adepoju *et al.* (2010); Long and Crisp (2010); Long (2011); Long (2015); Long and Rosengaertner (2016) work on mobility that goes beyond traditional durable solutions, this paper proposes granting *East African citizenship* to Rwandan refugees by issuing East African Community (EAC) passports or *residence*

¹ Out of 26.4 million refugees, 20.7 million refugees are under UNHCR mandate and 5.7 million are Palestinian refugees registered by United Nations Relief and Works Agency.

² This is based on personal interviews, observations, and interactions with new Rwandan Asylum seekers in Mbarara, Kampala, Oruchinga, and Nakivale refugee settlements during the period June 2010 to 2019. Rwandan asylum seekers include government officials, genocide survivors, journalists, and students, together with ordinary people.

³ The author has interviewed several ‘recyclers’ living in Nakivale and Oruchinga settlements in Uganda.

permits that gives them freedom of mobility and residence in the member countries in accordance with the EAC Treaty and Common Market Protocol. Searching for a durable solution at the EAC level comes at a time when efforts to establish the East African federation continue. Despite a number of challenges that might hinder its implementation, this solution has the potential to end a protracted refugee situation, promoting the rights of Rwandan refugees and enhancing people-centred regional integration in the region.

The aim of this paper is to contribute to the understanding of the prospects and challenges of alternative durable solutions to protracted displacement. The UNHCR and refugee hosting countries, including Uganda, have attempted to find a durable solution for Rwandan refugees with little success. In fact, it is becoming increasingly difficult to obtain solutions for contemporary forced migration flows using the traditional durable solutions provided by the existing refugee regimes (Long 2009). This paper responds to this challenge.

The paper is structured as follows: The following section presents the methodology, and subsequently, the search for a durable solution is presented. (In)voluntary repatriation, cessation of refugee status, and the challenges involved are discussed. Other durable solutions, such as resettlement and local integration, have not been used or are yet to be explored. Subsequently, the paper analyses the ‘new solution’ of granting Rwandan refugees *East African citizenship* by issuing EAC Passports or *residence permits* that gives them freedom of mobility, residence, employment, and other rights in the EAC in accordance with the Common Market Protocol. The prospects of this durable solution and the challenges that might affect its implementation are discussed, followed by the conclusion.

2. Methodology

This paper is the result of four research visits carried out at different intervals between 2010 and 2019. The first three visits were carried out at the Nakivale and Oruchinga settlements in south-western Uganda and focused on Rwandan new caseload refugees⁴. During these visits, I spoke to over 200 Rwandan refugees, with help from two research assistants. The fourth visit partly covered Nakivale, Oruchinga, and Kampala. It looked at Rwandans among refugees from other nationalities.

While the first visit lasted for one month, the remaining were two weeks long. Semi-structured interviews were conducted to collect data from refugees and local hosts at the study sites. The research also included key informant interviews with OPM, UNHCR, and NGO officials. Focus group discussions (FGDs), with six to twelve refugees each, were organised. Direct observation was crucial for understanding some of the issues, such as living conditions, forced repatriation operations, victims

⁴ Rwandan new caseload refugees refer to the Hutu that came during and after the 1994 genocide. Before them, Uganda hosted old caseload Rwandan Tutsi refugees who arrived in 1959 and the early 1960s. The majority returned to Rwanda after the genocide, but a significant number stayed in Uganda.

of human rights violations, refugee-host relations, etcetera. I have also used documentary evidence such as text books, journal articles, magazines, newspapers, government and UNHCR policy documents, and legal instruments such as the 2006 Refugees Act, the 1999 EAC Treaty, and the 2009 EAC Common Market Protocol. 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 the 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 the inability to recover land and property in Rwanda.

In all four research visits, the Rwandan refugees and other categories of respondents answered questions on themes such as refugee physical security, refugee rights and obligations, refugee-host relations, voluntary and forced repatriation, local integration, resettlement, the so-called cessation clause, and alternative durable solutions. Thematic and content analyses were used to analyse the data. The analysis further made use of secondary data, both scholarly articles and grey literature. The study was cleared by the OPM and Isingiro Districts in Uganda. During the data collection, the respondents were briefed about the purely academic nature of the study and they participated voluntarily. Their confidentiality and anonymity were protected throughout the research process.

3. Challenges in the search for a durable solution

3.1. Voluntary repatriation

Since October 2002, the government of Rwanda (GoR), the government of Uganda (GoU), and the UNHCR have played an active role in promoting the voluntary repatriation of Rwandan refugees (UNHCR and IOM 2011). The GoR has strongly pursued the return of all its citizens, stating that the country is enjoying stability and economic growth, so there is no reason for anyone to remain in exile (MIDIMAR 2011). Rwanda would also like to see its refugee population return from exile so that they can take part in rebuilding the country, as well as put an end to vital security and justice issues which flow from Rwanda’s history of genocide (Human Rights First 2004, IRRI and Refugee Law Project 2010, Karooma 2014).

In 2003, a tripartite agreement was signed between Uganda, Rwanda, and the UNHCR, to set up a Tripartite Commission to oversee the repatriation process, and joint communiqués were issued from time to time. Sensitisation campaigns were also carried out in the settlements to encourage refugees to return. Furthermore, ‘Go and see, come, and tell visits’ were organised, under which refugee delegations to visit Rwanda were escorted by OPM and UNHCR. On return, the refugees shared their experiences about what they had or had not seen in Rwanda.

However, several challenges have hindered this repatriation exercise. First, the refugees do not trust

the information they receive from the UNHCR and officials from Rwanda and Uganda. In FGDs, refugees noted that, ‘We were shown videos and pictures which paint a good picture of Rwanda. They showed us the conditions in Rwanda and how they have improved to enable us to go home. However, we were not convinced because they only showed us the good things about Rwanda when we know very well that our country has another bad side’⁵.

