

Rights in Exile

STUDIES IN FORCED MIGRATION

General Editors: Stephen Castles and Dawn Chatty

Volume 1

A Tamil Asylum Diaspora: Sri Lankan Migration, Settlement and Politics in Switzerland

Christopher McDowell

Volume 2

Understanding Impoverishment: The Consequences of Development-Induced Displacement

Edited by Christopher McDowell

Volume 3

Losing Place: Refugee Populations and Rural Transformations in East Africa

Johnathan B. Bascom

Volume 4

The End of the Refugee Cycle? Refugee Repatriation and Reconstruction

Edited by Richard Black and Khalid Koser

Volume 5

Engendering Forced Migration: Theory and Practice

Edited by Doreen Indra

Volume 6

Refugee Policy in Sudan, 1967–1984

Ahmed Karadawi

Volume 7

Psychosocial Wellness of Refugees: Issues in Qualitative and Quantitative Research

Edited by Frederick L. Ahearn, Jr.

Volume 8

Fear in Bongoland: Burundi Refugees in Urban Tanzania

Marc Sommers

Volume 9

Whatever Happened to Asylum in Britain? A Tale of Two Walls

Louise Pirouet

Volume 10

Conservation and Mobile Indigenous Peoples: Displacement, Forced Settlement and Sustainable Development

Edited by Dawn Chatty and Marcus Colchester

Volume 11

Tibetans in Nepal: The Dynamics of International Assistance among a Community in Exile

Anne Frechette

Volume 12

Crossing the Aegean: An Appraisal of the 1923 Compulsory Population Exchange between Greece and Turkey

Edited by Renée Hirschon

Volume 13

Refugees and the Transformation of Societies: Agency, Policies, Ethics and Politics

Edited by Philomena Essed, Georg Frerks and Joke Schrijvers

Volume 14

Children and Youth on the Front Line: Ethnography, Armed Conflict and Displacement

Edited by Jo Boyden and Joanna de Berry

Volume 15

Religion and Nation: Iranian Local and Transnational Networks in Britain

Kathryn Spellman

Volume 16

Children of Palestine: Experiencing Forced Migration in the Middle East

Edited by Dawn Chatty and Gillian Lewando Hundt

Volume 17

Rights in Exile: Janus-Faced Humanitarianism

Guglielmo Verdirame and Barbara Harrell-Bond

Rights in Exile

JANUS-FACED HUMANITARIANISM

Guglielmo Verdirame and Barbara Harrell-Bond

With Zachary Lomo and Hannah Garry
and a foreword by Justice Albie Sachs



Berghahn Books
New York • Oxford

First published in 2005 by
Berghahn Books
www.berghahnbooks.com

© 2005 Guglielmo Verdirame and Barbara Harrell-Bond

All rights reserved.

Except for the quotation of short passages
for the purposes of criticism and review, no part of this book
may be reproduced in any form or by any means, electronic or
mechanical, including photocopying, recording, or any information
storage and retrieval system now known or to be invented,
without written permission of the publisher.

Library of Congress Cataloging-in-Publication Data

A catalog record for this book is available
from the Library of Congress.

British Library Cataloguing-in-Publication Data

A catalogue record for this book is available
from the British Library.

Printed in the United States on acid-free paper.

ISBN 1-57181-526-0 hardback

Contents

Foreword by Justice Albie Sachs	ix
Preface	xii
Acknowledgements	xix
List of Abbreviations	xxv
Introduction	1
<i>The setting</i>	1
<i>Main movements of refugees into Kenya and Uganda</i>	2
<i>Aims and objectives of the research</i>	5
<i>Assumptions underlying the research</i>	7
<i>Research methods</i>	9
<i>Main findings</i>	15
<i>A research and advocacy agenda for the future</i>	21
1 Refugee Law and Policy in Kenya and Uganda	26
<i>Introduction</i>	26
<i>The Legal Framework in Kenya</i>	26
<i>The Legal Framework in Uganda</i>	28
<i>Refugee policy in Kenya</i>	31
<i>Refugee policy in Uganda</i>	36
<i>Refugee law-making in fits and starts</i>	45
<i>Conclusion</i>	49

