

# Introduction

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## The setting

In 1997, when this research commenced, the office of the United Nations High Commissioner for Refugees (UNHCR) estimated that there were 420,300 refugees in Uganda and Kenya.<sup>1</sup> According to these estimates, which referred almost exclusively to encamped refugees, about 90 percent of the refugee population came from Somalia and Sudan;<sup>2</sup> there were smaller numbers of refugees from the Democratic Republic of Congo (DRC) (14,400), Ethiopia (8,500), Rwanda (17,900), and Burundi (100).<sup>3</sup> In addition, Uganda and Kenya each gave refuge to a small number of the other's citizens,<sup>4</sup> and received a few refugees from as far as West Africa, the Balkans, and the Middle East. Both countries witnessed internal displacement, as a result of the conflict in the north in Uganda and of the ethnic strife in various parts of the country in Kenya.<sup>5</sup> The majority of the refugee population in both countries consisted of people who had arrived there in the 1990s.

All of the 'assisted' refugees lived in remote rural encampments administered by UNHCR and non-governmental organisations (NGOs),<sup>6</sup> with the exception of an official 'urban' refugee programme for approximately 530 refugees in Kampala, Uganda.<sup>7</sup> In Nairobi, the Jesuit Refugee Service (JRS), contracted by UNHCR as an implementing partner, also provided some material assistance to small numbers of asylum-seekers and refugees.<sup>8</sup> Apart from these limited numbers of assisted refugees, Kampala and Nairobi hosted tens of thousands of refugees who lived outside the aid umbrella. Unassisted refugees could also be found in smaller towns and in rural areas. A combination of factors led these refugees away from the camps, with lack of physical security and the search for better socio-economic or educational opportunities being prominent (Kibreab 1989, 1991, 1996; Hansen 1982).<sup>9</sup> There was great uncertainty about their overall numbers.<sup>10</sup>

## Main movements of refugees into Kenya and Uganda

In both Kenya and Uganda, forced migration predates independence.<sup>11</sup> From the 1920s to the 1950s, Rwandans and Burundians (mainly Hutus) migrated in the hundreds of thousands to Uganda and in smaller numbers to Kenya, fleeing state-imposed forced labour requirements and physical abuse, which today would qualify them for refugee status (Richards 1956; Newbury 1988). In 1936–38 alone, around 100,000 Rwandans and Burundians are believed to have entered Uganda each year; by the late 1950s their numbers were over 500,000, of whom 350,000 were Rwandan (Chrétien 1993: 277–8). Many became assimilated in the clan structure, took local names, acquired land, and married locally, and their grandchildren today may be only dimly aware of their Rwandan or Burundian ancestry. Such examples of integration of forced migrants are seldom remembered in the current climate.

The first major refugee-producing crises in the region after the Second World War began in Sudan in 1955 and in Rwanda in 1959. In 1955, the mutiny by southern Sudanese troops and the resulting seventeen-year *Anyanya* war forced many southern Sudanese to seek refuge in northern Uganda and Kenya (see Johnson 2002). Sudanese refugees continued to arrive in Uganda for more than fifteen years, with the main influx in 1964–65. Although the signing of a peace agreement in 1972 between Jaafar Al-Nimeiry's government and the *Anyanya* rebels paved the way for the repatriation of many Sudanese refugees (Betts 1974), in 1983 war broke out again between the forces of the Khartoum government and a new rebel group, the Sudan People's Liberation Army/Movement (SPLA/SPLM) led by Colonel John Garang. The war quickly spread to many parts of southern Sudan and, by 1986, the security situation had deteriorated to such an extent that many Sudanese fled in massive numbers to northern Uganda. In fact, they accompanied the many Ugandan refugees who had been driven out of their place of settlement in southern Sudan at the time (Harrell-Bond and Kanyeihamba 1986). More Sudanese refugees continued to arrive on a regular basis throughout the 1990s in both Uganda and Kenya – with peaks and troughs linked to the security situation in southern Sudan.

Even after independence, Rwanda remained a major refugee-producing country in the region. Although refugees from other countries have surpassed Rwandans as the largest group of exiles in Uganda, Rwandans historically played a defining role in the development of Ugandan refugee policy. Between 1959 and 1967, about 78,000 Tutsi refugees from Rwanda fled to southwestern Uganda, driving thousands of head of cattle before them.<sup>12</sup> They were settled in the Oruchinga valley in 1961, at Nakivale in 1962, and later in new settlements at Kahunge, Kyaka, Ibuga, and Rwamwanja in Toro (now Kabarole) district. As the crisis in Rwanda flared up again, some 20,000 refugees arrived between 1964 and 1967, and

two new settlements were established at Kyangwali and Kinyara in Bunyoro (now Hoima and Masindi) districts in 1965.<sup>13</sup> In October 1990 a group of Rwandan refugee rebels, many of whom had served in Yoweri Museveni's National Resistance Army (NRA), crossed the border into Rwanda. Attempts to solve the conflict through peaceful means failed dramatically when on 6 April 1994 the plane carrying Presidents Habyarimana of Rwanda and Ntaryamira of Burundi was shot down as it approached Kigali airport. Within hours, a well-organised massacre began and in the following months a genocide took place, in which around 800,000 Tutsis and moderate Hutus were killed by extremists. The eventual overthrow of the Rwandan government by the Rwandan Patriotic Army (RPA) led to a massive exodus of over two million Rwandans – mainly to Zaire (now DRC) and Tanzania, but also to Kenya and Uganda (UNHCR 2000b). Unfortunately, the end of the genocide did not usher in an era of peace and stability in Rwanda. Refugees, both Hutus and Tutsis, continued to flee owing to the insecurity in parts of the country as well as political and ethnic persecution: many of these arrived in Nairobi and Kampala during our research.

The 1960–67 civil wars in the Congo and growing political repression by the Mobutu regime forced many Congolese to seek refuge in East Africa – mostly in Uganda, but also in Burundi, Tanzania, Sudan, and Kenya. Many of the estimated 33,000 Congolese were settled in camps in Achol-Pii in northern Uganda and Kyaka in western Uganda, but an unknown number of others 'self-settled' and successfully integrated into Ugandan society (Pirouet 1988: 240). Some of these 'self-settled' populations, especially the Congolese, helped their fellow nationals get settled when they fled the most recent wars in their country.

The ousting of Mobutu from power in May 1997 signalled the beginning of another chapter in the Congolese wars. In August 1998, Laurent Kabila fell out with his erstwhile allies Uganda and Rwanda, and a new wave of rebellions under different leaders, who served as proxies of Rwanda and Uganda, erupted in the now-renamed Democratic Republic of Congo (DRC), plunging the country into further turmoil and producing more refugees. After August 1998, Rwanda and Uganda openly backed the rebellion against Laurent Kabila's government in the DRC under the banner of the Rassemblement Congolais pour la Démocratie (RCD). In mid-1999, the RCD split into competing factions supported by either Uganda or Rwanda, and intensified efforts to silence human rights activists reporting atrocities under its rule (HRW 2001c).<sup>14</sup> Differences in strategy in the DRC wars produced serious tensions between the former allies, culminating in three separate bouts of heavy fighting in Kisangani in 1999 and 2000. Uganda backed a rebel group called Movement for the Liberation of Congo (MLC), which, led by Pierre Bemba, controlled a significant portion of territory in the east and the north of the country. The

conflagration between Uganda and Rwanda in eastern DRC shifted attitudes towards the Congolese and Rwandan refugees in Uganda, although this did not necessarily increase their security.