Second, during the visits to Rwanda, the refugees complained that they were not taken to all the places they wanted to visit which cast a doubt on the whole process. For example, in the FDGs, the refugees noted that they were taken to selected areas in Rwanda that the government was interested in showing and not what they wanted see⁶. They observed that these visits were state-managed and aimed at painting a good picture of Rwanda⁷. They noted that they were not able to see or understand the other side of Rwanda, which is hidden from the public⁸. They noted that they would have loved to verify the stories of arrests at night by the Directorate of Military Intelligence (DMI), disappearances of civilians, genocide ideology laws, human rights violations, and land conflicts to mention but a few of the things that they have heard⁹. These stories do little to convince the already apprehensive refugees.

Despite all efforts to promote voluntary repatriation, Rwandan refugees have been reluctant to return. Since 2004, refugee returns have remained low. The following are the number of refugees who have returned since 2004: 2004 (2,400), 2005 (1,591), 2006 (none), 2007 (2,732), 2008 (461), 2009 (5,583), 2010 (1,762), 2011 (19), and 2012 (157) (Rwandan Ministry of Disaster Management and Refugees Statistics Report 2012).

3.2. Forced repatriation

Because of the low numbers, in the late 2000s, repatriation became associated with forced repatriation operations, deadlines, threats, withdrawal of land for cultivation, and reduction of food rations. In short, what started as a voluntary process had taken a coercive turn. In other words, repatriation became a forced return (Ahimbisibwe 2020).

For example, on 5 October 2007 it was reported that ‘Ugandan security operatives on Wednesday night raided Kyaka II and Nakivale refugee settlements and violently drove out thousands of Rwandan nationals’ (Basiime *et al.* 2007). It was further pointed out that ‘reports indicate that up to 3,000 people were evicted but UNHCR official said 1,535 people were forcefully repatriated’ (ibid.).

⁵ Focus Group Discussion, Rubondo zone, Nakivale settlement, on 8 July 2010; Focus Group Discussion, Sangano Base Camp, Nakivale settlement on 10 June 2016; Focus Group Discussion, Sangano Base Camp, Nakivale settlement, on 28 November 2019.

⁶ *ibid.*

⁷ *ibid.*

⁸ *ibid.*

⁹ Focus Group Discussion, Sangano Base Camp, Nakivale settlement on 10 June 2016; Focus Group Discussion, Oruchinga settlement on 29 August 2016; Focus Group Discussion, Juru zone, Nakivale settlement on 30 June 2010.

In another incident, ‘on 14 July 2010, the Ugandan and Rwandan government police and military entered Nakivale refugee camps in Uganda. Some 1,700 Rwandans were gathered together in Nakivale on the pretext that they were to be informed of the results of their refugee status claims, but then found themselves being herded into lorries at gunpoint to be returned in Rwandan military lorries’ (Harell-Bond 2011). According to refugees’ investigations and reports, 14 Rwandans died, families were separated, children were left behind, and 17 recognised refugees were refouled (ibid.).

Again, since 2009, Uganda has imposed a cultivation ban on Rwandan refugees. ‘Since then, refugees have become extremely food insecure and reported resorting to numerous coping mechanisms that, in turn, increased their vulnerability’ (Amnesty International 2011: 12). According to Amnesty International, ‘such a ban directly discriminates against the Rwandan refugees on the grounds of nationality and as such violates Article 3 of the 1951 Refugee Convention’ (ibid.). This ban on cultivation came at the same time when vigorous efforts to promote repatriation were put in place. Rwandan refugees were given a deadline of 31 July 2009 to repatriate or the Nakivale settlement would be closed (ibid. 13). This deadline was extended to 31 August 2009 (IRIN News 2010). ‘The ban on cultivation was used as a tool to force Rwandan refugees to return’ (ibid.). Despite these efforts to force Rwandans to return, the refugee issue has not been solved. Even those who were forcefully repatriated found their way back to Uganda, either returning to the settlements or disappearing into the host communities (Karooma 2013, Ahimbisibwe 2015).

3.3. Cessation of refugee status

In 2011, the UNHCR put in place a Comprehensive Strategy for the Rwandan Refugee Situation (hereafter, comprehensive strategy) an important component of which was the elaboration of a common schedule leading to the cessation of refugee status¹⁰, initially foreseen to commence on 31 December 2011 (UNHCR 2011: 1). The cessation of refugee status targeted Rwandan refugees who fled their country between 1959 and 1998, thereby assessing that Rwanda had become a safe nation for these refugees to return (Gillaume 2012). ‘Unlike refugee flows from Rwanda after 1998, the above-mentioned periods shared 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: 6). It was asserted that all these disturbing events had since stopped and ‘Rwanda enjoys an essential level of peace, security,

¹⁰ Refugee law provides for cessation of refugee status: Article 1 C (5) of the 1951 Convention states that ‘He can no longer, because the circumstances in connection with which he has been recognized as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of his nationality’; Article 1 (4) (e) of the OAU Convention states that ‘he can no longer, because the circumstances in connection with which he was recognized as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of his nationality’; Section 6 of the 2006 Refugees Act also provides for cessation of the refugee status such that the person shall cease to be a refugee if the circumstances in connection with which that person was recognised as a refugee have ceased to exist.

reconciliation, democracy and human rights’ (ibid.).

However, Uganda did not officially implement the cessation clause. The cessation of refugee status originally set for implementation by the Ugandan government on 30 June 2013 was suspended until further notice. After the 2016 UNHCR executive committee meeting in Geneva, the implementation of the cessation clause was scheduled for 31 December 2017 and later postponed indefinitely. According to the Minister for Disaster Preparedness and Refugees, the postponement took place due to the pending resolution of legal ambiguities and the charting of a way forward towards the implementation of local integration and alternative legal status as required by the refugee law and comprehensive strategy (Government of Uganda 2013). Overall, the implementation of the cessation clause is not a solution to the Rwandan refugee problem (Kingston 2017). It risks creating stateless people and other protection challenges (ibid.). The threat of the cessation clause has made the refugees disappear and go off the radar, with a number of them moving away from the settlements and self-settling in different parts of the country¹¹. This is not a solution. Rather it only complicates the situation further and makes protecting them even more difficult.

