

**1103223 [2011] RRTA 595 (13 July 2011)**

**DECISION RECORD**

**RRT CASE NUMBER:** 1103223

**DIAC REFERENCE(S):** CLF2010/95390

**COUNTRY OF REFERENCE:** Uganda

**TRIBUNAL MEMBER:** Alison Murphy

**DATE:** 13 July 2011

**PLACE OF DECISION:** Melbourne

**DECISION:** The Tribunal remits the matter for reconsideration with the direction that the applicant satisfies s.36(2)(a) of the Migration Act, being a person to whom Australia has protection obligations under the Refugees Convention.

## **STATEMENT OF DECISION AND REASONS**

### **APPLICATION FOR REVIEW**

1. This is an application for review of a decision made by a delegate of the Minister for Immigration and Citizenship to refuse to grant the applicant a Protection (Class XA) visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant, who claims to be a citizen of Uganda, arrived in Australia on [date deleted under s.431(2) of the *Migration Act 1958* as this information may identify the applicant] May 2010 and applied to the Department of Immigration and Citizenship for the visa [in] July 2010. The delegate decided to refuse to grant the visa [in] March 2011 and notified the applicant of the decision on the same date.
3. The delegate refused the visa application on the basis that the applicant is not a person to whom Australia has protection obligations under the Refugees Convention.
4. The applicant applied to the Tribunal [in] April 2011 for review of the delegate's decision.
5. The Tribunal finds that the delegate's decision is an RRT-reviewable decision under s.411(1)(c) of the Act. The Tribunal finds that the applicant has made a valid application for review under s.412 of the Act.

### **RELEVANT LAW**

6. Under s.65(1) a visa may be granted only if the decision maker is satisfied that the prescribed criteria for the visa have been satisfied. In general, the relevant criteria for the grant of a protection visa are those in force when the visa application was lodged although some statutory qualifications enacted since then may also be relevant.
7. Section 36(2)(a) of the Act provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia to whom the Minister is satisfied Australia has protection obligations under the 1951 Convention relating to the Status of Refugees as amended by the 1967 Protocol relating to the Status of Refugees (together, the Refugees Convention, or the Convention).
8. Further criteria for the grant of a Protection (Class XA) visa are set out in Part 866 of Schedule 2 to the Migration Regulations 1994.

### **Definition of 'refugee'**

9. Australia is a party to the Refugees Convention and generally speaking, has protection obligations to people who are refugees as defined in Article 1 of the Convention. Article 1A(2) relevantly defines a refugee as any person who:  

owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.

10. The High Court has considered this definition in a number of cases, notably *Chan Yee Kin v MIEA* (1989) 169 CLR 379, *Applicant A v MIEA* (1997) 190 CLR 225, *MIEA v Guo* (1997) 191 CLR 559, *Chen Shi Hai v MIMA* (2000) 201 CLR 293, *MIMA v Haji Ibrahim* (2000) 204 CLR 1, *MIMA v Khawar* (2002) 210 CLR 1, *MIMA v Respondents S152/2003* (2004) 222 CLR 1 and *Applicant S v MIMA* (2004) 217 CLR 387.
11. Sections 91R and 91S of the Act qualify some aspects of Article 1A(2) for the purposes of the application of the Act and the regulations to a particular person.
12. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
13. Second, an applicant must fear persecution. Under s.91R(1) of the Act persecution must involve “serious harm” to the applicant (s.91R(1)(b)), and systematic and discriminatory conduct (s.91R(1)(c)). The expression “serious harm” includes, for example, a threat to life or liberty, significant physical harassment or ill-treatment, or significant economic hardship or denial of access to basic services or denial of capacity to earn a livelihood, where such hardship or denial threatens the applicant’s capacity to subsist: s.91R(2) of the Act. The High Court has explained that persecution may be directed against a person as an individual or as a member of a group. The persecution must have an official quality, in the sense that it is official, or officially tolerated or uncontrollable by the authorities of the country of nationality. However, the threat of harm need not be the product of government policy; it may be enough that the government has failed or is unable to protect the applicant from persecution.
14. Further, persecution implies an element of motivation on the part of those who persecute for the infliction of harm. People are persecuted for something perceived about them or attributed to them by their persecutors. However the motivation need not be one of enmity, malignity or other antipathy towards the victim on the part of the persecutor.
15. Third, the persecution which the applicant fears must be for one or more of the reasons enumerated in the Convention definition - race, religion, nationality, membership of a particular social group or political opinion. The phrase “for reasons of” serves to identify the motivation for the infliction of the persecution. The persecution feared need not be *solely* attributable to a Convention reason. However, persecution for multiple motivations will not satisfy the relevant test unless a Convention reason or reasons constitute at least the essential and significant motivation for the persecution feared: s.91R(1)(a) of the Act.
16. Fourth, an applicant’s fear of persecution for a Convention reason must be a “well-founded” fear. This adds an objective requirement to the requirement that an applicant must in fact hold such a fear. A person has a “well-founded fear” of persecution under the Convention if they have genuine fear founded upon a “real chance” of persecution for a Convention stipulated reason. A fear is well-founded where there is a real substantial basis for it but not if it is merely assumed or based on mere speculation. A “real chance” is one that is not remote or insubstantial or a far-fetched possibility. A person can have a well-founded fear of persecution even though the possibility of the persecution occurring is well below 50 per cent.
17. In addition, an applicant must be unable, or unwilling because of his or her fear, to avail himself or herself of the protection of his or her country or countries of nationality or, if stateless, unable, or unwilling because of his or her fear, to return to his or her country of

former habitual residence. The expression 'the protection of that country' in the second limb of Article 1A(2) is concerned with external or diplomatic protection extended to citizens abroad. Internal protection is nevertheless relevant to the first limb of the definition, in particular to whether a fear is well-founded and whether the conduct giving rise to the fear is persecution.

18. Whether an applicant is a person to whom Australia has protection obligations is to be assessed upon the facts as they exist when the decision is made and requires a consideration of the matter in relation to the reasonably foreseeable future.

### **CLAIMS AND EVIDENCE**

19. The Tribunal has before it the Department's file relating to the applicant. The Tribunal also has had regard to the material referred to in the delegate's decision, and other material available to it from a range of sources.