Despite having, like its neighbour Rwanda, a constitution that was to some extent the result of an internal constitutional debate (Verdirame 2000), Burundi steadily degenerated into authoritarianism in the 1960s. After Hutu candidates obtained the majority of seats in the National Assembly in the 1965 elections, the country plunged into a state of civil war. The abandonment of the post-independence constitutional structure was sealed in 1966 when the monarchy was overthrown and Michel Micombero proclaimed himself president. The elected assembly was replaced by a Supreme Council of the Republic, which was composed of officers in the Tutsi-dominated army. The Hutu uprising in 1972 against the ethnic oligarchy that was by then in power ended in one of the worst bloodbaths in the history of the region. Educated Hutus were systematically eliminated – as many as 300,000 said to have been killed and probably more displaced. The massacre aimed to destroy the Hutu educated elite, depriving the Hutu majority of any chance to obtain power for a generation. The following two decades were in fact dominated by power struggles within the dominant Tutsi oligarchy. The 1976 coup, which brought Colonel Bagaza to power, and the 1987 coup by Major Buyoya did not signify any change for the Hutu majority, which remained oppressed and excluded from power. In 1985, for example, only four ministers out of twenty were Hutu, seventeen members of the National Assembly out of sixty-five, one ambassador out of twenty-two (Reyntjens 1994: 41). Finally, by the early 1990s, pressure to introduce a multi-party system was sufficient to lead to free and vividly contested elections in June 1993, which were won by Melchior Ndadaye, candidate of the main opposition party. Only a few months later, on 21 October 1993, President Ndadaye was murdered by members of the army, still dominated by Tutsis. Violent clashes erupted and thousands of Burundians were once again forced to seek refuge in neighbouring countries.<sup>15</sup> The majority sought refuge in Tanzania, but many fled also to Uganda and Kenya. Major Buyoya staged another coup in 1996, and negotiations between his government and various Hutu rebel movements took place in Tanzania, with the former Presidents of Tanzania and South Africa, Julius Nyerere and Nelson Mandela, as mediators. In April 2003, Domitien Ndayizeye, a Hutu, became president under the terms of a power-sharing agreement signed between the government and most rebel factions.

A large portion of Africa's refugees in the 1990s have come from Somalia, one of the continent's 'failed states'.<sup>16</sup> Somalia was created from the union of two former colonial territories, one Italian and the other, in the north, British. In 1969, Muhammad Siad Barre overthrew the government of Abdi Rashid Ali Shermarke in a coup, and, the following year, pro-

claimed Somalia a socialist state. The 1977–78 Ogaden war, which saw the defeat of Siad Barre’s expansionist plans, accentuated internal clan divisions, and the government of Siad Barre cracked down on clans perceived to be hostile. By 1991, armed factions organised along clan lines had gained sufficient strength to topple what remained of Siad Barre’s government in Mogadishu. The capital was ransacked with extreme ferocity, and the only escape route open to many was the ocean. Within weeks, Somali refugees were arriving in large numbers in Kenya’s ports, particularly Mombasa,<sup>17</sup> and later in Uganda. In 1992–93 the Security Council authorised a peacekeeping mission in Somalia, entrusting it at one point with an essentially peace-enforcement mandate. The UN intervention ended in failure when US troops did not manage to capture warlord Muhammad Aideded. As the peacekeeping troops were withdrawn, the war in Somalia continued and various agreements between faction leaders proved precarious. After the terrorist attacks on the US on 11 September 2001, fears grew that Somalia might become a ‘haven’ for terrorists, and foreign aid agencies decided to scale down their presence. Meanwhile, Somaliland, the northern part of the country, declared independence unilaterally and, although it received no international recognition, it proceeded to a period of relative stability with presidential elections in April 2003.

## **Aims and objectives of the research**

The research for this book was carried out in conjunction with a collaborative study funded by the European Union (EU) on the health and welfare of refugees in Kenya and Uganda in 1996–99.<sup>18</sup> The main question addressed by the EU project was whether refugees outside camps fared better than refugees in camps in terms of health and welfare. This provided a broad framework within which to investigate discrete issues in the psychosocial, legal, and policy spheres. Our project was then designed to focus on the extent to which refugees enjoyed their fundamental rights in camps/settlements, as opposed to refugees who had settled outside the aid umbrella in rural or urban areas.

The primary aim of this research was to analyse how international human rights and refugee law is implemented – in other words, how international legal protection is actually translated into the everyday life of a refugee in East Africa. The research was designed to examine refugee protection as portrayed by governments, humanitarian organisations, and by UNHCR in their official documentation, as well as to investigate their actual conduct. It was intended to act as a catalyst for the reform of law and practice in line with international human rights and refugee law, as well as for initiatives designed to promote respect for the rights of refugees in Kenya and Uganda. Other objectives of the research included:

to develop a replicable sociolegal methodology for investigation of the legal protection of refugee rights through field research and case-based methods; and to test a strategy for the dissemination of findings that could lead to greater awareness and promote reform.

It should be noted what the research did not set out to do and what, as a result, this book is *not*. Although throughout the book we do compare refugee protection in Uganda and Kenya, the research was not conceived as a comparative study per se. Rather, it was a study of the same research questions in two different settings. In some instances, comparable data were available, in others not. For example, it was possible to collect much more data on the police in Uganda than in Kenya, but on sexual violence we gathered more data in Kenya. In Uganda we made some observations on refugees who were ‘self-settled’ in rural areas and who were making their living through agriculture; in Kenya we did not have the opportunity to observe such groups.

This book is not a human rights report, although it is on the same subject matter. Human rights reports, written, for example, by Amnesty International or Human Rights Watch (HRW), often gather facts without extensive analysis of the systemic power relations that are at the root of certain human rights abuses. In addition, such reports are sometimes based upon short-term field visits during which there may not have been time to conduct follow-up.<sup>19</sup> By contrast, we aimed to gather extensive data over a prolonged period of time using a rigorous legal anthropological methodology. Although parts of this book may read like an exposé of human rights violations, we have attempted throughout to place the data in a sociolegal context. Moreover, unlike most human rights reports, our research did not deal exclusively with the actions of governments, but also examined the role of other actors in a position of power vis-à-vis refugees.

We did not dwell on the causes that prompted refugees to flee in the first place. Refugees are an ‘after-the-fact’ phenomenon. While knowledge of the causes within the country of origin is critical for refugee advocates in preparing cases for status determination, this information is of limited relevance to the refugees’ protection needs outside their country.

This book is the result of a long-term ethnographic study of the *violations* of the catalogue of rights that refugees should enjoy, but it does not review the legal scope of each right. With a few exceptions, it is not our stated aim to further knowledge on the interpretation of particular provisions in refugee or human rights treaties. The contribution to legal scholarship that we seek to make is by illustrating and analysing the factual accounts of violations of rights – emphasising the role of perpetrators, as well as the circumstances and patterns in these violations.