4. Unexplored durable solutions

4.1. Local integration

A possible durable solution for the Rwandan refugees in Uganda is local integration. This solution was provided in the 1951 UN Convention Relating to the Status of Refugees (hereafter, the 1951 Convention). Article 34 calls upon states to assist in the assimilation and naturalisation of refugees enabling them to become citizens of the host country. According to Crisp (2004: 2), ‘Strictly speaking, it can be argued that the process of local integration becomes a durable solution only at the point when a refugee becomes a naturalized citizen of his or her asylum country, and consequently is no longer in need of international protection’. Ahimbisibwe *et al.* (2017) argue that any integration without the attainment of citizenship may not be a durable solution, and despite the socio-economic integration of Rwandan refugees, naturalisation is yet to be explored for the Rwandan refugee caseload. Although it is not available as a solution, it is worth noting that the majority of the Rwandan refugees support this option (ibid.). It has even been argued that local integration has the potential to address the refugee challenge (ibid.). However, there are a number of challenges to naturalisation that range from legal ambiguities in Ugandan laws, unwillingness of Uganda and Rwanda to naturalise these refugees, security concerns regarding the possible hostility of the host population, etcetera (ibid.). These challenges have added to the dilemma of finding an appropriate solution for Rwandan refugees in Uganda.

¹¹Field Notes 2016, 2018, and 2019.

4.2. Resettlement

The second traditional durable solution is resettlement. Resettlement involves the selection and transfer of refugees from a state in which they have sought protection to a third state which has agreed to admit them as refugees with permanent residence status (UNHCR 2011). The status provided ensures protection against refoulement and provides a resettled refugee and their family or dependants access to rights similar to those enjoyed by nationals (*ibid.*). Resettlement carries with it the opportunity to eventually become a naturalised citizen of the resettlement country (*ibid.*). However, there are no resettlement opportunities available to Rwandan refugees. The number of refugees is too high and the number of slots available for resettlement are usually very limited. Resettlement remains a dream, as there are no countries accepting large groups of refugees (Ahimbisibwe 2015). In general, only 1% of the world's refugees benefit from resettlement (Long 2011). In fact, 'given the narrow quotas, the chance of being resettled is slim, and indeed many people in refugee camps think of resettlement as akin to winning the lottery' (Jacobsen 2005: 55). Also, 'the Rwandan government has promoted the notion to the international community that there is peace in Rwanda. This has made the international community reluctant to resettling Rwandan refugees when their country of origin is secure and willing to welcome them' (Ahimbisibwe 2015: 290).

5. Beyond traditional durable solutions: A brief overview

As already stated, it is difficult to solve today's refugee problem using traditional durable solutions. Long (2009: 3) argues that 'it has become increasingly clear in recent years that the three durable solutions¹² are not always able to respond adequately to the complexity of contemporary forced migration flows'. Failure to find durable solutions, among other causes, has led to the emergence of protracted refugee situations. It is clear from the above discussion that the three durable solutions are limited in addressing the Rwandan refugee problem. Amidst these limitations, scholars have proposed a number of 'new durable solutions' to respond to the challenge of forced displacement. They range from addressing the root causes of conflicts in countries of origin to granting refugees freedom of mobility, establishment, and residence in host countries and regions with regional citizenship within regional integration blocs.

5.1. Addressing the root causes of displacement

The ideal solution would be to address forced displacement at the source and avoid a situation in which people flee as refugees in the first place. However, the reality is that Rwandan refugees in Uganda and other countries find themselves trapped in protracted. Guterres has argued that 'we have to recognise

¹² As already shown, 'voluntary' repatriation has not addressed the Rwandan refugee problem. Local integration and resettlement have not been or are yet to be tried.

that there are no true humanitarian solutions to refugee problems. Rather, solutions require political will and leadership' (Guterres 2012). This suggests there is a need to look for political solutions to refugee problems. We need to reconstruct the state and build institutions that promote accountability of leaders to the population, clearly separate powers between the arms of the government, and put the army under civilian control through good civil-military relations, and conduct regular free and fair elections. Mushemeza takes this idea further, arguing that 'Rwanda, and Africa as a whole, must build institutions that allow popular participation in decision making, transfer of political power from one group or generation to the other, and generally, address the question of democracy and good governance' (Mushemeza 2007). This will address the challenge of future displacement that might arise as a result of bad governance, undemocratic tendencies, and human rights violations in EAC member countries.

Furthermore, there is a need to create mechanisms for resolving disputes in the countries of origin peacefully. The use of violence has been the main reason behind the forced displacement of Rwandan refugees in the recent past. In the FDGs, refugees stated, 'As Africans, we have to learn to resolve our conflicts using peaceful means. The use of force is responsible for the problem of refugees in our countries'¹³. They further pointed out that 'our leaders should learn to use dialogue to resolve the differences. If President Habyarimana had sat with Kagame and RPF leaders to resolve the Tutsi grievances, perhaps we would have avoided the 1990 invasion, the 1994 genocide, and the wars that followed in Zaire/DRC'¹⁴.