20. The applicant was represented in relation to the review by her registered migration agent.

### **The primary application**

21. The applicant states in her application for a protection visa that she was born in Masaka, Uganda on [date deleted: s.431(2)] and states that she is a citizen of that country. Her ethnicity is stated to be Muganda (singular)/ Baganda (plural) and her religion as born again Christian.
22. The applicant states that she entered Australia [in] May 2010 on a 456 visa issued in Nairobi, travelling on a Ugandan passport. She states that the only other country she has resided in or transited through is South Africa, where she was in transit for a few hours [in] May 2010. She states that she is unsure whether she had trouble obtaining her passport as it was obtained for her by a friend.
23. The applicant states that she has had 16 years education, most recently at [Faculty 1] between 2006 and 2009 where she completed a Bachelor [degree]. She states that she was social worker before travelling to Australia.
24. The applicant's refugee claims are set out in a statutory declaration dated [in] July 2010 accompanying her visa application in which she states in summary that:
  - She was born on [date deleted: s.431(2)] in [Town 1] Masaka district in Uganda and her ethnicity is Muganda (referred to as Baganda in the plural) and she is a born again Christian;
  - In Uganda there are different kingdoms made up of each ethnic group which has its own king. The Baganda ethnic group is the largest ethnic community in Uganda, representing approximately 16.9% of Uganda's population;
  - In recent times there have been serious clashes between the government of Uganda and the Baganda kingdom and Baganda people are persecuted in different ways in Uganda;

- She was orphaned as a young child and together with her two sisters was raised by a paternal uncle. She attended primary and secondary school before going to [Faculty 1] where she studied a Bachelor [degree];
- She commenced university in 2006 and as part of the orientation program, leaders for each of the different ethnic groups spoke about their club's presence at the university;
- She joined the Nkobazambogo club because this represented her ethnic group, Baganda and became an active member;
- She was elected as [an office-bearer] of that club in 2007 and became responsible for representing her ethnic group at the university, often being invited by Nkobazambogo club members from other universities to their meetings to discuss academic, social, economic and political issues. Given that the members in their clubs (Nkobazambogo) nationally were the Baganda youth, they felt the future for the Baganda culture rested in their hands;
- Political issues were included in their discussions whenever they met because the relationship between the government of Uganda and the Baganda kingdom was strained;
- Her role at the club (along with other leaders) was to bring the Baganda youth closer to their culture and norms and also to encourage them to love their king and kingdom to help safeguard the rich heritage that their culture had had for centuries now being tarnished by many political leaders. They believed that the government was trying to impose numerous changes to the overtake the power of the kingdom;
- Her other roles included attending scheduled meetings with officials from the kingdom and meetings with other members of the Nkobazambogo clubs from other universities;
- The leadership of the club often sent suggestions and ideas that they thought were important to Baganda youth to Baganda representatives inside the government, which often upset anti-Baganda kingdom government officials who sought to tarnish the name of the clubs. Those actions created many rifts between the government and the Baganda Kingdom and between the government and the Nkobazambogo clubs around the country;
- That unrest continues and she knew very well at the time that by having the leadership role, she risked harm at the hands of the government. Despite this she felt that the work was important;
- In or about May 2009, she finished university and went home and stayed with her eldest sister in [Town 2] Masaka. Even after she returned home she was constantly involved in the Kingdom's work and kept in close contact with the current university leadership of the Nkobazambogo club. Because of her ongoing contact, she would frequently be asked to chair and attend different functions arranged by the club at the university and to contribute to their meetings;
- In or about early July 2009, she received an invitation to speak at the Baganda Youth Day celebrations ceremony in Kayunga District which was due to take place on 12

September 2009. She felt honoured to be chosen to address the many people that were expected in the presence of their cultural leader, the Kabaka;

- She planned to speak about the Bulungi Bwansi, an event organised at least once per month by the Baganda government to preserve the beauty of the country by undertaking environmental tree protection activities such as tree planting, cleaning of roads and digging of wells;
- The Baganda Youth Day Celebrations ceremony was expected to be attended largely by Baganda youth from different academic institutions and was being hosted by the youth from Kayunga District and presided over by the Baganda king (Kabaka Mutebi). After the speeches there was to be Baganda cultural singing and dancing;
- On 10 September 2009, the Premier (Katikiro) to the King (Kabaka Mutebi) visited the Kayunga District ahead of the King's arrival for the preparations of the celebration to be held on 12 September 2009. The Premier was to be escorted to Kayunga District and during his tour by officials from the Kingdom and youth representatives, including the applicant;
- The applicant was travelling to Kayunga District with two other former club leaders and one present club leader from different universities. They had arranged to travel with the Premier on 10 September 2009 and met up with the other group at Bulage – Mengo (the Kingdom headquarters) where they met the Premier and embarked on the journey to Kayunga in a motorcade of about 10-20 cars;
- Before reaching the Kayunga District, the motorcade was stopped at River Sezibwa by the military police and armed security operatives who stated that they had been directed by the government to stop them going any further. After an hour's discussions, the Premier told everyone to go back despite the fact they were all unhappy about it;
- The fact that the Premier had been blocked from entering the Kayunga District had been broadcast on radio across the nation and caused people to protest in the capital, Kampala and towns outside the city. The government deployed military police who started shooting at the crowds as well as releasing tear gas and beating protesters. This later turned into serious violence;
- During the violence, four Baganda radio stations were shut down including the Central Broadcasting Service which is owned by the King, with the government accusing them of inciting violence;
- The motorcade that was turned back tried to return to Kampala but the road was blocked by protesters and police so they could not move any further. They jumped out of their vehicles, leaving them on the side of the road in a suburb outside Kampala and tried to run to safety;
- One of the people who had been in the applicant's vehicle was shot in the leg by a person wearing a police uniform and was later taken by the police patrol vehicle to the [hospital] where his relatives found him. The applicant was hit by a stick on her back but kept running and was hit by a stone on her left leg and fell down bleeding. She kept running with the encouragement of her friend;

- They managed to get a motorcycle at Bakuli (a Kampala suburb) as they pleaded with the driver to take them to [Suburb 2] where the applicant's second eldest sister lived. They paid 50,000 Ugandan shillings to the driver who was also trying to escape and the applicant was hit by a stone again while on the motorbike;
- They reached the applicant's sister's place where her wound was dressed and she was given pain killers. Then they continued watching the incident on television for the next two days without leaving the house. After a week when the situation had calmed down, the applicant travelled back to Masaka with her friend;
- The applicant was in fear in Masaka because of her role as [an office bearer] with the Nkobazambogo club and her activities in support of her ethnic group. During this time the government said they were looking for the leaders of the Baganda ethnic group including the heads of the student groups. She heard that the former Chairperson of the Nkobazambogo club at her university had fled the country in fear of his life;
- Several Baganda officials went missing, captured from their homes by people sent by the government and taken to places where they were tortured by beatings, given no food, injected with unknown drugs which made them insane and the women were sexually abused. Some were returned to their homes and others just disappeared, leaving their families in fear. There were many notices in newspapers about missing people and the applicant was terrified for her safety;
- In November 2009 the applicant got a job at [a community organisation], working part time as a social worker. At work she made friends with other members of her ethnic group who she discussed her problem with said they would try to protect her by preventing anyone from finding out about her role with the Nkobazambogo club, but this did not make her feel safe;
- In early April 2010 she heard about a conference in Australia, the International Federation on Ageing and her attendance was partly paid for by her organisation, topped off by her. She wanted to seek protection in Australia on account of her fears in Uganda;
- She was scared to arrange her own passport so a Muganda friend from work helped her to obtain it by filling in the forms, paying the fee and lodging it at the passport office for her. The applicant does not know if she had any problems or if she had to pay a bribe, but her friend had a friend in the passport office which may have made it easier which is why she offered to help in the first place;
- She did not have any problems going through the airport even though she was scared, but she was not surprised because the systems are not sophisticated and she doubts they would have a list of people not allowed to leave or that they would be able to organise to enforce this list at the airport;
- She fears going back to Uganda because she might be imprisoned, tortured or even killed because of her role with the Nkobazambogo club and because she was a representative of the Baganda ethnic group. She continued her work even after finishing university and would feel compelled to do so if she returned to Uganda as it is very important to her. The government has accused people like her of

masterminding the riots against the government and of promoting ethnic hatred and want to prevent people like her from recruiting others;

- She does not support the government in Uganda because of the way they are treating the Baganda people. The current President came to power the year before she was born and during her lifetime nothing in Uganda has changed for the better with the President and his government promoting ethnic hatred;
- She also fears people from other tribes or those who support the government, or who have extremist views, or who are part of gangs that the government will now use to target Baganda people on their behalf and the government will not protect her from those people;
- She fears that if she was imprisoned or detained or harmed by government supporter gangs who act with impunity, she could be raped or sexually assaulted because she is a woman, a young woman and an Omuganda woman. Women are treated as second class citizens in Uganda;
- She fears returning to Uganda because of the discrimination she fears she will suffer on account of her ethnicity. Many businesses owned by Baganda people had been stopped from operating by the government, for example the CBS radio station, and others still able to operate pay much higher taxes compared to non-Baganda businesses in some areas;
- She therefore fears that as the number of Baganda businesses decrease, it will be increasingly difficult for Baganda people to get jobs. She would also be discriminatorily denied employment if her political opinion or activities in support of Baganda culture were discovered.