There are questions that this book raises but does not examine in detail. For instance, we discuss resettlement only briefly, particularly in the con-

text of persons who faced an imminent security risk and who should have been resettled expeditiously. We also only touch on the treatment of certain ‘vulnerable groups’, such as unaccompanied minors (about whom a separate book could have been written). Similarly, we have barely addressed rights associated with mental health, or the particular needs for the protection of the elderly and adolescents.

In the presentation and analysis of the research data, we have categorised cases under the main human right that was violated, with the proviso that in most cases other human rights were simultaneously being violated. For instance, interviews with headmasters and teachers on the right to education for refugees also raised issues related to labour rights, freedom of expression, and freedom of association. Another example is restriction on freedom of movement, which affected the enjoyment of virtually all other human rights to which refugees were entitled, such as physical security, access to courts, and education. Cataloguing these violations under one right was necessary for practical reasons, but this should not be regarded as a repudiation on our part of the interdependence and indivisibility of all human rights.

Five main questions were posed in order to assess the ‘gaps’ between law and practice. First, recognising that a multiplicity of actors (the government, UNHCR, and NGOs) are normally responsible for refugee protection in host states in the ‘developing world’, we sought to understand the roles played by each and their impact on refugee protection. Second, we assessed the level of protection of refugee rights in camps and settlements, as opposed to Nairobi and Kampala. Third, we examined decision making on individual asylum status-determination claims in each country. Fourth, on the premise that enjoyment of one’s rights is best achieved through an *awareness* of those rights, we tried to measure the extent to which individual refugees, the host populations, the governments, and NGOs were informed about international human rights and refugee law. Finally, we examined the extent to which refugees in both countries were able to seek the enforcement of their rights. This question encompassed an analysis of the laws and policies which needed reform in order to comply with international standards.

## **Assumptions underlying the research**

We assumed that refugee protection encompasses both general human rights and refugee-specific rights. The system of international protection originated from the need to provide refugees with an effective substitute for diplomatic protection. A group of core protection activities – including the prevention of *refoulement* and expulsion, access to status-determination procedures, grant of asylum, release from detention, identity and

travel documentation, family reunion, access to educational institutions, facilitation of the right to work, solutions – can be identified on the basis of the 1950 UNHCR Statute, in conjunction with the 1951 Convention (Goodwin-Gill 1998: 230–31). With the development of human rights law, the concept of refugee protection has been expanded, as standards and procedures of universal application have evolved. ‘Conditions under which they [refugees] frequently live’ have to be taken into account, and, in recent years, ‘added weight’ has been given ‘to claims for personal security, family reunion, assistance, and international efforts to achieve solutions’ (ibid.: 231).

The research was based on the assumption that human rights are inter-related and indivisible. Connected to this was the premise that the welfare of refugees depends on protecting all of their rights – civil and political, as well as economic, social, and cultural. Since we assumed that respect for human rights is an intrinsically positive thing, we did not set out to subject human rights per se to a critique; nor did we question the assumption that refugee-specific rights – such as the right not to be *refouled*, or the right to obtain identity papers or travel documents – could in any way be harmful to refugees.

We agree that universality of human rights should be ‘beyond dispute’ (Deng 2000: 234). Hence, we did not use perceived contextual values or norms as the yardstick for gauging the situation of refugees, and were not prepared to make any justification for ‘culturally acceptable’ practices that constitute violations of human rights. Torture, the burning at the stake of women accused of witchcraft, and racism have all been deemed ‘culturally acceptable’ at some historical point: the supine defence of the cultural status quo is an ultimately reactionary position, which might appear progressive only to the ideologically confused.

We did, however, seek to benefit from ‘the methodological insights’ of cultural relativism (Wilson 1997: 8). It is axiomatic that the socio-economic and cultural context affects everyone, refugees and citizens alike. We recognised the importance of the social context for devising an effective strategy for research on the human rights of refugees and for understanding the nature of some obstacles to the enjoyment of rights. For example, cultural attitudes towards the stranger are an important factor in the treatment of refugees.<sup>20</sup>

The social context includes a multiplicity of actors, each standing in a particular relationship of power vis-à-vis the other, which the study assumed it was necessary to unravel. The organisations of UNHCR and NGOs are themselves multi-layered. We made the assumption that studying humanitarian organisations required not only examining the policy documents emanating from ‘headquarters’ but also the practices of regional and local offices down to the actions of individuals working at the camp level. The relative power of institutionally-based actors at different



times and in various situations could not have been predicted on the basis of their mandates or public documents concerning policy. Studies of national welfare institutions have already highlighted the existence of a street-level practice which does not always operate in accordance with guidance from the management (Lipsky 1980). At every level of society there are also individuals who act as gatekeepers, empowered to control access to services. These individuals often behave in an arbitrary or discriminatory manner, even extorting money from those requiring assistance.<sup>21</sup> Institutional hierarchy, geographical spread, and the political, cultural, and religious biases of individuals working within humanitarian organisations constitute yet another level of complexity. Then there are the refugees themselves, some of whom acquire power over others by virtue of their military, political, religious, or economic standing.

Finally, it was assumed that international human rights and refugee law binds both states and international organisations (Verdirame 2001b). Awareness of human rights law amongst the population as a whole – including government officials, humanitarian workers, and the refugees themselves – was assumed to be a precondition for the effective protection and enjoyment of these rights. In particular, we considered UNHCR as a human rights organisation, endowed with legal personality and bound to uphold human rights law in every aspect of its work, since ‘human rights standards can *define the kind of treatment refugees can expect under international protection*’ (Towle 2000: 27 [emphasis added]). Not everyone is accustomed to thinking of UNHCR as a human rights organisation and the question has been raised: can UNHCR combine its ‘humanitarian and non-political character’ with human rights work?<sup>22</sup> The answer from UNHCR itself has been unequivocal: ‘Placing greater reliance on human rights standards as a basis for our work does not jeopardize the humanitarian character of our activities, since international human rights law is itself non-political and non-partisan’ (UNHCR 1995g: 5).<sup>23</sup>

## Research methods

The research for this book applied social science methods, primarily anthropological, to data collection in the field. Kenya and Uganda were chosen as the site for the research for several reasons. Both were stable host countries, at least in comparison with other central and eastern African countries. In addition, previous experience and research facilitated access to the sources of data. More importantly, these two countries seemed ideal for conducting ‘action research’: they were in the process of reforming or introducing refugee legislation, and the research could offer a timely contribution.