Political ethnicity has been at the root of wars and conflicts in Rwanda that have resulted in considerable bloodshed as well as the displacement of people as refugees during and after the war. De-ethnicisation should be encouraged as a political solution aimed at creating harmony and peaceful coexistence. Government officials, civil society organisations (CSOs), religious leaders, traditional leaders, and the media can be the main vehicles for delivering the message and encouraging people to discard toxic notions in this regard. However, mere legislation is insufficient for de-ethnicising society, especially if there is continuous discrimination and segregation against a group of people. For example, the current legislation against genocidal ideology in Rwanda is ineffective unless the government is seen to be fair and willing to promote equal justice as opposed to one-sided justice that favours one group at the expense of others. Equal opportunities for all citizens of Rwanda, protection of human rights, and promotion of unity and democracy are necessary to bring about true de-ethnicisation of society instead of legislating ethnicity away. The refugees stated, 'Kagame should be a leader for all Rwandans. He should not favour Tutsi and discriminate against Hutu. This has been the source of our conflicts in Rwanda. We should learn from history that exclusion and discrimination breed grievances

¹³ Focus Group Discussion, Sangano Base Camp, Nakivale settlement on 24 June 2010.

¹⁴ *ibid.*

and lead to violence, whereas inclusion and non-discrimination can lead to peace and security'¹⁵. The next section looks into the possible durable solutions of refugee mobility and regional citizenship of the EAC or future political federation.

5.2. Refugees, mobility, and regional integration

Regional integration is one of the avenues through which the refugee problem can be addressed. With the East African countries as one political federation, there is hope that a bigger economy and a wider country would swallow the narrow attitudes of ethnic segregation. If the federation comes through, the people would be known as East Africans rather than Rwandans, Ugandans, Kenyans, Burundians, or Tanzanians. Rutinwa (1996) argued that regional integration has the potential of addressing political instability in the Great Lakes region of Africa. Economic integration is capable of addressing economic factors underlying the political conflicts. However, it would be a while before the political federation of East Africa is realised (Kasaija 2004).

Long and Crisp (2010) proposed a solution for the mobility of protracted refugees. They argued that from the point of view of labour migration, refugees' mobility is a positive asset that can contribute to their lasting protection, and labour migration has the potential to '[address] the needs of protracted or residual refugee populations unable to access the three traditional durable solutions of repatriation, resettlement or local integration' (ibid. 57). Long (2015: 6) argued that labour migration has been found to assist the traditional three solutions. She has highlighted the role of labour mobility in bringing an end to protracted refugee situations by allowing refugees access to markets through further migration or finding opportunities in the host country (ibid.).

In addition, 'in a broader sense, it is now increasingly recognised that human mobility provides an important means for people to improve their standard of living and to contribute to the economic and social life of their countries of origin and destination' (ibid. 56). Mobility enables refugees to obtain rights and protection in destination countries. Refugee mobility creates 'transnational diasporic community networks that can contribute positively to the de facto protection of refugees, asylum seekers, IDPs and other persons of concern to UNHCR' (ibid.).

However, Long (2009: 1) also states that 'regularised labour migration cannot, and should not, replace the traditional citizenship-focused durable solutions of resettlement, local integration or repatriation'. She argues that labour migration should not be seen as a fourth durable solution but rather as a part of the solutions framework intended to address forced displacement (ibid. 5). She admits that labour migration is limited in its scope as it cannot function as a durable solution without being connected to some form of citizenship in the state of origin, country of asylum, and regional or

¹⁵ Focus Group Discussion, Rubondo zone, Nakivale settlement on 27 November 2019.

supranational organisation like the Economic Community of West African States (ECOWAS) and East African Community (*ibid.*). She adds that without access to citizenship, labour migration is an incomplete solution (*ibid.* 23).

Long and Rosengaertner (2016) expanded on the notion of labour migration to include mobility for education and training, family reunion, and marriage. Young refugees face the challenge of disrupted education cycles and, hence, the acquisition of skills due to displacement (*ibid.*) even though schools and training institutions are available in host countries. Allowing refugees to cross borders for further studies enables them to expand on the opportunities available to them and take control of their future. This is relevant for Rwandan refugees in Uganda. Their mobility for school and training within the East African region is necessary to build their potential, provide opportunities, and deepen people-centred regional integration. However, financial aid and scholarships would have to play a key role in opening study and training migration channels to refugees (*ibid.*). Left on their own, the costs of education and training programs would be too high for refugees to bear.

In practice, refugee mobility has been implemented in the context of ECOWAS which was founded in 1975 to promote trade and economic integration in the West African sub-region (Adepoju *et al.* 2010). A protocol on free movement was adopted by ECOWAS in 1979 ‘which confers on community citizens the right to enter, reside in and establish economic activities in the territory of any ECOWAS member state’ (*ibid.* 123). Furthermore, ‘the ECOWAS protocols extended residency, including the right to seek and carry out income-earning employment, to community citizens in host ECOWAS member States, provided they had obtained an ECOWAS residence card or permit’ (*ibid.*). The protocols further state that ‘obliged member states to grant migrant workers, complying with the rules and regulations governing their residence under ECOWAS, equal treatment with nationals in areas such as security of employment, participation in social and cultural activities, and, in certain cases of job loss, re-employment, and training’ (*ibid.*).

Within the ECOWAS protocols, refugee mobility and right to residence have been guaranteed. For example, in 2009, Nigeria issued three-year ECOWAS residence permits alongside re-issuing passports of residual refugee populations from Sierra Leone and Liberia (Long and Crisp 2010: 57). Similarly, Gambia also issued ECOWAS residence permits to Sierra Leonean refugees who chose to stay in Gambia. At the same time, Sierra Leonean passports were issued to these refugees by the Sierra Leonean High Commission in Gambia (Long 2009: 10).

According to Long (2009: 26), ‘the success of the ECOWAS migration-based solutions framework for Liberian and Sierra Leonean refugees suggests that labour migration could prove particularly useful when incorporated into wider regional frameworks intended to promote economic integration’. Although this approach had its own set of challenges (Omata 2016), it was an innovative durable solution in a world where durable solutions to forced displacement are becoming increasingly difficult.

The EAC is one region that can learn from the ECOWAS refugee mobility experience and deal with residual refugee populations including Rwandans within the framework of the Common Market Protocol that provides rights of movement and residence to East African citizens (Long 2009).