25. Lodged with the applicant's application for a protection visa was a copy of her passport issued by the Republic of Uganda, issued [in] January 2010 and valid until [January] 2020.

26. [In] October 2010, the applicant lodged a further statutory declaration with the Department made [in] September 2010 stated in summary that:

- She has two sisters [Ms A] aged [age deleted: s.431(2)] and [Ms B] She spoke to her sister [Ms A] by telephone [in] August 2010 who told her that she had been abducted [on an earlier date in] August 2010 by four men, who forcibly took her away from her house and beat her. They demanded to know where the applicant was, but her sister told them she did not know. They dumped her by the roadside, telling her that next time they would kill her;
- [In] September 2010 she spoke with her other sister, [Ms B], who told her that [Ms A] had been found murdered after going missing from her home. [Ms B] did not know who had killed her but the applicant believes it was the same group of men who abducted her;
- Although she cannot know why her sister was murdered, she believes her death came about because she refused to say where the applicant was. She believes that if she were forced to return to Uganda, she would be targeted and killed as her sister was.



### **The departmental interview**

27. The applicant attended an interview at the Department's offices in Melbourne [in] February 2011. At that interview she answered questions about and elaborated on her written claims.
28. [In] March 2011 the applicant's representative lodged further country information and further written submissions with the Department. In that written submission, the applicant claimed among other things that she also feared persecution in Uganda because of her gender, stating that in accordance with Ugandan tradition, her paternal uncle (who was her carer following the death of her parents) wishes her to marry a man of his choosing so that he can receive a dowry.

### **The delegate's decision**

29. [In] March 2010 a delegate decided to refuse to grant the applicant a protection visa, not being satisfied that she was a person owed protection obligations for the purposes of section 36 of the Migration Act and criteria 866.221 of the regulations.

### **The applicant's statutory declaration made [in] May 2011**

30. [In] June 2011, the applicant's representative lodged with the Tribunal a written submission together with a further statutory declaration of the applicant made [in] May 2011, in which she responded to matters set out in the delegate's decision and made new claims that can be summarised as follows:
  - She discovered she was a lesbian when she was about 16 and at college. She always knew it was illegal in Uganda to be homosexual so she never dared have relationships. In 2009, she became aware of the Bill currently before the government against homosexuality and the knowledge that she would have to spend her entire life in Uganda hiding her sexual preference and risking discrimination and persecution if she was discovered was, together with her other claims, the reason that she decided to flee the country;
  - It is already illegal in Uganda to engage in homosexual acts and the Bill proposed increasing penalties from 14 years to life imprisonment and death for "aggravated homosexuality". The applicant states that to the best of her knowledge, there is little opposition to the Bill within Uganda, where most of the population are very conservative and deeply against homosexuality;
  - In Uganda she went to a party where she met a gay man, [Mr C], a human rights activist who had no choice but to become openly homosexual after his sexuality was disclosed in a newspaper article. She was impressed by [Mr C], but continued to fear developing a sexual relationship with a woman and never told anyone of her sexual preference. Her fears were justified when she learned in January 2011 that [Mr C] had been beaten to death in his own home;
  - The only person that she told about her sexual preference was her maternal uncle [name deleted: s.431(2)] when she stayed with him for a week in February 2010. She went out with female friends and when she returned, her uncle made some comment about how she should be getting married rather than going out with other girls. She

told him that she did not intend to marry because she was a lesbian. He became very angry and told her not to contact him again and never to return to his house;

- She has not previously mentioned that she is homosexual because she feared that it might also be unlawful in Australia and because she was frightened to state openly that she was lesbian. She hoped her first claims for protection based on her ethnicity and political belief were strong and that she would not have to mention her sexual preference.

## Country Information

### *The political situation in Uganda*

31. Country information before the Tribunal indicates that Uganda has been subject to a degree of political instability since achieving self-government from the British in 1962, with coups, guerrilla armies and widespread atrocities commonplace. In the mid-1980s, relative stability was restored with the installation of President Yoweri Museveni, who remains in power to this day.
32. Baganda are recognised as being the largest and most politically powerful ethnic community in Uganda, with an estimated five million people. During the colonial period, the British rewarded the kingdom for its collaboration by giving it territories belonging to the kingdom of Bunyoro. Baganda is located in the central region by Lake Victoria and Uganda's capital, Kampala, is also home to Mengo, the seat of the *kabaka* (king)<sup>1</sup>.
33. Sources suggest that after taking power, President Museveni started negotiating with Baganda to restore its *kabaka*, which was thought to be political repayment for the Baganda people's support for the NRA in the early 1980s. In July 1993, Ronald Mutebi was crowned *kabaka*, though the role was described as 'purely ceremonial' and this was followed by the coronation of monarchs of other tribal kingdoms. While the constitution prevents cultural leaders from participating in politics, they continue to wield influence over their respective communities.<sup>2</sup>

### *The role of cultural associations in Ugandan universities*

34. Country information indicates that cultural associations are commonplace at Ugandan universities and that Nkobazambogo was established on 4 August 1991, with the primary aim of mobilising and educating Baganda youth about the "norms and values of Baganda culture as a foundation for social, political and economic developments" Known by the acronym BANKOSA (Baganda Nkobazambogo Students Association), the organisation includes students from tertiary institutions, secondary schools and primary schools. BANKOSA claims to be non-political, though the organisation acknowledges that for some non-members, the group may be misconstrued as a political party. BANKOSA states that it is a non-profit organisation, and that its leadership is strictly voluntary.<sup>3</sup>

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<sup>1</sup> 'Uganda: A rough guide to the country's kingdoms' 2009, *IRIN News*, 11 September  
<http://www.irinnews.org/Report.aspx?ReportId=86107>

<sup>2</sup> Human Rights Watch 2009, *Uganda: Investigate Use of Lethal Force During Riots*, 1 October  
<http://www.hrw.org/en/news/2009/10/01/uganda-troops-killed-unarmed-people-riot-period?tr=y&auid=5408929>

<sup>3</sup> 'Nkobazambogo About Us' 2010, Nkobazambogo website, 17 December  
[http://nkobazambogo.com/index.php?option=com\\_content&view=article&id=68&Itemid=28](http://nkobazambogo.com/index.php?option=com_content&view=article&id=68&Itemid=28)