2	Getting In	55
	<i>Introduction</i>	55
	<i>The influence of donor countries</i>	55
	<i>The OAU Convention and group recognition</i>	57
	<i>Admission: standards and procedures</i>	58
	<i>Legal hurdles to admission</i>	59
	<i>Ordeals of arrival</i>	63
	<i>New arrivals and local people</i>	70
	<i>Conclusion</i>	72
3	Status-Determination Procedures: ‘... and when you go to UNHCR, pray’	78
	<i>Introduction</i>	78
	<i>Procedural standards in status determination</i>	79
	<i>Who is in charge?</i>	80
	<i>The role of NGOs</i>	87
	<i>Confidentiality</i>	91
	<i>Interpreters</i>	92
	<i>Advocacy</i>	93
	<i>Standards of evidence</i>	94
	<i>Decisions</i>	96
	<i>Exclusion</i>	107
	<i>Cessation</i>	110
	<i>Conclusion</i>	113
4	Civil and Political Rights	120
	<i>Introduction</i>	120
	<i>Non-discrimination</i>	121
	<i>Right to Life</i>	130
	<i>Freedom from torture and from cruel, inhuman, or degrading treatment or punishment</i>	133
	<i>Freedom from slavery and forced labour</i>	151
	<i>Liberty and security of the person</i>	152
	<i>Freedom of movement</i>	179
	<i>Access to courts and right to fair trial</i>	182
	<i>Privacy and family life</i>	195

<i>Freedom of expression, thought, conscience and religion, and freedom of assembly and association</i>	198
<i>Conclusion</i>	201
5 Economic, Social, and Cultural Rights	214
<i>Introduction</i>	214
<i>Employment</i>	215
<i>An adequate standard of living</i>	225
<i>The highest attainable standard of physical and mental health</i>	241
<i>Education</i>	253
<i>Cultural rights</i>	260
<i>Conclusion</i>	263
6 Refugee Protection: What Is Going Wrong?	271
<i>Introduction</i>	271
<i>Host countries</i>	272
<i>Donor countries</i>	277
<i>Resettlement</i>	283
<i>UNHCR</i>	287
<i>NGOs</i>	312
<i>Conclusion</i>	324
Conclusions	332
Bibliography	340
Index	372

Foreword

Brace yourself. This is a painful book. Not only is the information in it extremely distressing; the main targets of its critique are 'the good guys'. The central argument is that the international and humanitarian organisations that are in charge of looking after refugees are responsible for extensive and avoidable violations of the rights of those dependent upon them. Considerable research was done on the life of refugees in Kenya and Uganda. The book details examples of failure to accord to such refugees respect for their human dignity. There is nothing to suggest that the treatment of refugees in these two countries was markedly inferior to the way refugees are treated elsewhere in Africa or other continents.

This is much more, however, than a denunciatory case study. It raises important questions of a general nature that go right to the heart of refugee law and practice. International organisations, NGOs, donors, and humanitarian agencies generally exercise great power over the lives of refugees. At the same time they are subjected to only minimal levels of accountability, either legal or political. In general terms, it is very rare for them to have to submit to the due process of law in national or international courts. They are seen as beneficent bodies acting to alleviate distress. While officials working on their behalf may be accountable internally to their management bodies, they are not legally or politically accountable to any external agencies. The refugees themselves, by the nature of their dislocation and lack of means, are rarely in a position to pursue legal actions against them. Not only would they have difficulty in establishing legal rights in an area where great discretion is allocated to those providing welfare; they would also be seen as biting the hand that feeds them.

Nor are these humanitarian bodies accountable to the electorate. The authors point out that in many respects they are immune to the scrutiny to which states and political parties may be subject. Political parties in office have to face criticism from political opponents, who will on occa-

sion mobilise public opinion and activate the media to highlight governmental failure with respect to refugees. Although humanitarian organisations frequently compete for funds and sometimes over ‘jurisdiction’, they do not mount public campaigns against each other. Thus, as far as public opinion is concerned, humanitarian organisations are seen as wholly good. They are certainly not regarded as being responsible for abusing the rights of refugees. Indeed, the concept of rights for refugees tends to be limited in the public mind to the right to receive asylum and sufficient food and shelter to keep them alive. Their rights as human beings to take decisions for themselves, to make something of their lives, and to enjoy the ordinary pleasures of contemporary life, are simply not part of the equation. Refugee law is glacially trapped in its 1950 format when its main focus was on enabling people to flee from persecution and then simply to survive. If refugee law is to be seen as growing organically in keeping with the evolution of human rights law generally, then it needs to be given a far more expansive character, one which takes account of all the dimensions of being a human person in the world today.

Crucial to the situation is the relative powerlessness of refugees. They have little opportunity to speak for themselves in their own many voices. There are few channels available to them to make proactive proposals relating to how they should be dealt with both as communities and as individuals. Individuals may have some rights to claim classification under pre-determined categories that are favourable to them. They have little opportunity, however, to help decide what those categories should be, or to appeal to impartial tribunals against decisions made concerning them, except in the limited case where the decision relates to expulsion.