In Kenya, data collection began in March 1997 with a survey of the field in Nairobi and a research trip to Kakuma refugee camp. Most data were collected between March 1997 and May 1998, with several shorter periods of research throughout the following two years. The research concentrated on refugees in Nairobi, and in the camps in Kakuma and Dadaab. In Uganda, after a short trip in April 1997, data collection began in September with the presentation of a background paper at Makerere University analysing Uganda's draft refugee bill in relation to the standards contained in Uganda's bill of rights as well as in treaties to which Uganda is a party (Garry 1998b). This presentation elicited comments and discussion among lawyers, government officials, and policy advisers on refugees in Uganda, as well as NGO staff and donors, which helped to highlight the areas on which the research should focus (Garry 1998c). Data collection continued until January 2000, and we focused on Kampala and on the refugee settlements in Moyo and Adjumani districts. Since the end of the project, we have continued to monitor the situation in both countries through the work of other researchers, and, most importantly, through the Refugee Law Project (RLP) in Kampala and the Refugee Consortium of Kenya (RCK) in Nairobi.<sup>24</sup>

The majority of the data were qualitative, collected through observation, unstructured conversations, in-depth interviews (some tape-recorded), and discussions with focus groups, as well as the study of documents such as court cases, government reports and records, UNHCR reports, NGO newsletters and reports, and newspaper articles. In both countries interviews were held primarily with refugees, but also with government officials (police, the judiciary, prison officers, the government's own refugee office, the immigration departments, and local administrators), UNHCR and NGOs staff, donor representatives, local lawyers, and academics. Available statistics were gathered from the Ugandan Department of Prisons and, in both countries, from courts and NGOs.

We were also able to benefit from a large number of discrete in-depth studies carried out in settlements and camps, many by volunteer interns working under our supervision, and others by Ph.D. candidates whose research complemented ours. These and other studies conducted more or less simultaneously by other scholars are cited throughout the book.

### *The participatory approach*

Our research employed participatory methods, as distinct from the classical anthropological view of participant observation, which implies that the researcher participates in the daily lives of the 'objects' of research over an extended period of time. Our participatory approach recognised that field research is a dialogical process, which questions the subject-object polarisation typical of much anthropological research

(Horst 1999, drawing from Schrivjers 1991, 1995). It requires openness about one's research, and necessitates an actor-oriented approach. Research questions were discussed with refugees in order to help determine the best approach. Reports of work were given to various people for comment and further discussion. We wrote up interviews with agency staff and often copied them to the same staff for confirmation of our interpretation of their responses.<sup>25</sup>

### *Reconstructing the practice of law*

In neither Kenya nor Uganda was there systematic law reporting. Moreover, refugee populations were usually kept in separate spaces – that is, refugee camps and settlements – where a parallel legal system operated outside the law of the host state. At times, this practice was in dramatic conflict with both national and international law.<sup>26</sup> Therefore, we reconstructed the practical application of the law in order to find out to what extent, by what means, and for what reasons those in charge failed to respect the rights of refugees. Reconstruction was done via observations, oral testimony, correspondence, and policy statement analysis.

Early on in the fieldwork, it became evident that it was not simply a matter of studying how the law was interpreted and applied, particularly since the domestic legal framework regulating refugee matters was either absent (Kenya) or inadequate and with lacunae (Uganda). It was at times necessary to analyse informal policy- and decision-making systems – parallel to and, at times, in conflict with provisions contained in the positive law – that had been introduced surreptitiously by the humanitarian organisations, or that reflected the customary law and the cultural norms of refugee communities as interpreted by their unelected leaders. In refugee camps/settlements, international civil servants and NGO staff rely on such systems, rather than on domestic or international legal standards, as the framework regulating their actions.

### *Case studies*

Throughout the research, the case-study method was followed. Detailed interviews aimed to elicit the personal experiences of refugees regarding the enjoyment of particular rights, and to 'reconstruct' the facts of the case and the decisions taken by those in charge (Verdirame 1999b). For most refugees interviewed in Kampala or Nairobi, we opened individual case files containing photocopies of their documents in addition to their testimonies.<sup>27</sup> In camps, we could normally only take field notes, since it was not usually possible to collect documentation to the same extent.

Some questioned the reliability of the case-study method, viewing it as leading to the collection of merely anecdotal evidence. For instance, when

preliminary findings were presented at a meeting of officials at UNHCR in Nairobi in September 1997, some challenged us on the need for ‘statistics’ – ‘how many times are rights violated?’ or ‘what percentage of the refugee population suffered violations of a particular right?’. The mistaken assumption was that for an argument to be credibly put forward on human rights violations affecting refugees, one would need to demonstrate that such violations affect the majority, or at least a significant portion of the refugee population. However, legal materials (submissions of the parties, judgments) are often, in a sense, anecdotes – that is, narratives that summarise facts and analyse them according to legal categories and principles. A single case representing a violation of internationally agreed human rights standards suffices to justify the general statement ‘Country A (or organisation B) is in breach of international law with respect to that particular standard’. Obvious as it may seem, it is necessary to emphasise that the obligation to respect a certain human right means that a state has to respect that right in *all* cases, not in the majority of them. The main research question that we addressed was not whether ‘refugee rights are respected in regard to the majority of refugees’ but whether ‘refugee rights are respected’. Of course, a systematic pattern of abuse is more serious a breach of the law than an isolated case, and we did distinguish situations based on the incidence of the violations; such distinctions are important for developing a strategy for advocacy as well as for identifying the type of reform(s) needed for improving the situation and preventing the recurrence of abuses.

Having collected the personal testimonies of refugees, we then attempted to cross-check the facts with additional interviews, corroborating documentation, and interviews with other sources. This method was made possible in part because of the long-term nature of the study. In addition, the fact that we were providing legal assistance to many refugees for their status-determination interviews meant that we could insist that their testimonies were truthful. Some interviews relied on interpreters, but the use of them was minimised by the fact that the team included members who could speak English, French, Italian, Kiswahili, Madi, Turkana, Acholi, ‘Juba’ Arabic, Kakwa, Lugbara, Lingala, Runyoro, and Luganda. The only relevant languages not covered were Kinyarwanda, Kirundi, and Somali. When we used interpreters, we were aware of their potential influence: their gender, personality, skills, and actual or perceived membership of a faction, clan, or ethnic or political group might make some refugees unwilling to speak in their presence. We were also aware of the influence of others present at the interviews and attempted to ensure that all individual interviews were conducted in private, assuring full confidentiality in order to encourage as open a discourse as possible with each interviewee. However, this was not always possible; in prisons, for example, we were sometimes watched:

Aukot noticed that his interviewees seemed to be holding back information ... I asked the prison warden ... if maybe we could have a bit more privacy as it seemed that the refugees were not able to speak freely. The warden quickly answered that it was 'his right' as a prison warden to be present in order to 'prevent any secrets from leaving the prison' ... In the end, he consulted his superior who informed him to go and talk to the remaining [refugees] waiting to be interviewed that they should 'feel free' and tell us all and not feel afraid to talk to us! ... A woman warden monitored me both times [when I was in a particular prison] and I noticed that a young Dinka was very distracted by the guard and told me very little. His eyes kept averting to the warden and he acted as if he really didn't want to talk to me.<sup>28</sup>

### *Action research*

The research was action-oriented. As will be shown throughout the book, we took every possible opportunity to intervene when a right was violated.<sup>29</sup> Many of the refugees we interviewed had problems relating to their status in Kenya and Uganda. Much of the information we collected was sensitive, having to do with torture, sexual violence, forced recruitment and defections, relationships with authorities, and all other forms of injustice and abuse. Although we did not offer material assistance, we could provide refugees with advice on their cases and, at times, refer them to others who could help.<sup>30</sup> By doing so, we managed to establish a relationship that was reciprocal: refugees were usually more willing to give us information because it would also be used for their own benefit.<sup>31</sup> Some of the more important data would not have been obtained had we not adopted this methodology. At the same time, we made certain our interviewees were aware of the larger design of the research and of the way we would use their interviews while protecting their confidentiality.