35. Despite the above claims, there are competing views as to the actual role played by Nkobazambogo with some suggesting that it is overtly political. *The Monitor* reported that in the days before the September 2009 Kampala riots, the royal palace was preparing an “army of Nkobazambogo youth to guard Kabaka Ronald Mutebi during his tour of Kayunga District”. According to a Nkobazambogo representative, the ‘army’ would be in Kayunga to protect the *kabaka* against any intrusion by the Banyala; however, the force would be unarmed, and would not seek to provoke any violence.<sup>4</sup> In an article published a week later following the first day of rioting in Kampala, *The Monitor* referred to Nkobazambogo as “Baganda youth vigilantes”, who temporarily gained control of Kayunga from heavily-armed police. A Nkobazambogo spokesperson reportedly said that they were “fighting the government, not Banyala...[w]e actually want our king to visit us”.<sup>5</sup>

#### *Events of September 2009*

36. On 10-11 September 2009, more than 20 people were killed in violent clashes between Baganda protestors and government security forces in the capital city Kampala.<sup>6</sup> According to Human Rights Watch, at least 13 of those shot were in situations where lethal force was not necessary. The riots began when police blocked a delegation representing the Baganda kingdom from visiting Kayunga district, ahead of a planned visit two days later by the *kabaka*. The visit was opposed by leaders of the Banyala ethnic group in the region, who do not acknowledge the authority of the *kabaka*.<sup>7</sup>
37. The riots forced a cordoning-off of Kayunga for approximately two hours while police attempted to reclaim control after Baganda youth overpowered the town. Banks, shops and petrol stations were forced to close as the Baganda threw rocks and tree branches at police, who in turn responded with tear gas. The police were over-run, and forced to take refuge outside the town as they awaited reinforcements.<sup>8</sup> Cars and police stations were set on fire, and looting was widespread. In response, President Museveni sent thousands of police and troops into Kayunga, who, reportedly with orders to shoot on sight, fired live rounds into the crowds.<sup>9</sup>
38. An article published in *The Economist* suggests the violence reflected the tension between Baganda authorities and the Ugandan government over access to land and Baganda demands for greater autonomy. Baganda viewed proposed government land bills as a scheme to gain control of the region’s resources, though the government argued that the proposals would merely improve land security.<sup>10</sup>

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<sup>4</sup> ‘Nkobazambogo to Guard Kabaka During Visit to Kayunga’ 2009, All Africa website, source: *The Monitor*, 4 September <http://allafrica.com/stories/200909040470.html>

<sup>5</sup> ‘Kayunga Becomes Battle Field As Youths Take On Cops’ 2009, All Africa website, source: *The Monitor*, 10 September <http://allafrica.com/stories/200909100402.html>

<sup>6</sup> ‘Landmark royal meeting in Uganda’ 2009, *BBC News*, 30 September <http://news.bbc.co.uk/2/hi/africa/8283588.stm>

<sup>7</sup> Human Rights Watch 2009, *Uganda: Investigate Use of Lethal Force During Riots*, 1 October <http://www.hrw.org/en/news/2009/10/01/uganda-troops-killed-unarmed-people-riot-period?tr=y&aid=5408929>

<sup>8</sup> ‘Kayunga Becomes Battle Field As Youths Take On Cops’ 2009, All Africa website, source: *The Monitor*, 10 September <http://allafrica.com/stories/200909100402.html>

<sup>9</sup> Delany, M. 2009, ‘Riots in Uganda: A Sign of Things to Come?’, *Time*, 17 September <http://www.time.com/time/world/article/0,8599,1924258,00.html>

<sup>10</sup> ‘Kingdom come’ 2009, *The Economist Intelligence Unit*, 16 September [http://www.economist.com/agenda/displaystory.cfm?story\\_id=14442349](http://www.economist.com/agenda/displaystory.cfm?story_id=14442349)

39. According to *Time*, President Museveni's recent efforts to retain power, such as abolishing presidential term limits and imprisoning opposition leaders, narrowed the avenues through which Ugandans could express dissent resulting in a re-embracing of tribal allegiances in order to channel their discontent.<sup>11</sup>
40. According to a police spokesperson, in excess of 550 arrests were made following the riots, the majority being those who were directly involved in the riots and the ringleaders.<sup>12</sup> According to Human Rights Watch (HRW), in the days after the unrest, police conducted "brutal mass arrests of hundreds of young men, beating alleged riot suspects" The government charged 31 people for terrorism offences, 23 of whom remained in gaol awaiting trial 12 months later. An estimated 80 others were released on bail, facing charges such as inciting violence and participating in a riot.<sup>13</sup>

### *The Land Bill*

41. Independent country information suggests that the violence that flared in September 2009 reflected the tension between Baganda authorities and the Ugandan government over access to land and Baganda demands for greater autonomy, with the Baganda viewing the proposed Bill as a scheme to gain control of the region's resources<sup>14</sup> A BBC report before the Tribunal indicates that the Land Bill was passed by the Ugandan Parliament in November 2009 but that even before the President assented to the Bill, the Baganda Kingdom, which had provided the fiercest opposition to the Bill, declared that it would not respect the new legislation as they considered it a way of eroding the powers of their king<sup>15</sup>.

### *Ongoing tensions in Uganda*

42. Country information indicates that there have been further tensions between the authorities in Uganda and members of the Baganda ethnic groups since the 2009 riots. NewVision reports that the Baganda's royal tombs in Kasubi were burnt in a fire in March 2010, those tombs being situated in Kampala and an active religious site in the Baganda Kingdom<sup>16</sup> This led to a clash between the Ugandan security forces and rioters, with Aljazeera.net reporting that the country's presidential guard opened fire at members of the Baganda ethnic group after rioters tried to stop President Museveni from the visiting the destroyed tombs, killing three people three people and injuring several.
43. The UNHCR in its report 'Freedom in the World 2010 – Uganda' reports that:

Serious human rights problems in the country including arbitrary killings, vigilante killings, mob and ethnic violence, torture and abuse of suspects and detainees; harsh prison conditions, official impunity, arbitrary and politically motivated arrest and

<sup>11</sup> Delany, M. 2009, 'Riots in Uganda: A Sign of Things to Come?', *Time*, 17 September <http://www.time.com/time/world/article/0,8599,1924258,00.html>

<sup>12</sup> 'Deadly riots lead to over 550 arrests' 2009, *France 24 News*, 13 September [http://www.france24.com/en/20090913-uganda-kampala-buganda-riot-africa-police?quicktabs\\_1=1](http://www.france24.com/en/20090913-uganda-kampala-buganda-riot-africa-police?quicktabs_1=1)

<sup>13</sup> Human Rights Watch 2010, *Uganda: Investigate 2009 Kampala Riot Killings*, Human Rights Watch website, 10 September <http://www.hrw.org/en/news/2010/09/10/uganda-investigate-2009-kampala-riot-killings> –

<sup>14</sup> 'Kingdom come' 2009, *The Economist Intelligence Unit*, 16 September [http://www.economist.com/agenda/displaystory.cfm?story\\_id=14442349](http://www.economist.com/agenda/displaystory.cfm?story_id=14442349)

<sup>15</sup> BBC World Service 27 November 2009 *Uganda Land Bill Passed* [http://www.bbc.co.uk/worldservice/africa/2009/11/091127\\_uganda\\_land.shtml](http://www.bbc.co.uk/worldservice/africa/2009/11/091127_uganda_land.shtml)

<sup>16</sup> 'Buganda's royal tombs in Kasubi burnt' *NewVision* 16 March 2010 <http://www.newvision.co.ug/D/8/12/713151>

detention . . . violence and discrimination against women and children . . . violence and discrimination against . . . .homosexual persons . . .