Refugees are not only voteless and voiceless; they are frequently unpopular. Often more political advantage is gained from stereotyping and denouncing them than from respecting their dignity and finding humane solutions to their situations. The focus is on who should or should not be granted asylum. This creates a climate in which scant attention is paid to the conditions under which refugees live. The authors contend that placing refugees in camps with little hope of repatriation is the source of many of the problems. They argue instead for more attention to be given to integrating refugees into local communities. This would mean looking for the skills refugees have to offer or else promoting their acquisition of skills, rather than seeing them simply as passive recipients of international welfare.

The authors write trenchantly and directly, so that no one can miss the sharpness of their critiques as academics and the strength of their indignation as human beings. Indeed, they would contend that in the area of refugee studies, intellectual enquiry must be strongly infused with human compassion. Furthermore, the compassion must not stop simply at the level of seeking to alleviate suffering. It must go on to facilitate the

provision of opportunities to enable those fleeing persecution to achieve full human dignity in their new and alarming circumstances. Few could quarrel with these propositions.

Do I think the book is narrowly focused and too harsh on those that it criticises? I do. Do I think that this work pays insufficient attention to the dialectic of international responsibility for refugees? I do. The work of international organisations and humanitarian bodies has been extremely important in helping to give refugees recognised status, physical security, and at least minimal conditions of survival. Indeed, the sharp critiques made by the authors presuppose the existence of all the work, frequently arduous and thankless, done over the decades by these various institutions. Do I nevertheless think that the book must be read by anyone interested in the field of refugees and their lives? Yes I do. The very successes achieved by international humanitarian organisations in a quantitatively spectacular sense of saving people from persecution require more attention to be given to the qualitative questions of how the dignity of those affected can achieve full recognition. There is a need for devising new policies going beyond survival. There is a need for giving refugees a far more active role in deciding on their future. And there is a need for more rather than less investigative work like that done by the authors of this book. The challenges they make go well beyond polemic. They present sufficient documentary and empirically researched material to force any reader to sit up. Each one of us can make up his or her mind as to whether the characterisation of the activities of ‘the good guys’ is too sweeping and unduly wounding. Perhaps, not all of us would have told the story in the way that they have chosen. But this is their story, expressed in their way – openly, directly, and forcefully.

They stir the pot and the juices flow and penetrate. One hopes that those who feel that their work has been treated with unnecessary harshness will read and study this book with an appreciation of the importance of dialogue over the issues it raises. This book is a powerful voice in the debate. As I said at the beginning of this foreword, brace yourself, and read it.

Albie Sachs

Preface

Rights in Exile: Janus-Faced Humanitarianism is a sociolegal analysis of compliance with international human rights and refugee law in Kenya and Uganda. This book analyses the extent to which the rights of refugees were violated, as well as the ways in which such violations were perpetrated by a range of actors, chiefly governments and aid organisations. The findings of this book, while based on empirical research conducted in two countries, are pertinent to other host states, especially those in the 'developing world' where humanitarian organisations play the leading role in making and implementing refugee policy.¹

The research on which this book is based constitutes the *first* long-term empirical study of violations of the full spectrum of human rights within a country with respect to a particular social group. The use of empirical methods was, in a sense, a forced choice, since there was no other way of finding out *to what extent, how, and by whom* the human rights of refugees were violated in Kenya and Uganda. In countries in the 'developing world', the use of traditional methods of legal research, in particular the study of judicial practice, is often severely hampered by the lack or inadequacy of case reporting. Moreover, many disputes, including criminal cases, are settled out of the court system; as far as refugee cases are concerned, an even smaller proportion is adjudicated in court.

'Experience is the life of the law',² and when lawyers lose touch with reality and fail to take 'experience' into account, their ability to promote the use of the law as a tool for social change is compromised. Limited by a formalist approach to legal methods, legal scholars have failed to bring attention to the *real* situation of refugees in countries in the 'developing world'. In this area, a gap of 'experience' has developed between the social sciences, where some have studied what really happens, and legal scholarship, which remains for the most part oblivious to these realities. Over fifteen years ago, *Imposing Aid: Emergency Assistance to Refugees*

(Harrell-Bond 1986) exposed the violations of economic and social rights, and the lack of physical protection and of access to justice that were suffered by refugees.³ It showed how the methods of assistance imposed by humanitarian organisations were in themselves significant causes of many rights violations. *Imposing Aid* spawned a growth of academic critiques of humanitarianism by social scientists.⁴ The first serious attempt by lawyers to follow up this evidence was reported in *African Exodus* (1996) by the Lawyers Committee for Human Rights (LCHR). This was the result of short field studies conducted in Côte d'Ivoire, Kenya, Malawi, Mozambique, Senegal, Sudan, and Zimbabwe.