Such reciprocity was not only expedient; it also addressed some of the ethical issues of research with subjects who were victims of human rights abuses (*see* Wilson 1992). There is little doubt that our data collection, and our findings, were coloured by the role of advocates that we chose to assume. From the point of view of 'pure' social sciences, this might not be ideal, but was there any alternative? From the outset, we had envisaged that advocacy would be part of our research – for both moral and practical reasons. The situation with regard to asylum status determination, however, immediately posed a challenge to our intended methodology; the law played such a marginal role in the decision-making process that overtly assisting a refugee with his or her case could be harmful, as it might be seen as an indication that the refugee had 'dared' to seek advice outside UNHCR.<sup>32</sup> This capriciousness in the system, particularly in the early months of the research in Kenya, put us in a moral dilemma. We could try to help refugees within this abusive and unfair system while remaining behind the scenes. Alternatively, we could openly challenge the system

with legal arguments, but run the risk of harming the individual we were seeking to help. We decided that the interests of the refugees were paramount, and we therefore did not overtly act in refugee status-determination cases, until the appointment of a new senior protection officer in August 1997 who encouraged us to intervene on behalf of asylum applicants.

In addition to advising on individual cases, in the course of the research we aimed to engage with the various actors in order to influence policy, practice, and the law-making process – in other words, to challenge the status quo. We employed a number of refugees to write reports on specific issues.<sup>33</sup> Whenever possible, we disseminated refugee law materials.<sup>34</sup> We organised courses, lectures, and seminars on refugee rights – which were open to the public – at Makerere University, Uganda and gave lectures in the Faculty of Law, Nairobi University, and at Moi University in Eldoret. We also used the press to disseminate research findings quickly (e.g., Harrell-Bond 1997b), to publicly challenge policies of the government or UNHCR (e.g., Harrell-Bond 1999b; Mwilinda 1999a, 1999c, 1999d; Lomo 1999c; Reynell 2000), and to raise awareness (e.g., Harrell-Bond 1997b, 1999c; Bouman and Harrell-Bond 1999; Mwilinda 1999e, 1999f; Taylor 1999). A group was organised to contribute to the law-making process in both Kenya and Uganda. In April 1999, a seminar on refugee law was organised at Makerere University for judges (also attended by a judge from Kenya), NGOs, government representatives, the media, and students.

We conducted a survey on knowledge of refugee law among the police, in which we interviewed some 100 police officers from five police stations in Kampala. Its primary result was awareness building. A regular relationship of consultation was established with police who began calling our office with questions on how to handle specific refugee cases according to refugee law.<sup>35</sup> On one occasion, when around sixty Rwandan students sought asylum in Uganda, it was a policeman from the Kampala old police station who brought a group of them to us.<sup>36</sup>

Our research into the level of awareness of refugee law and refugee issues among national institutions involved other actors as well. On many occasions the fact that research and activism can be coextensive and mutually supportive was confirmed. For instance, we met with members of the Uganda National Council for Children, the body responsible for coordinating all NGO and government activities vis-à-vis children. During our interview, the head admitted that refugee children were not understood to be part of their mandate and asked us to write a letter so that he could use it in promoting the Council's work in this area. More examples of actions that we took on behalf of refugees or to affect policy are discussed throughout the book.

As noted before, one of the major direct outcomes of the research in Uganda was the establishment of the Refugee Law Project (RLP) at the

Faculty of Law, Makerere University.<sup>37</sup> The objectives of the RLP are to provide training in refugee and human rights law for the police and other target groups (such as immigration officials), to support the development of a postgraduate course in refugee studies at Makerere, and to promote, oversee, and advise the NGOs providing legal aid services to refugees. One of the first activities of the RLP was to mount an intensive two-week course for police from refugee-affected districts. It now also offers short courses on refugee issues for NGO staff in rural areas as well as in Kampala. RLP has become the main provider of legal aid to refugees in Kampala and has extended these services to rural areas.

Action research strengthened the participatory approach: the dissemination of findings and advocacy relied on local actors to take the lead (*see* Fox and Brown 1998). Because of the paternalistic assumptions underlying them, we reject such terms as ‘capacity building’ or ‘empowerment’, which are generally employed to describe a unidirectional process in which ‘insiders’ benefit from ‘outsiders’. To the extent that they have any relevance, these notions ought to emphasise that, in research, ‘empowerment’ and ‘capacity building’ are reciprocal. Moreover, although access to police cells, refugee camps and, sometimes, official documentation was easier for the ‘outsiders’ (as three of us were), advocacy cannot be entirely successful without ‘insiders’. That more was accomplished in Uganda was not merely because the research extended over a three-year period, and that it had more funds available to it, but because one of the main researchers on our team was a Ugandan lawyer who knew the ‘landscape’, with both its pitfalls and opportunities. Throughout we tried to play on the relative strengths and weaknesses of the social and ‘anthropological’ position of the members of our research team.

## Main findings

### *The model of segregated camps increases the potential for abuse rather than enhances the protection of refugee rights*

The main conclusion of this book is that refugee rights cannot be protected in camps and settlements. This conclusion applied equally to the Kenyan camps and the Ugandan settlements, the latter purportedly promoting economic self-reliance. We found that in camps the law of the host country virtually ceased to be applied; camps were spaces *beyond the rule of law* in which the life of refugees was governed by an oppressive blend of customary practices and rules established by humanitarian organisations and refugees. We found evidence of violations of the full catalogue of human rights. Whether in a local camp or a settlement, refugees were effectively segregated – prevented from enjoying freedom of movement,

a fundamental right upon which the exercise of other rights is contingent. Crucially, these restrictions, together with their isolation in remote areas, inhibited refugees from engaging in business and trade in order to provide for their own welfare. All of the camps and settlements in which we conducted research lacked sufficient provision for education. Although UNHCR maintained that the health services were better than those available to nationals, morbidity rates among the refugee population were generally higher than among the hosts (*see also* Porter 2001). In both Kenya and Uganda, the social make-up of camps made it impossible for refugees to enjoy the right to physical safety from internal strife and their location subjected them to rebel attacks from outside. Freedom of expression and of conscience and religion were not ensured. Many refugees were victims of discrimination, mainly on grounds of gender and membership of ethnic or religious groups.

***Socio-economic integration is the best solution from the point of view of the refugees' enjoyment of their fundamental rights***

In both countries, the only alternative to camps was local integration, since repatriation was not available in the foreseeable future and only small numbers could benefit from resettlement. While integration is a complex socio-economic process contingent upon several factors, a *sine qua non* for successful integration is the removal of legal obstacles (recognition of refugee status, identification papers, free movement and choice of residence, work permits, access to schools and universities, and so on), which result in the marginalisation of refugees. The successful situation of the refugees who had arrived in Kenya before 1991 and whose integration was not generally impeded by legal obstacles was revealing: they were generally well integrated and enjoyed a level of security from arrest and police abuse that, though far from ideal, was not worse than that of nationals. For all other refugees in both countries, however, the legal obstacles to integration were insurmountable, with the consequence of making integration in the host society unavailable as a 'durable solution'. Many refugees still chose to reside in cities like Nairobi and Kampala, where they could at least seek educational opportunities or employment in the informal sector of the economy.