There were no reports that the government or its agents committed politically motivated killings, however security forces killed demonstrators, suspects, detainees, and other citizens. Some deaths occurred as a result of torture.

44. Human Rights Watch in its World Report 2011: Uganda reports that:

Freedom of assembly and expression in Uganda have come under attack in 2010, the pressure intensifying in advance of presidential and parliamentary elections scheduled for February 2011 . . Security and quasi-military organisations continue to illegally detain and torture suspects, in some instances leading to death. Impunity for human rights abuses persists. For example, Uganda failed to carry out investigations or prosecutions for the deaths of at least 40 people killed, some by military police, in riots in September 2009.

45. The 2011 Amnesty International Report, referring to Uganda stated that:

Law enforcement officials were not held to account for human rights violations including unlawful killings, torture and other ill-treatment. The government attacked freedom of expression and press freedom. Despite a high prevalence of gender bias, there was little progress in bringing perpetrators to justice and implementing long promised legislative reforms.

*Availability of Death Certificates in Uganda*

46. Country information suggests that lack of birth and death certificates is an identified problem in Uganda, with a national birth and death registration system created by the British colonial authorities collapsing during the political turmoil of the 1970s. In 1994, the Government of Uganda introduced legislation mandating the registration of all births and deaths, however the level of birth and death registration is reported to remain low, with only a small number of births and deaths occurring in the country being registered. It is reported that in practice death certificates are only obtained where there are legal claims to be made relating to assets left behind by a deceased person<sup>17</sup>.

**The Tribunal hearing**

47. The applicant appeared before the Tribunal [in] June 2011 to give evidence and present arguments in support of her application. The applicant was represented in her review by her registered migration agent.
48. The applicant gave evidence to the Tribunal about her personal background and history that was consistent with that contained in the Departmental file. She stated that her father had died when she was aged [age deleted: s.431(2)] and her mother when she was aged [age deleted: s.431(2)]. From that time she and her two sisters were brought up by their paternal uncle and his wife, together with their nine children.

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<sup>17</sup> 'Report on the identity documents available in the Uganda legal and administrative system and other supporting documentation for applications for participation in proceedings in Uganda' prepared by the Victims Participation and Reparations Section on 12 October 2007  
(\\ntssyd\refer\Research\2011\Web\Uganda.documentation.pdf)

49. The applicant stated that from the time she attended secondary school, she slept at school and returned to her uncle's home for holidays. She commenced her university studies at [Faculty 1] in 2006 and joined the Nkobazambogo group in the same year. She stated that it is usual in Ugandan universities for students to join clubs representing their cultural group and that the Nkobazambogo club represented her cultural group, the Baganda. As a club member, she would attend meetings and participate in club activities, including cooking traditional dishes and presenting traditional dances.
50. The applicant gave evidence that she was elected [an office bearer] of that club in the second year of her studies and that she served in that position for two and a half years until mid-2009. In this position she and other members of the leadership group would go outside the university and attend Baganda functions in the community and in other universities. She stated that in belonging to this cultural group, she was expressing a political view because she did not support the government in power and that she was also a member of the Democratic Party who were not in power, but in opposition. She gave evidence that she had a membership ID showing her membership of the Democratic Party but that she had left it in Uganda.
51. As part of that leadership, she attended meetings with officials at the Baganda kingdom, who would invite student leaders to meetings to discuss issues concerning their cultural group. Officials from the kingdom would also attend meetings at the university and that the student involvement with the kingdom concerned the government who believed that if you love your culture, you are against the government. The applicant stated that the government felt this particularly about Baganda culture because they were more active than other cultural groups who were mainly silent. The government felt that encouraging Baganda members to love their culture was promoting ethnic hatred and was concerned that the Baganda king, the Kabaka, had more power than the President. The applicant gave evidence that the Baganda king was born to the throne and would remain king for all of his life.
52. The applicant stated that she had met the Kabaka at ceremonies to celebrate his birthday each year which she attended along with many others. She stated that it was not so common for the Kabaka to attend meetings with the club members or leadership, which would usually be attended by his officials, but that she had met the Premier to the King at these meetings.
53. The applicant gave evidence that the Chairperson of the Nkobazambogo club at [Faculty 1] was [Mr D] who served the same two and a half year term as the applicant and that she had heard from his female relative that he fled Uganda after the September 2009 riots. She stated that the leadership group at Nkobazambogo club at her university comprised of [Mr D], [herself], the treasurer, the secretary, two mobilisers, the Chief Whip and the warden. She stated that she was no longer in contact with any of those people. The applicant stated that generally the Chair would make public statements on the radio and that she sometimes accompanied him, but that she never herself made media statements.
54. She stated that she completed her studies in mid-2009 and returned to Musaka where she lived with her sister [Ms A] who was selling clothes. Her other sister [Ms B] was working in Kampala selling clothes and the applicant started looking for work in Musaka. During this time she still attended Nkobazambogo club meetings and competitions and was involved in work with the Kingdom.
55. The applicant stated that in about July 2009 she received an invitation from the Baganda Kingdom, signed by the Premier, to attend and speak at the Baganda Youth Day celebrations

on 12 September 2009. Around 16 people were invited to speak, including the Kabaka, Baganda government representatives and university leaders. She planned to speak about Bulangi Buansi, being community work done by people of different organisations.

56. The arrangements were that the Premier (to the Baganda Kingdom) would travel to Kayunga on 10 September 2009 and the applicant and others would meet with him at the Kingdom House in Kampala on that date, as it was too far to travel to Kayunga on the same date as the celebrations. Accordingly she travelled from Musaka to Kampala on 10 September and then left Kampala for Kayunga in convoy with the President totalling 10-20 vehicles. After travelling for 1 ½ hours and about an hour before reaching Kayunga, the convoy was stopped by police who stated that they were had been ordered not to allow the convoy to proceed into Kayunga. The police were talking to the Premier and many people in the convoy were shouting. The applicant stated that she understood that the Premier was told by the police that they had been ordered not to allow the convoy into Kayunga. They argued for about 30 minutes and in the end the Premier gave up and told the convoy to turn around. Everyone was very upset and the incident was broadcast on the radio.
57. The applicant was travelling in a car with two friends from Masaka, one of whom was also invited to speak at the proposed celebrations and the other of whom was a member of the Nkobazambogo club but not intending to speak. As they were travelling back through the suburbs towards Kampala, riots started with crowds burning tyres and placing stones on the road to stop cars passing. The applicant and her two travelling companions were forced to leave their car and start running. People were throwing stones and the police were there, shooting into the crowds and chasing people. As they were running, the applicant was hit with stones and beaten on the back by a police officer. One of her companions, [name deleted: s.431(2)], was beaten and couldn't keep running so they left him lying on the road. The applicant stated that she later found out that he was taken to hospital. The applicant and her other companion, [name deleted: s.431(2)], made it to her sister [Ms B]'s place where [Ms B] dressed the applicant's wounded toe. They stayed inside for about 2-3 days until the rioting died down and one week later travelled back to Musaka.
58. After returning to Musaka the applicant lived in fear as the government was trying to arrest people they thought caused the riots. The applicant feared she would be arrested because she was a speaker at the celebration, [an office bearer] of the Nkobazambogo club and a student leader, however the authorities never came and questioned her.
59. The applicant got a job working [at a charity] she had worked for during the summer holidays while a university student, which is funded by donations from private sponsors outside of Uganda. She worked part time for three days per week and everyone working there was Baganda. She spoke to her co-workers about her role in the university Nkobazambogo club and everyone knew that the government was blaming Baganda people for the riots. Her co-workers told her they would try and cover up her role in the Nkobazambogo club and the Youth Day celebrations.
60. The applicant told the Tribunal that immediately after the riots she felt that she was no longer safe in Uganda but that she did not know how she could leave. The applicant stated that she was still in fear and that she did not know what would happen if she returned to Uganda. She stated that she didn't speak to anyone about her intention to flee but that when she had the opportunity to attend a conference in Australia through work, she told her friend who helped her get a passport that she did not intend to return. She needed assistance to obtain a passport because the application form requires the signatures of different Chairpersons at a District