5.3. Refugees and regional citizenship

Refugee mobility and residence are linked to regional citizenship, which creates new dimensions of identity and belonging away from the nation-state. According to IRRI (2014: 1), ‘Citizenship is understood both as access to legal citizenship, and more broadly as a recognition of the right of a person to belong in a community and the power of that acceptance/belonging as a means of accessing other rights’. Citizenship is defined at two levels: legal and empirical citizenship. Legal citizenship ‘denotes a legal status given at the national level that designates full membership in a state with concomitant rights or entitlements and duties’ (ibid. 5). It refers to the relationship between the individual and the state. The individual has rights and duties under the law, and the state has certain responsibilities in this legal bond (ibid.). It spells out how individuals and groups are related to their state or community (ibid. 5). Legal citizenship, under which an individual carries a passport or national identity card, shows a level of belonging at the national level. On the other hand, empirical citizenship ‘is about individuals’ or the groups real life experiences of belonging and being able to claim rights on an equal footing with other community members’ (ibid.).

Although citizenship, to a large extent, still operates at the national level, regional citizenships, like the one seen above under ECOWAS, are emerging. Under such regional citizenship citizens are able to move freely within a regional bloc. The West African bloc introduced an ECOWAS passport and residence permit that allowed Sierra Leonean and Liberian refugees to settle in member countries such as Nigeria, Ghana, and Gambia. Long (2011: 35) points out that:

[O]ne important insight from these case studies is to recognize that new citizenships may unlock elements of protracted displacement crises by sitting either below or above traditional or formal state-citizen structures. The emergence of new ‘citizenships’ or community memberships within regions of protracted crisis, as described above, is one facet of this development. The other is the development of new supra-national and regional citizenships that may in coming years have a profound effect on both integration prospects and mobility, helping both to unlock and to prevent protracted displacements. ECOWAS citizenship has proved useful in resolving residual displacement of Liberian and Sierra Leonean refugees.

Similarly, Long and Rosengaertner (2016) argue that regional citizenship may be crucial for the

mobility of recognised refugees. As citizens of regional blocs, recognised refugees would be able to move for protection and livelihoods. We now look at the possibility of refugee mobility and regional citizenship in the context of the EAC and its challenges.

6. The EAC Treaty and Common Market Protocol

The EAC was first established in 1967 by three countries: Uganda, Kenya, and Tanzania. The EAC collapsed after 10 years in 1977 due to a number of factors, including ideological, political, and economic factors (Ojo *et al.* 1985, Rwekaza 2000). A treaty re-establishing the EAC was signed by the founding nations in 1999. Rwanda and Burundi joined the EAC in 2007, followed by South Sudan in 2016. The DRC and Somalia have also expressed interest in joining the EAC.

Chapter 17, Article 104 of the EAC Treaty provides for the free movement of persons, labour services, right of establishment, and residence. Article 104 (1) states that ‘partner states agree to adopt measures to achieve the free movement of persons, labour and services and to ensure the enjoyment of the right of establishment and residence of their citizens within the community’. Member states are to achieve this goal by: (a) ease border crossing by citizens of the partner states; (b) maintain common standard travel documents for their citizens; (c) effect reciprocal opening of border posts and keep the posts open and manned for 24 hours; (d) maintain common employment policies; (e) harmonise their labour policies, programmes, and legislation, including those on occupational health and safety; (f) establish a regional centre for productivity and employment promotion and exchange information on the availability of employment; (g) make their training facilities available to persons from other partner states; and (h) enhance the activities of the employers’ and workers’ organisations with a view to strengthening them. The Common Market Protocol was put in place to ensure the effective implementation of this last goal of the EAC Treaty.

The Protocol for the Establishment of the EAC Common Market was signed in Arusha, Tanzania by the Republic of Kenya, Uganda, Rwanda, Burundi, and the United Republic of Tanzania, on 20 November 2009, and it came into force in 2010 (Kago and Wanyama 2017: 345). Article 4 of the Common Market Protocol provides that the ‘overall objective of the Common Market is to widen and deepen cooperation among the partner states in the economic and social fields for the benefit of the partner states’. One of the specific objectives is to ‘accelerate economic growth and development of the partner states through the attainment of the free movement of goods, persons and labour, the rights of establishment and residence and the free movement of services and capital’. Article 7 of the Common Market Protocol provides for free movement of persons such that ‘the partner states hereby guarantee the free movement of persons who are citizens of the other partner states, within their territories’. Partner states further commit themselves to respect the principle of non-discrimination of each other’s citizens based on their nationality.

Rwengabo (2015) argues that the Common Market Protocol guarantees freedom of cross-border movements of persons, immigration, right of residence, and ensures the creation of a regional sense of belonging that spans the EAC geo-social space, leading to the creation of an East African Citizenry.

Under the Common Market Protocol framework, East African citizens are free to move within the EAC. The Common Market emphasises the mobility of East African citizens as a way of strengthening regional integration. The Common Market provides an opportunity to discuss solutions for residual refugee caseloads, including Rwandans, with freedom of movement and residence in the region. With no clear traditional durable solution in sight, guaranteeing mobility and regional citizenship to refugees could be a starting point in the search for a solution. In fact, Long (2011: 35) hopes that ‘EAC citizenship could address the problem of refugees in East Africa, a region with historically high levels of displacement’. The International Refugee Rights Initiative (IRRI) (2014: 4) made a similar observation: ‘New regional arrangements such as the EAC are building a sense of regional belonging that may prove powerful in promoting access to rights across the region. Guarantees of freedom of movement and establishment for community members may act to protect refugees in practice (with or without formal reference to refugee status)’.

One way to explore this is by granting East African passports to refugees. The first EAC passport was introduced in 1999 and was recognised as a travel document within (but not outside) the regional bloc. This passport enabled East African citizens to travel freely within the region. A new internationally recognised and valid EAC e-passport with increased security features was introduced in January 2018 (UNHCR 2018). The new passport is issued by member states of the EAC with their coats of arms and other national symbols. This paper proposes the EAC passport, could be offered to Rwandan refugees as a step towards shedding off the refugee label.