***UNHCR is the main authority that exercises power and effective control in camps; combined with its role in the status-determination process, this power means that UNHCR is not simply unable to promote respect for the rights of refugees, but is often responsible for the violation of these rights***

While host governments may be largely responsible for the treatment of refugees in countries in the 'developed world' (see e.g., Nagy 2000; Helton 2000), our research found that, where UNHCR and NGOs have assumed the host state's primary obligation for status determination and control of refugee populations in camps, they may in practice bear at least an equal share of responsibility. This is despite the fact that UNHCR holds itself out to be a 'human rights organisation' and, according to the Preamble of the 1951 Convention, 'is charged with the task of supervising international conventions for the protection of refugees'. In Uganda, responsibility for the management of camps was shared between UNHCR, NGOs, and the state through the Directorate of Refugees (DoR), but the funding for this authoritarian apparatus is supplied almost entirely by UNHCR. In Kenya, UNHCR and NGOs took full responsibility for camp management. The very organisation set up to monitor the extent to which refugees enjoyed their human rights had assumed de facto sovereignty over them. Who could monitor the monitor (Wilde 1998)?

Another example of the compromise of UNHCR's mandate (Goodwin-Gill 1999, 2000) was its primary role in status-determination procedures in both countries. Rather than acting as an advocate for the asylum-seeker and monitoring a national administrative process for determining asylum status, UNHCR assumed the adjudicatory role. The process it put in place flouted minimum requirements of procedural fairness. Its power over refugees was even more conspicuous when it came to deciding whether a refugee ranked among the select few who 'qualified' to stay in urban settings or whether he or she had to live in camps to receive assistance; it was almost absolute in decisions on whose case would be submitted to the embassies for resettlement in another country.

In a highly competitive funding environment, for UNHCR and its partner NGOs, institutional survival rather than the protection of the rights of refugees became the primary determinant of policy (Walkup 1997; Kent 1987: 92, as cited in Schmidt 1998: 6). Thus, UNHCR continued to support the encampment policy because of its perceived attraction to donors, for whom the main advantage was visibility – being able to 'prove' the presence of refugees.<sup>38</sup> '[W]hen a tight-fisted international community says ... it will provide help for refugees in camps ... this evidently encourages ... root[ing] out refugees who are integrated and plonk[ing] them into camps' (Malloch-Brown 1984: 9, as cited in Schmidt 1997: 28). In addition,

the staff of UNHCR were often not properly informed of, nor did they consider the human rights dimension of their work. They were in denial about their role as violators of rights; they assumed that the direct violator of refugee rights was the host state.<sup>39</sup>

In typically bureaucratic fashion, UNHCR officials gave precedence to the implementation of internal policies, regardless of their consistency with human rights standards, with UNHCR's own mandate, or with the best interest of refugees. An example of this was the systematic withdrawal of food rations in the settlements of northern Uganda according to a schedule 'set by Geneva'. This decision was made without regard to the drought and the insecurity, which made it impossible for refugees to plant and harvest in order to have an adequate store of food to compensate for the withdrawn rations. Another vivid illustration was the destruction of Ogujebe transit centre. In the space of one week, businesses and homes were bulldozed (without always checking to see if they had been evacuated) and the army was brought in. 24,000 people were uprooted at gunpoint into large lorries with all of their life's possessions, splitting up families in the rushed process.<sup>40</sup> From the perspective of refugees, the demolition of Ogujebe was an extreme violation of human rights.<sup>41</sup> Yet the destruction of the centre was viewed as a significant achievement, even worthy of celebration, by UNHCR.<sup>42</sup> How could the views of refugees, ourselves, and many other onlookers be at such variance with those of UNHCR and, to a lesser extent, the NGOs?<sup>43</sup>

In general, rather than challenge the camps policy, UNHCR and NGOs even supported it for the perceived advantages that this concentration and isolation of the refugee population provided: administrative efficiency, the ability to control refugees, and the facilitation of the 'voluntary' repatriation of refugees (UNHCR n.d.: 136). In Kenya, for example, UNHCR admitted that the issue of local integration was never 'seriously discussed with the government' in the 1990s when Kenya moved from a laissez-faire approach to an encampment policy for refugees (UNHCR 1997a: 20).<sup>44</sup> In Uganda, in its comments to the Ugandan government on its draft refugee bill, UNHCR Uganda recommended: 'perhaps under this section there should be added positive powers to establish or designate specific areas as transit centre, camps or settlements where refugees will be required to stay or settle rather than just including a provision that empowers the Commissioner to specify certain areas out-of-bound for certain refugees' (UNHCR 1996j).

### ***Host governments have abdicated their responsibilities for formulating and implementing refugee policy***

Related to the previous finding is the finding that host governments have largely handed over control over refugee matters to UNHCR and to for-

sign humanitarian organisations. Our findings on this process of transfer of responsibilities are similar to what Karadawi found in Sudan (1999). Interestingly, Kenya and Uganda were at different stages in the process at the time of the research: the government had completely relinquished responsibility in Kenya, while in Uganda it still attempted to maintain at least the vestiges of control over refugee policy. In neither country were officials aware of the fact that, despite this 'hand-over', legally their governments remained responsible under international law for the treatment of refugees.

Governments were also responsible for some violations of refugees' human rights – especially arbitrary arrest and detention, unfairness in criminal and civil proceedings, as well as violations of economic and social rights, such as the right to work. These are detailed throughout the book.

***Lack of awareness of the rights of refugees on the part of the various actors involved in refugee matters and of refugees themselves was one of the main factors that hindered respect for such rights***

There was an across-the-board lack of awareness of the law and the rights to which refugees are entitled in the host state by government officials, humanitarian organisations, and refugees themselves. It was not uncommon for us to find refugees in jail cells on misinformed charges of 'lying to a police officer' or for presenting false papers to an immigration officer or on grounds of treason against the Ugandan government. Police officers in Uganda responsible for first screening asylum-seekers upon arrival would not hesitate to bar them from a status-determination interview on the grounds that they were 'economic' migrants, if, in addition to claiming persecution, they stated that they were coming to Uganda in the hope of pursuing an education or a 'better life'. Asylum-seekers themselves were often unaware of how to present their testimonies in order to meet the burden of proof necessary to be found credible as someone fleeing from persecution. Segregation in remote camps in both countries was a serious obstacle to access to courts. Even where they had access to courts, misinformation about refugees and refugee law among the judiciary hindered proper enforcement. Refugees had no voice in the political arena, or in humanitarian decision-making circles: they were stereotyped negatively and kept at a distance, and their complaints were dismissed by those in charge, whether UNHCR, NGOs, governments, or local institutions. In Uganda, we found that through simple steps such as providing training courses for the police and the judiciary, raising awareness of violations of rights through dissemination of our research, and establishing legal-aid clinics for refugees, these problems could be mitigated.

## **A research and advocacy agenda for the future**

We did not specifically set out to test the effectiveness of different advocacy strategies for promoting respect for the rights of refugees: it would not have been possible to do this, given that in both countries one of the main problems was precisely the lack of such advocacy. However, our research was based on the assumption that it should advance refugee policy and catalyse efforts to ensure compliance with the laws and standards safeguarding the rights of refugees.