level and she feared asking them, so she talked to a friend who was able to arrange the passport to be issued without those signatures.

61. The applicant gave evidence that her sister [Ms A] whom she had been living with in Musaka told her in July or August 2010 that she had been abducted by four men who tortured her and demanded information about the applicant's whereabouts. The applicant stated that when she called [Ms A] two or three weeks later, her phone was off and her other sister [Ms B] told her that [Ms A] had been found murdered. The Tribunal noted that the applicant had provided photos of a deceased person and a funeral to the Department and discussed those photos with the applicant, who identified her sister [Ms A] as the person shown in a photo of the deceased person and identified people shown in photos of a funeral as various family members and relatives.
62. The Tribunal asked the how she obtained the photo of [Ms A]'s body and the applicant stated that it had been sent to her by her sister [Ms B] after the family learned of [Ms A]'s death via a radio announcement that a body had been found. The applicant stated that her uncle had taken the photo of the body after responding to that radio announcement. The Tribunal asked whether the applicant had a death certificate evidencing [Ms A]'s death and the applicant stated that such certificates were not generally available in Uganda.
63. The applicant told the Tribunal that when she last spoke to her sister [Ms B] in mid-April 2011, [Ms B] had told her that the police were investigating [Ms A]'s death but that nobody from the police had come to the funeral. The applicant told [Ms B] that she was trying to stay in Australia and [Ms B] began crying, because [Ms A] had died and her only other sister was not returning, leaving her alone.
64. The Tribunal asked the applicant why she thought she would still be at risk in Uganda, given that the events of 2009 were now two years in the past and that nobody from the authorities had tried to question or detain her between the riots in September 2009 and the time she departed Uganda in May 2010. The applicant stated that she did not know what would happen if she were to return but that Baganda people were still being killed and put on the roadside and still go missing in Uganda.
65. The applicant stated that she feels she is still at risk because [Ms A] was killed almost a year after the September 2009 riots. She stated that she does not support the government in power and that if she returns to Uganda, she will continue to work with the Baganda kingdom and will be placed at risk in the future.
66. The Tribunal asked the applicant whether she had ever worked with the Kingdom through the Nkobazambogo club on political issues. The applicant stated that Baganda members of the Ugandan government had often asked student activists such as herself to comment on political matters including Bills before the Parliament. The applicant stated that she had regularly met with Baganda [politicians] and that she been involved in discussions on topics including a proposed Land Bill, which sought to transfer land ownership from the country's kingdoms to the government. The applicant stated that the government feared the extensive land ownership of the Kabaka and believed the people should be tenants not landowners, but that she and other Bagandas opposed the Land Bill as Uganda has a long cultural history of land ownership.
67. The Tribunal asked the applicant about the claims made in her statutory declaration dated [in] May 2011 and in particular why she hadn't made those claims at an earlier point in the



process. The applicant stated that she didn't raise it earlier because she was not familiar with the customs in Australia at the time she made her application for a protection visa and the matter was private, making her feel shy. She stated that having been in Australia for longer, she realised that you can be who you are here, not like in Uganda.

68. She stated that she first became aware that she was lesbian in Form 2 when she was 16. She stated that she had never had a sexual relationship with a man and that she tried to have a sexual relationship with a woman but was scared and gave up. When asked to elaborate, the applicant stated that she had a female friend and that she had thought about taking their relationship to the next step at the end of 2008 but they both knew they were in danger if anyone got to know about it. She stated that the friend was from a different university and that they had met through a sports competition.
69. The applicant stated that she talked to her uncle on her mother's side about her sexuality but that he was angry and said she couldn't return to his house, that he was no longer her uncle and that he would report her to the authorities. When asked why she told him, she stated that she thought it was risky and wasn't prepared to tell him but that he brought the matter up, because men in Ugandan culture believe that when you finish school, you should marry so that they can get their bride price for you. The applicant stated that she would not allow her uncles to marry her off and didn't want to live in hiding anymore and that she had never told her sisters about her sexuality.
70. The applicant gave evidence that she met [Mr C] at a party at a friend's house in Kampala in 2009 and he was open about his sexuality and that he was supportive of her when she told him and said they should be free to do anything they wanted. She stated that she had not had a sexual relationship with any person since arriving in Australia and hadn't told anyone except her lawyer about her sexuality.
71. The applicant gave evidence that after arriving in Australia she lived with a couple named [Ms E and Ms F] for 3 - 4 months until they needed to rent the room for money. She met them as they were friends of a person she met at the conference. She stated that she had been to the Red Cross who offered her emergency accommodation in [suburb deleted: s.431(2)] and that when she started receiving financial assistance, she moved back in with [Ms E and Ms F] and paid rent.
72. The Tribunal asked the applicant about the bank statements in the name of [name deleted: s.431(2)] she had provided in support of her subclass 456 (Business (Short Stay)) visa application. The visa applicant stated that this was the name of the main patron of the [community organisation] and that they had supplied her with those documents to assist her to get the visa.
73. The applicant told the Tribunal that she had falsely declared that she was engaged in her visa application because she thought it would give her a better chance of getting a visa and she was looking for any opportunity to leave the country. She had also arranged the transfer of a parcel of land she and her sisters inherited from their grandparents to her name alone because she thought this might improve her chances of getting a visa. She stated that she talked to them about this and they agreed. The land is close to her uncle's land and he grows crops on it and she and her sisters have never used it.

## **Report from the Red Cross**

74. Following the hearing and at the Tribunal's request, the applicant submitted to the Tribunal a report from [Ms G], [counselor/ advocate] dated [in] March 2011. In that report [Ms G] stated that her sessions with the applicant commenced [in] November 2010 and focused largely on the death of the applicant's sister. [Ms G] states that she saw the applicant twice per month between November 2010 and February 2011 after her referral from the Red Cross for trauma and grief counseling.
75. [Ms G] states that the applicant was referred for depressive and anxiety symptoms associated with the murder of her sister, [Ms A] after her caseworker noticed a deterioration in her functioning. [Ms G] notes that the applicant was reluctant to discuss her sister's death and told her that she had not talked at length to anyone about it.
76. [Ms G] reports that the applicant has suffered multiple deaths in her immediate and extended family, including both parents as a young child, her brother in law, eight of her paternal aunts and uncles and close friends. She concludes that the applicant is suffering from depressive and anxiety symptoms and attributes the cause of those symptoms to her sister's death together with other significant losses, her ongoing separation from her friends and family, the situation in her home country and her worries for her future.