The other option is to give them EAC residence permits that grant them the right to be permanent residents within the EAC. This would allow them freedom of movement and residence, get employment opportunities, and pursue other livelihood strategies. This will end their legal status as refugees in the short run while also opening a window for future solutions such as East African permanent residents, citizens of the federated state of East Africa, or naturalised citizens of member countries of the EAC like Uganda.

The granting of both EAC passports or residence permits, will only be a part of the solution which may become a durable solution when linked to support other solutions, such as naturalisation. This is in line with an earlier argument by Long (2009) that labour migration is not a complete solution until it is linked to citizenship in the country of origin, host country, or regional organisations. Rwandan refugees willing to get Rwandan passports can access them in Uganda. This is a renewal of their Rwandan citizenship, which means that they will remain Rwandan citizens but live as diaspora. However, our findings suggest that not many Rwandan refugees would be willing to take on Rwandan citizenship out

of fear and uncertainty about the Rwandan state. The other category is naturalisation in Uganda. This is based on the fact that Rwandan refugees have received *de facto* integration in Uganda. They have successfully attained socio-economic integration (Ahimbisibwe *et al.* 2017). In addition, a good number of them already have Ugandan *de jure* citizenship through unofficial channels (Ahimbisibwe 2022).

Furthermore, there is a potential of citizenship at the level of the East African community. Although the East African community is a young organisation, it has the potential to grant citizenship to Rwandan refugees, especially in the future when the East African federation becomes a reality. IRRI (2014: 4) opined that, ‘Although rights at the regional level are envisaged as relying on a base of national citizenship, its potential should be developed in such a way as to expand protection and complement current refugee protection structures’. Some lessons can be drawn from the ECOWAS regional durable solution for residual Liberian and Sierra Leonean refugees in West Africa and develop it further with innovations, making it appropriate and relevant for the East African region.

7. The prospects of an EAC durable solution

This proposed durable solution has some possibility to succeed owing to a number of factors that might favour it. These include the *de facto* integration of Rwandan refugees, similar ethnicities across borders, the EAC Common Market Protocol, and the fact that Rwandan refugees favour integration as East African citizens. We will discuss each of these below.

7.1. *De facto* integration of Rwandan refugees

Rwandan refugees have acquired *de facto* integration in Uganda. Faced with forced repatriation and cessation of refugee status, a large number of Rwandan refugees have resorted to integrating themselves into the local communities. During the data collection exercise, I observed Rwandan refugees who had integrated themselves into the local communities¹⁶ in the surroundings of the Nakivale settlement. I also found that a large number of refugees had migrated to the Isingiro, Mubende, Kyenjojo, Kamwenje, and Mbarara districts of Uganda. Those who had money had bought land, built a house, and bribed the local council officials to get a voters’ card or village residents’ identity card (Ahimbisibwe 2022). With time, the refugees are able to claim that they are Ugandans, especially since the country is open to refugees and immigrants and local officials and populations are not strict to new people coming into their areas of jurisdiction. Rwandan refugees who have used this option benefited from the fact that they speak Runyankore, the local language spoken in the Ankole sub-region, and share the physical appearance of the Banyankore of south-western Uganda. I found that although it is easy to identify a Rwandan Tutsi

¹⁶ The researcher met *de facto* integrated Rwandan refugees in Ngarama, Kashumba, Rugaaga, and Mbaale sub counties surrounding the Nakivale Refugee Settlement. A number of them had already acquired identity cards from local councils or village leaders showing that they are Ugandan permanent residents.

by physical appearance and features, this was not possible with Rwandan Hutu. In addition, many Ugandan Banyarwanda have made it easy for the Rwandan population to mingle and interact. This also includes the former old case load Rwandan Tutsi refugees that arrived in 1959 and the early 1960s. As noted above, although the majority returned to Rwanda after the 1994 Rwandan genocide, a significant number stayed in Uganda. Rwandan refugees are locally integrated and spread across different parts of Uganda. They are able to reside and move freely, work, and carry out businesses and other livelihood activities. Granting them East African citizenship or residence status only reinforces the already existing reality on the ground.

7.2. Similar ethnicities across borders

Some of Uganda's population shares cultural, linguistic, and ethnic ties with the Rwandan refugees. The colonial borders that separated people shared similar cultures, languages, and tribes. The World Bank (2016: 17) argues that:

[T]he shared ethnicity among communities living along all of these countries' borders is another important contributor, with nearly half of Uganda's 64 constitutionally recognized indigenous communities having become administratively divided from their kith and kin by the colonial borders.

For example, as already pointed out above, there is a large population of Banyarwanda in Uganda similar to Banyarwanda in Rwanda. The 1995 Constitution recognises Banyarwanda as one of the tribes in Uganda. In addition, the Bafumbira in Kisoro district in the south-western part of the country speak Rufimbira, a dialect of Kinyarwanda spoken by Rwandans. It is common to find groups such as the Acholi and Madi in Uganda and South Sudan; the Kakwa are found in Uganda, South Sudan, and DRC; the Bakonjo and Alur are found in Uganda and DRC; and the Samia, Iteso, and Sebei are found in Uganda and Kenya. In situations of forced displacement, refugees usually cross borders and stay with their tribesmates. This was the case when Rwandan Tutsi came to Uganda in the late 1950s and the early 1960s when they settled in most parts of the south-western region. The current Rwandan Hutu refugees also settled in most parts of this region. Even the settlements hosting Rwandans like Nakivale, Oruchinga, and Kyaka II border the local hosts of similar tribes and languages. This has facilitated interactions, intermarriages, and other socio-economic relations between the local hosts and Rwandan refugees. An East African regional durable solution builds on the existing interactions and relations and is likely to strengthen people-centred regional integration.