A striking feature of refugee advocacy is the lack of transnational civil society coalitions. Such groups have succeeded in promoting social change in other areas (Fox and Brown 1998). In particular, some change in international financial institutions has been accomplished by activists in affected countries liaising with lobbying groups and academics in Europe and North America. These networks have drawn attention to development programmes harmful to the environment and human rights.

We attempted to establish something akin to transnational advocacy coalitions on several occasions. For example, when refugees were deported from Belgium to Uganda on Sabena Airways, we established contact with a Belgian group of activists and members of parliament who were seeking to stop those deportations. We were in contact with researchers from Amnesty International and HRW throughout the research, especially in order to circulate information on issues such as the plight of human rights activists in the DRC or the wave of arbitrary arrests in Kenya in July 1997.

Despite some encouraging results in these instances, we were generally frustrated by the overall state of refugee advocacy. The refugees' 'protector', UNHCR, had for the most part proved to be unable to do its job properly. Because of their close partnership with UNHCR, humanitarian NGOs were reluctant to get involved in serious advocacy for refugee rights. With a few exceptions, local human rights NGOs did not usually include refugees in their activities. International human rights NGOs tended to follow a *modus operandi* crystallised in the 1970s: fact-finding missions followed by the publication of reports are the main tool to promote compliance with human rights organisations. Despite the utility of this method, other approaches could have been developed. For example, there was little monitoring of the actions of UNHCR or NGOs – still viewed as 'partners' against governments – and even less proactive use of local institutions, such as courts, for advancing respect for refugee rights.

What is the way forward for refugee advocacy? The establishment of effective transnational advocacy coalitions, ideally including a reformed UNHCR, would require a rethinking of the roles of all the actors, exploiting certain features of the current sociopolitical and sociolegal context. A propitious development since the 1980s has been the growth of the human rights community in many countries in the 'developing world',

and the introduction of important legal and constitutional reforms. Both Kenya and Uganda could be described as having a thriving network of human rights NGOs and activists, and in both countries, albeit to a different extent, there is some room for bringing about changes through the law. Nevertheless, at the time of our research, foreign NGOs, both humanitarian and human rights ones, were too often slow to react to these developments, and seldom sought to strengthen local NGOs by, for example, mobilising funds and other resources in countries in the 'developed world' for public interest litigation on behalf of refugees.

Our research also revealed the need for more scholarly studies, in particular sociolegal ones, of human rights and refugees. Academic lawyers ought to challenge some of their deep-seated attitudes and methods. Human rights standards are universal, but power relations are contingent and the reality of refugee protection is fluid. As long as human rights and refugee lawyers do not engage with the 'field', they will remain vulnerable to accusations that the standards they propound can only work in the abstract (Morris 1999: 494).

## Notes

1. See UNHCR (1998) 'Refugees and Others of Concern to UNHCR,' 1997 Statistical Overview, Statistical Unit, Geneva, July, at <http://www.unhcr.ch>.
2. Ibid.
3. Ibid. Note that according to UNHCR they were also assisting approximately 400 Mozambicans in Kenya in 1997.
4. Most of the approximately 5,500 Ugandans remaining as refugees in Kenya had gone there during the troubles in the north of the country in the 1980s, though in 1999–2000 a group of Ugandans who had escaped from the Lord's Resistance Army (LRA) in Sudan had pitched camp at Uhuru Park in Nairobi and were being screened by UNHCR. The 'Lakwena', Alice Auma – the Acholi prophetess who inspired the bloody Holy Spirit Mobile Forces rebellion against the Museveni government in 1987 – was still a recognised refugee at Dadaab camp in northeastern Kenya, where she lived in a special compound with other members, all male, of her faction (*see* Behrend 1999 for the Lakwena war). There was a group of Kenyans in Uganda in Nakivale settlement in Mbarara district, and others who had fled the clashes in the Rift Valley region during the contentious elections of 1992, and many of them were living among their hosts in Mbale district, unassisted by UNHCR. Uganda had also hosted Kenyans fleeing the British repression of the Mau Mau uprising.
5. The Akiwumi report on the ethnic violence in Kenya in the 1990s confirmed what most people suspected – that the violence was planned by various members of the ruling party.
6. These were usually called 'camps' in Kenya and 'settlements' in Uganda. Throughout this book the terms 'settlement' and 'camp' will be used interchangeably. UNHCR and the government in Uganda claimed that the settlement policy differed from encampment because refugees in settlements were given the opportunity to become 'self-sufficient'. In practice, as it will be

shown throughout this book, the difference between camps and settlements was notional.

7. UNHCR 1997 Statistical Overview *supra* note 2. Macchiavello (2001) estimates there are 14,000 refugees living in Kampala but, according to our observations, this may be an underestimate.
8. Asylum-seekers are those who have applied for asylum but have not yet been granted it; refugees, on the other hand, are already accorded status on the basis of an individualised status-determination procedure or on a *prima facie* basis.
9. These are normally referred to as 'self-settled' refugees, although this term is a misnomer. It would be impossible for anyone to 'settle' without the active assistance of local people, the authorities, or other refugees who had arrived previously, usually the most important source of assistance to new arrivals.
10. For example, International Aid Sweden estimated that 32,000 self-settled refugees lived along the Sudan/Uganda border in Moyo district in Uganda, but our interviews with members of the local administration, who collected taxes from them, indicated that the numbers in the district were closer to 70,000. In Kenya, there were unassisted Rwandan refugees living in Eldoret. It was also known that Somali and Oromo refugees settled among their kinfolk in Kenya.
11. Colonial appropriation of land was a cause of forced displacement in both countries, but the most violent dispossession took place in the Kenyan highlands. In Kenya, political repression of the movement for independence also took a more violent form than in Uganda: tens of thousands were displaced in the 1950s, and the internment camps built by the British during the Mau Mau rebellion were particularly brutal. In the 1940s Uganda was host to about 7,000 Polish refugees who were accommodated in camps in Masindi and Mukono districts. In addition, civilians from Axis countries who had been resident in the Middle East and Iran, were sent to Uganda and Kenya to be interned as enemy aliens for the duration of the Second World War. Nearly all of these Europeans left East Africa shortly after the end of the war (Lwanga-Luyiingo 1996). Kenya hosted Ethiopians fleeing the Italian aggression in 1935 and a small number of Europeans from the Second World War. During the war there were also camps in Kenya for prisoners of war, mainly Italians.
12. On Rwanda's history, *see* Prunier 1995, Newbury 1988, Lemarchand 1970, and Reyntjens 1994. For social aspects, *see* de Lame 1996 and Vidal 1991.
13. Kinyara was closed four years later because of 'high mortality' rates. Many of the Rwandans who lived at Kinyara had first been refugees in Zaire.
14. *See*, e.g., case nos. 064/DRC/U/98; 032/DRC/U/1999; 034/DRC/U/1999; 037/DRC/U/1999; 044/DRC/U/1999; and 054/DRC/U/1999. These and many other young human rights activists from the DRC were finally resettled from Uganda to the US.
15. For further detail, *see* Lemarchand 1973, 1995; Prunier 1995; Reyntjens 1995, 1999. A peace accord was agreed for Burundi in 2000 in Arusha; but the main armed Hutu rebel groups did not sign, and in 2002 violence against civilians continued unabated. Meanwhile, UNHCR had made plans for repatriation (UNHCR 2000a).
16. However, after Hargeisa was sacked by the Somali army in 1988, thousands of Somalis fled to Ethiopia and Djibouti. *See* Gersony 1989. It was a prelude to what was to come.
17. For a brief treatment of Somali history, *see* Prunier 1995. For more detailed studies, *see* Lewis 1988, 1993, 1994; Cassanelli 1982; Samatar 1991.