## **FINDINGS AND REASONS**

### **Credibility**

77. The Tribunal considered that the applicant's evidence at hearing was consistent with her written claims and her oral statements at interview with the Department. The applicant impressed the Tribunal as being a considered and thoughtful witness who did not embellish her claims, nor attempt to speculate about events of which she could not reasonably have known.
78. The Tribunal considered that the applicant's evidence and material was both coherent and internally consistent as well as being highly consistent with information available to the Tribunal from external sources. The Tribunal was assisted by comprehensive and relevant submissions from the applicant's registered migration agent.
79. The Tribunal accepts the grief expressed by the applicant at times during the hearing to be genuine and acknowledges the deeply distressing nature of some of the material that was necessarily canvassed at the hearing. The Tribunal considers that its own observations as to the applicant's state of mind in this regard are supported by the contents of the report from [Ms G], dated [in] March 2011.
80. The Tribunal notes the applicant's admissions that she made a false statement on her 456 (Business (Short Stay) visa application regarding her marital status and also that she arranged for the transfer of her sisters' shares in their jointly owned land to herself as sole owner. The Tribunal accepts the applicant's explanation that she did so in both cases to improve her chances of obtaining a visa to enter Australia and that this was because of her fears for her safety in Uganda. The applicant's conduct in these matters has not impacted on the Tribunal's overall assessment of her credibility.
81. For all of the above reasons the Tribunal finds the applicant to be a witness of truth.

## **Country of Nationality**

82. The applicant travelled to Australia on a passport issued by the Republic of Uganda, valid from [a date in] January 2010 and valid until [a date in] January 2020. She states that she is a national of that country and the Tribunal accepts this to be the case. The Tribunal has assessed the applicant's claims against Uganda as her country of nationality.

## **Well Founded Fear of Persecution**

83. In order to satisfy the Convention definition of a refugee, the applicant must have a well-founded fear of persecution. She must have a subjective fear, and that fear must also be well-founded when considered objectively. There must be a real chance that the applicant will be persecuted for a Convention reason if she returns to Uganda. The Tribunal accepts that the applicant does not want to return to her own country for fear of persecution. The question for the Tribunal is whether the applicant's fear of persecution is objectively well-founded within the criteria of the Refugees Convention. With these matters in mind, the Tribunal now turns to the applicant's claims.
84. In essence the applicant has claimed that she fears persecution from the authorities in Uganda on the basis of her actual and imputed political opinion, her ethnicity and her membership of various social groups. However, the mere fact that a person claims fear of persecution for a particular reason does not establish either the genuineness of the asserted fear or that it is "well-founded" or that it is for the reason claimed. A fear of persecution is not "well-founded" if it is merely assumed or if it is mere speculation.
85. The Tribunal accepts that the applicant's evidence that she is of Baganda ethnicity and that she joined the Nkobazambogo club at the commencement of her studies at [Faculty 1] in 2006 and finds accordingly, noting that country information indicates that such clubs are prevalent at Ugandan universities. On the basis of independent country information before the Tribunal, the Tribunal accepts that the primary purpose of that club is the mobilisation and education of Baganda youth about the norms and values of Baganda culture as a foundation for social, political and economic developments<sup>18</sup>, which the Tribunal considers to be consistent with the evidence of the applicant.
86. The Tribunal accepts the applicant's evidence that she was elected [an office bearer] of the Nkobazambogo club at her university in 2007 and that she remained in that position until six months before finishing her studies in mid-2009. The Tribunal accepts that during the course of her membership of the leadership of that club at [Faculty 1], the applicant attended meetings with other clubs and the Baganda kingdom to discuss academic, economic, social and political matters as well as participating in cultural and sporting events.
87. The Tribunal accepts the applicant's evidence that she was invited to speak at the Baganda Youth Celebrations and that she travelled to Kampala two days prior to the planned celebration to travel in convoy with the Baganda president and other attendees and was then caught up in the riots when the convoy was forced to return to Kampala. In making that assessment, the Tribunal notes that the applicant's evidence as to the events that unfolded on 10 September 2011 is entirely consistent with independent country information before the Tribunal, which indicates that the riots began when police blocked a delegation representing

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<sup>18</sup> 'Nkobazambogo About Us' 2010, Nkobazambogo website, 17 December  
[http://nkobazambogo.com/index.php?option=com\\_content&view=article&id=68&Itemid=28](http://nkobazambogo.com/index.php?option=com_content&view=article&id=68&Itemid=28)

the Baganda kingdom from visiting Kayunga district, ahead of a planned visit two days later by the *kabaka*<sup>19</sup>. Those sources also indicate that more than 20 people were killed in violent clashes between Baganda protestors and government security forces in the capital city Kampala<sup>20</sup> and that in excess of 550 arrests were made following the riots, the majority being those who were directly involved in the riots and the ringleaders<sup>21</sup>. It is reported that 31 people were charged with terrorism offences, 23 of whom are reported to remain in jail awaiting trial 12 months later and an estimated 80 others were released on bail, facing charges such as inciting violence and participating in a riot<sup>22</sup>.

88. The Tribunal is satisfied on the basis of the applicant's oral evidence and the photographs produced to the Tribunal that the applicant's sister, [Ms A], was murdered in August or September 2010. In making that assessment, the Tribunal notes that the absence of a death certificate is consistent with information found in independent sources to the effect that in practice death certificates are only obtained where there are legal claims to be made relating to assets left behind by a deceased person<sup>23</sup>. The Tribunal accepts that there is no reason for the applicant's family to have sought a death certificate for [Ms A] and that in circumstances where they are fearful that she was murdered by the authorities, they may be reluctant to seek such a certificate. While the applicant has openly acknowledged that she cannot know the reason for her sister's murder, the Tribunal cannot discount as remote or fanciful that [Ms A]'s murder was linked to the applicant's profile and conduct as a Baganda activist.
89. The Tribunal has considered whether the fact that the applicant was not detained or questioned in the period between the riots and her departure from Uganda means that she was not of interest to the authorities. However for the reasons that follow, the Tribunal is satisfied on balance of evidence that the risk to the applicant is real and not remote or fanciful and that her avoidance of arbitrary detention and arrest in 2009 may have been merely fortunate.
90. The Tribunal is satisfied that the applicant's profile as a student activist of Baganda ethnicity working with the Baganda kingdom and a proposed speaker at the Youth Day celebrations that sparked the riots is sufficient to bring her to the attention of the Ugandan authorities, noting that country information indicates that the 550 persons arrested after the riots were believed to be directly involved in the riots and the ringleaders<sup>24</sup>. The Tribunal considers that this is particularly the case given that the applicant participated in discussions with the Baganda Kingdom about the Land Bill, which she opposed along with many other Baganda people. The Tribunal notes that country information suggests that the violence that flared in September 2009 reflected the tension between Baganda authorities and the Ugandan government over access to land and Baganda demands for greater autonomy, with the