7.3. The EAC Common Market Protocol

The enactment of the Common Market Protocol that grants East African citizens the right to establish, settle, and reside, and the freedom of movement and employment is a positive development. The Common Market Protocol provides a legal framework that governs the mobility and citizenry of the people of East Africa. Although there are a number of challenges for making the common market a reality in the lives of ordinary people, the fact that the protocol exists is a step in the direction of regional integration. This is similar to the 1979 ECOWAS Protocol on free movement, which has been used to grant the right of movement, residence, and employment to Liberian and Sierra Leonean refugees by ECOWAS member states. The existence of this protocol provided a foundation for creating a durable solution. Similar to the West African sub-region, what is necessary is the political will and commitment to make durable solutions work and respond to complex forced displacement crises like the Rwandan refugee problem.

7.4. Rwandan refugees favour integration in East Africa

Refugees in a focus group discussion argued: ‘We fully support the idea of the East African Federation. It will help us look beyond our own small countries. As people of East Africa, we will be able to move and live in any of the countries without any hindrance. Why should we be forced to return to Rwanda when we can settle here in Uganda, Kenya, or Tanzania? Besides, regional integration will strengthen our economies and address the conflicts that come as a result of competition for power and resources’¹⁷. Another group of refugees had the same thoughts about East African integration. They said, ‘We request the EAC to consider us as East African citizens. We don’t want to return to Rwanda and face harassment and death’¹⁸.

The refugees asserted that an EAC-based solution would be the best solution, especially if President Museveni¹⁹ spearheaded it. They look at President Museveni as a Pan-Africanist who believes in the unity and cooperation of Africans. They stated, ‘He is a great leader who looks at them as fellow African brothers and sisters who need to be assisted through local integration. He has helped many Africans, including those from Somalia, Burundi, and South Sudan. He has been a champion of East African unity and does not believe in small countries and their borders. He wants a united East Africa. We support his idea of one East Africa, where East Africans can stay where they want. This would save us the trouble of returning to Rwanda which we don’t want’²⁰. Others said that refugees should be granted a chance to stay wherever they wish. For example, they talked about regional integration of the EAC, where people would be free to stay in any of the East African countries without hindrance. They believed that this

¹⁷Focus Group Discussion, Juru zone, Nakivale settlement on 30 June 2010.

¹⁸ Focus Group Discussion, Oruchinga settlement on 29 August 2016.

¹⁹ Museveni is the president of Uganda. He took power in 1986 after a guerrilla war in Uganda.

²⁰ Focus Group Discussion, Rubondo zone, Nakivale settlement on 8 July 2010.

could be a durable solution to the refugee problem in Africa, since people would live where they felt most secure. According to some refugees, there is a need for a discussion on the proposed East African federation, where member countries would federate into one East African state. They observed that such a solution would address the Tutsi-Hutu ethnic tensions in Rwanda and Burundi and make them look at themselves as citizens of a larger entity called East Africa²¹.

However, they are aware of the challenges of establishing the East African federation, especially given the current tensions between Uganda and Rwanda on the one hand, and Rwanda and Burundi on the other. ‘We have heard about the tensions between Museveni and Kagame. This makes us wonder whether we shall ever achieve East African integration’²².

8. Challenges of an EAC durable solution

A number of challenges are likely to hinder the progress and success of the proposed solution of granting East African citizenship and residence status for greater mobility to the Rwandan refugees. These range from the slow pace of the integration process, Rwanda-Uganda tensions, security concerns, and issues of sovereignty and territorial integrity.

8.1. Slow pace of the integration process

Article 5 (2) of the treaty for the establishment of the EAC states: ‘The partner states undertake to establish among themselves as in accordance with the provisions of the treaty, a customs union, a common market, subsequently a monetary union and ultimately a political federation’. Although the EAC Common Market has been established, the revived integration process is moving slowly (Kasaija 2004). It is not clear when political federation will be achieved (ibid.). Some countries like Tanzania and Burundi are slow to implement the political federation and other stages of the EAC (Ngari 2016). Even those advocating for it are not trusted by others and the Common Market is yet to be fully implemented by all member states (Bainomugisha and Rwengabo 2016). We have argued above that creation of a federated East African state would be crucial in granting citizenship at a supranational level and neutralising ethnic and national identities. The more the political federation is delayed, the higher is the likelihood of delaying the East African federated state and its associated citizenship.

Meanwhile, there is also a lack of political commitment to the integration agenda. Despite the rhetorical declarations by leaders, practical commitment is still lacking. Member countries are not committed and willing to put in place agreed upon policies and plans. Leaders have made decisions contrary to the principles of the EAC Treaty. For example, the decision by Rwanda to close the border with Uganda in early 2019 contravenes the spirit of the Common Market Protocol and raises questions

²¹ Focus Group Discussion, Oruchinga settlement on 30 November 2019.

²² Focus Group Discussion, Sangano Base Camp, Nativale settlement on 28 November 2019.

on Rwanda's commitment to the EAC integration trajectory.

8.2. Tensions between EAC member states

Another challenge relates to the tensions between the member states of the EAC. Regional integration tends to slow down every time member states engage in conflict. Instead of focusing on how to advance the integration agenda forward, they busy themselves in engaging in actions that undermine integration. This is a reality that the EAC currently faces. For example, Uganda and Rwanda are engaged in a number of disputes, including the border dispute that led to the closure of the common Katuna/Gatuna border in 2019 (Byaruhanga 2019). The border closure has negatively affected trade, business, and other economic activities between the two countries (*ibid.*). This is contrary to the EAC Treaty and Common Market Protocol that emphasise open borders, free movement, and granting residence to each other's citizens.