18. Four universities (the Centre for Refugee Studies at Moi University, Kenya, the Institute of Public Health at Makerere University, Uganda, the Institute of Tropical Medicine at the University of Antwerp, Belgium, and the University of Oxford's Refugee Studies Centre, then Programme, UK) participated in the research on health and welfare of refugees.
19. For example, one of our researchers was surprised to find that the main researcher working for one international human rights organisation wrote his country report largely from his hotel room in Kampala, relying on information from other field researchers, with no time personally to gather data from the field.
20. One enormous gap in anthropological literature is information on the role of the 'stranger' in societies which host refugees (Shack et al. 1979; Elmadmad 2002). For example, in Luo society in Kenya (and no doubt among the Luo who live across its borders), there are several 'categories' of the stranger, including one which is analogous to refugee status (Opondo 1994).
21. When the stakes are so high, as in refugee status determination or resettlement, it should be anticipated that some would succumb to the temptation of selling services.
22. Sadly, it is more likely to be perceived as a welfare institution, providing humanitarian assistance that is given as charity as part of a donor government's 'largesse' (Harrell-Bond 2002).
23. Another view from outside UNHCR is that 'active involvement in human rights promotion by operational humanitarian agencies might undermine their non-political and humanitarian mandate and compromise their relation with host and donor governments' (Bayefesky 2000: ix). For other views, see Reilly 2000; Petrask 2000; Towle 2000.
24. The RLP was a direct 'product' of the research, initially funded by the Amberstone Trust in 1999. Part of the Faculty of Law, Makerere University, which now offers a postgraduate diploma in refugee law and forced migration studies, the RLP provides legal aid, training for police, immigration officials, and NGO staff, and conducts research on which it bases its advocacy work. In Kenya, there had been attempts to form a refugee NGO in the early 1990s, and Guglielmo Verdirame 'kick-started' an initiative in 1997–98. RCK was founded in 2000.
25. See for example, Lomo's 'Notes on Meeting with Mr Hans Thoolen Representative, UNHCR, Kampala', 16 July 1998.
26. The peculiar nature of refugee camps also constitutes a legal conundrum for refugee advocates. International law cannot always be enforced domestically, and domestic legislation cannot be enforced vis-à-vis an intergovernmental organisation (IGO), which enjoys immunity. Refugees in camps are obviously entitled to respect for their basic rights, but the unavailability of a procedure for enforcing these rights in a court of law makes their actual enjoyment dependent on the 'good will' of the particular UNHCR official in charge of the camps.
27. From Kenya we have 187 individual case files; from Uganda, 232. These refugees were primarily from Burundi, Congo, Ethiopia, Eritrea, Kenya, Liberia, Rwanda, Somalia, Sudan, and Uganda, with very few from South Africa, Iraq, Senegal, and Mozambique. In this book they are cited by number, abbreviation of the country of origin, initial of the host country, and year in which the refugee was interviewed – e.g., case no. 42/Bur/K/1997. The files from Kenya are numbered by nationality with each group beginning with '1'. In Uganda, numbers were added at the end of the research and the entire group was numbered consecutively. Cases are preserved in hard copy and were scanned onto a disk. In

- addition to the numbered files, notes on many more interviews with refugees appear in Garry's, Harrell-Bond's, Lomo's, and Verdirame's field notes.
28. Field notes, Hannah Garry, 7 February 1998.
  29. Chapter 3 **Advocacy**.
  30. We developed a list of such resources, including Ugandan medical doctors who would offer refugees services *pro bono*.
  31. Moreover, the fact that the information which they were giving would be subjected to standards of 'credibility' as being applied by UNHCR, made it much easier to probe for further information so long as the relevance of the questions was explained.
  32. See Chapter 3 **Who is in Charge?**, on advice we received from a former protection officer who was helping refugees. He did not let UNHCR know he was involved in a case and did not use legal arguments. Rather than advise on a case on the basis of refugee law, we found ourselves having to scrutinise the erratic working of an office with its internal politics and penchant for punitive actions against outspoken refugees, some of whom were punished simply because they were aware of their rights (e.g. case no. 033/DRC/U/1999).
  33. For example, John Otim, a Ugandan refugee in Kenya, was employed to observe relationships between refugees and the 'gatekeepers' at the UNHCR/Jesuit Refugee Service (JRS) office in Wood Avenue, Nairobi (Otim 1998). The senior protection officer, Pia Prütz Phiri, encouraged this research and used the information he collected to introduce changes to the system.
  34. For example, after our first trip to Kakuma camp in March 1997, we sent copies of the 1951 Convention and the OAU Convention to a group of Sudanese refugees with whom we had had a focus group discussion. They had 'heard' about the Conventions, but had never seen them. UNHCR in Kakuma was loath to disseminate this type of information, and it had even forcibly relocated a refugee who had organised a series of lectures on human rights, accusing him of 'subversive activities'. See Chapter 4 *Collective punishment in Kakuma*.
  35. Members of the police force also attended a weekly seminar at Makerere University.
  36. See also case no. 216/RWA/1999. Very early on an immigration official alerted us to the case of the Iraqi family, case no. 231/IRAQ/U/1999, who, deported to Ugandan by Swedish authorities, had been recognised under UNHCR's mandate, but no further efforts to get him resettled had been made until we were introduced to the family.
  37. Seed money was obtained from the Amberstone Trust. In addition, all equipment purchased during Barbara Harrell-Bond's stay in Uganda, including a car, was donated to the RLP.
  38. Interview with Eric Morris by Anna Schmidt, Geneva, September 1997, UNHCR.
  39. For example, Mr Thoolen defended some of UNHCR's actions in Uganda, arguing that they were not 'direct violations of human rights' and needed to be distinguished from 'a job not properly done' (i.e. an omission to act).
  40. Field notes, Hannah Garry, 17 February 1998.
  41. Field notes, Hannah Garry, 17 February, 22–24 February 1998.
  42. See Chapter 4 **Non-discrimination** and Chapter 5 *The effect of forced evictions*.
  43. UNHCR and LWF justified the demotion as both 'good' and 'necessary' in order to eliminate what they saw to be corrupt usage of food rations by the refugees, who they claim were getting double or triple rations and storing or



reselling them in Ogujebe markets. It was also justified in order to comply with Uganda's settlement policy.

44. The situation changed to some extent in 1998 in Kenya when the new senior protection officer promoted some measures of integration by persuading the government to naturalise some of the pre-1991 refugees. UNHCR also agreed to the imposition of taxes on refugees, in exchange for business licences to refugee traders in camps. Nevertheless, there was no concerted effort by UNHCR to offer alternatives to the camps themselves.