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<sup>19</sup> Human Rights Watch 2009, *Uganda: Investigate Use of Lethal Force During Riots*, 1 October

<http://www.hrw.org/en/news/2009/10/01/uganda-troops-killed-unarmed-people-riot-period?tr=y&aid=5408929>

<sup>20</sup> 'Landmark royal meeting in Uganda' 2009, *BBC News*, 30 September

<http://news.bbc.co.uk/2/hi/africa/8283588.stm>

<sup>21</sup> 'Deadly riots lead to over 550 arrests' 2009, *France 24 News*, 13 September

[http://www.france24.com/en/20090913-uganda-kampala-buganda-riot-africa-police?quicktabs\\_1=1](http://www.france24.com/en/20090913-uganda-kampala-buganda-riot-africa-police?quicktabs_1=1)

<sup>22</sup> Human Rights Watch 2010, *Uganda: Investigate 2009 Kampala Riot Killings*, Human Rights Watch website, 10 September <http://www.hrw.org/en/news/2010/09/10/uganda-investigate-2009-kampala-riot-killings> –

<sup>23</sup> 'Report on the identity documents available in the Uganda legal and administrative system and other supporting documentation for applications for participation in proceedings in Uganda' prepared by the Victims Participation and Reparations Section on 12 October 2007

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<sup>24</sup> 'Deadly riots lead to over 550 arrests' 2009, *France 24 News*, 13 September

[http://www.france24.com/en/20090913-uganda-kampala-buganda-riot-africa-police?quicktabs\\_1=1](http://www.france24.com/en/20090913-uganda-kampala-buganda-riot-africa-police?quicktabs_1=1)

Baganda viewing the proposed Bill as a scheme to gain control of the region's resources<sup>25</sup>. Again the Tribunal considers the applicant's evidence to be materially consistent with the country information.

91. A BBC report before the Tribunal indicates that the Land Bill was passed by the Ugandan Parliament in November 2009 but that even before the President assented to the Bill, the Baganda Kingdom, which had provided the fiercest opposition to the Bill, declared that it would not respect the new legislation as they considered it a way of eroding the powers of their king<sup>26</sup>. Country information also indicates that further riots erupted in March 2010 following the burning of Baganda's royal tombs in Kasubi. This resulted in a clash between the Ugandan security forces and rioters and reports that the country's presidential guard opened fire at members of the Baganda ethnic group, killing three people and injuring several<sup>27</sup>.
92. The Tribunal accepts the applicant's evidence that she will continue to work with the Baganda Kingdom on matters affecting the Baganda if she returns to Uganda. The Tribunal is satisfied that there is a real chance that her existing profile as a Baganda student activist and her intention to continue her activism and work with the Baganda Kingdom in the reasonably foreseeable future would make her a target for the authorities and that as such she may be exposed to a litany of serious harms including arbitrary detention and arrest, torture and sexual violence. The Tribunal accepts that the applicant is without significant family support following the murder of the sister with whom she lived and her estrangement from the uncles who raised her.
93. That the applicant's ethnicity in these circumstances can be considered under the Convention ground of "race" is set out in *Calado v MIMA*<sup>28</sup> in which the Federal Court of Australia held that:

When considering the meaning of the expression "race" in a case such as the present, it is appropriate to take into account the "popular" understanding of the term which accords importance to physical appearance, skin colour and ethnic origin. There can be no single test for the meaning of the expression "race" but the term connotes considerations such as whether the individuals or the group regard themselves and are regarded by others in the community as having a particular historical identity in terms of colour, and national or ethnic origins. Another consideration is whether the characteristics of members of the group are those with which a person is born and which he or she cannot change.
94. The Tribunal is satisfied that the applicant's Baganda ethnicity means that she regards herself and is regarded by others as having a particular historical identity in the Ugandan community in terms of her national and ethnic origins. The Tribunal finds that the applicant faces a real chance of serious harm if she returns to Uganda now or in the reasonably foreseeable future for reasons of her race and political opinion.

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<sup>25</sup> 'Kingdom come' 2009, *The Economist Intelligence Unit*, 16 September

[http://www.economist.com/agenda/displaystory.cfm?story\\_id=14442349](http://www.economist.com/agenda/displaystory.cfm?story_id=14442349)

<sup>26</sup> BBC World Service 27 November 2009 *Uganda Land Bill Passed*

[http://www.bbc.co.uk/worldservice/africa/2009/11/091127\\_uganda\\_land.shtml](http://www.bbc.co.uk/worldservice/africa/2009/11/091127_uganda_land.shtml)

<sup>27</sup> 'Deaths in Riot after Uganda fire' 2010 *Al-Jazeera*, 18 March

<http://english.aljazeera.net/news/africa/2010/03/201031832626419981.html>

<sup>28</sup> (1997) 81 FCR 450. Appeals from this judgment to the Full Federal Court were dismissed, see *Calado v MIMA* (1998) 89 FCR 59. The Full Federal Court's judgment did not interfere with, or expand upon, the meaning of "race".

95. Accordingly, the Tribunal finds that the applicant has a well-founded fear of persecution for a Convention reason.
96. The Tribunal has considered whether the applicant could relocate to another part of Uganda to avoid the harm feared. The Tribunal notes that her only close family now comprises her sister [Ms B] who lives in Kampala. She is alienated from her uncles and more distant relatives and her sister with whom she lived in Uganda has been murdered recently. Country information indicates that the country continues to experience serious human rights problems including arbitrary killings, arbitrary and politically motivated arrest and detention, violence and discrimination against women and homosexual persons<sup>29</sup>. Recent human rights reports indicate that security forces continue to kill demonstrators, suspects, detainees, and other citizens and that official impunity for human rights abuses persists<sup>30</sup>, with law enforcement officials not held to account for human rights violations including unlawful killings, torture and other ill-treatment<sup>31</sup>. The Tribunal finds that relocation within Uganda to avoid the harm is not reasonable for the applicant in these circumstances.
97. Having found that the applicant faces a real chance of serious harm if she returns to Uganda now or in the reasonably foreseeable future for reasons of her ethnicity and political opinion, it is not necessary for the Tribunal to consider the applicant's other claims and submissions to the effect that she also faces serious harm on the basis of her membership of various social groups. The Tribunal makes no findings on those matters, other than to reiterate that for reasons set out elsewhere in this decision record, the Tribunal considers the applicant to be a witness of truth.
98. There is no evidence before the Tribunal that would suggest that the applicant has a right to enter and reside in any third country for the purposes of s 36(3) of the Act and, accordingly, the Tribunal finds that she does not have any such right.

## **CONCLUSIONS**

99. The Tribunal is satisfied that the applicant is a person to whom Australia has protection obligations under the Refugees Convention. Therefore the applicant satisfies the criterion set out in s.36(2)(a) for a protection visa.

## **DECISION**

100. The Tribunal remits the matter for reconsideration with the direction that the applicant satisfies s.36(2)(a) of the Migration Act, being a person to whom Australia has protection obligations under the Refugees Convention.

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<sup>29</sup> UNHCR in its report 'Freedom in the World 2010 – Uganda'

<sup>30</sup> Human Rights Watch in its World Report 2011: Uganda

<sup>31</sup> 2011 Amnesty International Report, referring to Uganda