The citizens of the two countries have paid a heavy price for the ongoing tensions. Rwanda does not allow its citizens to travel to Uganda, warning them with arrest, imprisonment, and torture (*ibid.*). In some cases, those who did not abide by their government's directives have been shot and killed for crossing the common border. In Uganda, Rwandan citizens and the Ugandans of Rwandan origin have been greatly affected. A number of them have been arrested and imprisoned after being accused of being Rwandan spies. The fact that her citizens face harassment and human rights violations on Uganda's soil is one of Rwanda's grievances against Uganda. Consequently, there is a section of Ugandans of the Banyarwanda tribe who have called for a change of their name to Abavandimwe, citing political witch hunting, discrimination in accessing passports and national identity cards, public service jobs, and other opportunities (Council for Abavandimwe Uganda 2021). Although they are Ugandan citizens, their identity as Banyarwanda has been a source of insecurity. They are victims of the political tensions between the two countries and feel it is safer to rebrand their identity (*ibid.*).

On the other hand, Rwanda and Burundi have had tensions amidst accusations that they are undermining each other's security and territorial integrity (Feyissa 2021). Burundi accused Rwanda of being behind the failed coup d'état of 2015 and at the same time giving military support to Burundian refugees (*ibid.*). The common border remains either closed or inactive, and this has greatly affected socio-economic interactions between the countries. Amidst these tensions, regional integration has suffered. It is difficult for these countries to focus on the EAC integration agenda when they do not see eye to eye.

8.3. Rwanda's security concerns

Rwanda has only favoured repatriation as a feasible solution and opposed other alternative solutions. For example, since 2002, Rwanda has repeatedly requested the UNHCR to invoke the cessation clause on Rwandan refugees who were unwilling to return (Fahamu 2011). Rwanda has always regarded all its

nationals abroad as either a political liability or security threat (IRRI and Refugee Law Project 2010, Ahimbisibwe 2019). Rwanda thinks that it is easier to control people on its soil than as diaspora. Granting East African citizenship or residence status may not take away Rwanda's fears that its population abroad may be a security threat, especially now that there are groups opposed to the Kigali government that can easily get support from this diaspora population. Therefore, such a solution may be curtailed by these Rwandan forces that are only interested in a solution that brings refugees back to its own soil where they will be able to monitor them well. According to Barongo (1998: 124), granting permanent asylum to refugees who have political interests in the country of origin would mean placing permanent conflicts on the political agenda of the neighbouring countries. This is similar to granting citizenship or permanent residence to Rwandan refugees who may have political interests in Rwanda and may use the new legal status to advance their political agenda. Rwanda's fear is premised on the fact that Rwandan refugees might use residence or citizenship abroad for political mobilisation, freedom of movement, acquiring wealth and education etcetera. It would be hard to control such an empowered population especially when they decide to engage in subversive activities against Rwanda. The Rwandan Tutsi did exactly the same thing during the period they were refugees in Uganda. After achieving empowerment, they formed a rebel movement called the Rwandan Patriotic Front (RPF) and attacked their country of origin on 1st October 1990. This was followed by a civil war and the 1994 Rwandan genocide.

8.4. Sovereignty and territorial integrity

Kasaija (2004: 31) has argued that 'the fundamental principles of the community seem paradoxically to be working against the establishment of the political federation/union'. Article 6(a) of the EAC Treaty emphasises the sovereignty and equality of member states. A federation requires the surrendering of sovereignty to a central political unit (Rwekaza 2000: 89). In practice, member countries are still preoccupied with sovereignty instead of focusing on the bigger picture. For example, we have seen some countries like Rwanda closing the border with Uganda in early 2019, prioritising national agendas at the expense of the EAC. Some countries like Tanzania and Burundi have been slow on the East African integration programmes, leaving Kenya, Uganda, and Rwanda to be at the forefront of the integration process. At this point, the three EAC countries were called the 'coalition of the willing' (Onyango 2015). But this was before tensions emerged between Uganda and Rwanda. At that time, they were willing and committed to fast-track EAC activities and projects, including the East African federation. One wonders how a political federation will be achieved when the treaty and member countries are still focusing on sovereignty, both in theory and practice. This presents an obstacle to achieving the East African federation.

9. Conclusion

This paper has argued that despite various attempts to search for a durable solution to the refugee crisis in Uganda, it has remained elusive. Since 2002, Uganda has promoted (in)voluntary repatriation, but the majority of Rwandans have refused to return and continue to stay in the country. Resettlement is not available, and local integration is yet to be explored as a durable solution. At the same time, the recommendation for cessation of refugee status by the UNHCR has not addressed these problems. Given these challenges, this paper proposes a durable solution for granting *East African citizenship* to Rwandan refugees by issuing EAC Passports or *residence permits* that give them freedom of mobility and residence in the member countries in accordance with the EAC Treaty and Common Market Protocol. Searching for a durable solution at the EAC level comes at a time when efforts to establish the East African federation continue. Despite a number of challenges that might hinder its implementation, this solution has the potential to end a protracted refugee situation, promoting the rights of Rwandan refugees and enhancing people-centred regional integration.

The insights in this paper have methodological and policy implications. From a methodological perspective, it is necessary to conduct further research to understand the potential contribution of mobility, regional citizenship, and other alternative durable solutions to similar protracted refugee situations in the Great Lakes and Eastern African regions associated with the complex forced displacement phenomenon. Since it is becoming increasingly difficult to address the refugee problem with traditional durable solutions of voluntary repatriation, local integration, and resettlement, it is important to think of other possible alternative durable solutions.

From a policy point of view, it is important that the EAC enacts the necessary policy framework in the context of the treaty and Common Market Protocol for freedom of movement and residence, and grant regional citizenship to refugees. There is a need for political will, focused and courageous leadership, and cooperation of the member states to ensure that the EAC policies are implemented and respected. A number of times, good policies are made but fail at the implementation stage. For us to be able to address the Rwandan refugee problem in Uganda, the implementation of EAC policies on refugees will be crucial going forward.

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