The lack of attention to the many ways in which refugees' rights are violated in host countries is astonishing, if one considers that the protection of the rights of all people has been on the United Nations (UN) agenda since the adoption of the Universal Declaration of Human Rights,⁵ and that refugees have formed an important part of the UN's relief work since the Second World War.⁶ However, refugees have traditionally been relegated to the category of 'humanitarian' problems, the human rights dimension of their plight being generally ignored. When their problems did attract attention, this was often because it was politically convenient. The differences in treatment accorded to Haitian and Cuban refugees in the US remains one of the most obvious examples of how the identity of the persecutor can colour the reception refugees receive in countries of asylum.

Since the early 1990s refugees have been clearly put on the map of the international human rights movement, as the main international human rights organisations have begun to devote greater attention to their treatment in host countries. Nevertheless, refugees are still too often sidelined in the work of local human rights organisations in countries in the 'developing world' – partly as a function of lack of resources, but partly also as a consequence of insular attitudes and of the still prevailing belief that refugees are an 'international' and 'humanitarian' question rather than one of the key items on any national human rights agenda.

Interestingly, refugee advocates invest less of their time than environmental or development advocates trying to change existing international law. In fact, the limited attention to the human rights dimension of the treatment of refugees in host countries cannot be said to reflect legal limitations. On the contrary, although some uncertainty may persist with regard to the scope and content of particular rights, there is overall little doubt that refugees *are* legally entitled to a standard of treatment in host countries that encompasses both fundamental human rights and refugee-specific rights. The former are enshrined in international human rights law; for the latter, the 1951 Convention Relating to the Status of Refugees, which predates most human rights treaties, remains the main instrument and contains a relatively detailed enumeration of rights. In some cases the Convention requires state parties to extend to refugees the same standard of treatment

as for nationals; in others⁷ it obliges states to accord refugees as favourable a treatment as possible, and not less favourable than that accorded to aliens generally in the same circumstances.⁸ In devising these two main yardsticks, those who drafted the Convention clearly sought to ensure that refugees would not end up as pariahs at the margins of host societies. On the contrary, they should be treated like nationals in many cases, or, at worst, like other aliens. If the Convention were correctly applied, the situations that can be found in so many countries today in which refugees are the ‘worst-treated’ aliens would never obtain. The 1951 Convention also obliges state parties to issue refugees with identity papers and with documentation required for international travel, the Convention Travel Document (CTD), a prerequisite for many people to the rebuilding of their social lives and re-establishing means of livelihood.⁹ It forbids discrimination on the grounds of race, religion, or country of origin,¹⁰ and, most importantly, it protects refugees from being returned to the place where their lives and freedoms would be at risk (principle of *non-refoulement*).¹¹

These provisions were set in place after the Second World War in response to the crisis of European refugees and continue to be regarded as the basis for the standards of treatment of refugees. As the sources of people fleeing wars and persecution shifted from Europe to countries in the ‘developing world’, the provisions of the 1951 Convention were extended globally through the 1967 Protocol, which also eliminated the temporal restrictions on eligibility for refugee status that had been limited to people fleeing events occurring before 1951. The mandate of the office of the United Nations High Commissioner for Refugees (UNHCR), set up as a temporary arm of the UN in 1950, was also expanded in 1967 to incorporate all persons seeking refuge across a border. In 1979, the General Assembly expanded UNHCR’s mandate to incorporate the 1969 Convention Governing the Specific Aspects of Refugee Problems in Africa of the Organisation of African Unity (OAU Convention) (Jackson 1999: 194), which broadened the refugee definition.¹²

Any book on human rights violations is inevitably an attack on those who commit these violations or who could have prevented them. As such, this book is open to the obvious criticism of being a tirade against states, UNHCR, and humanitarian organisations. This book is intended to be, *inter alia*, an exposé, and, like most exposés, it may jolt readers with startling facts. We wrote Chapters 4 and 5 on the violations of each right, letting, as far as possible, the facts speak for themselves. We have focused on violations of human rights rather than on the instances in which human rights might have been respected, not with the aim of casting a negative light on governments or on UNHCR, but because as a matter of fact *no refugee* enjoyed his or her rights when confined to a camp/settlement; this reality is well known but continues to be ignored by those who have an interest in using relief budgets for their institutional survival. On countless occasions, when we presented our preliminary findings or during the

research for this book, we were criticised for not ‘discussing the whole picture’ or for ‘failing to talk about all the good work’ of UNHCR, as if research on human rights should focus on people who are *not* arrested arbitrarily or on those whose freedom of speech is *not* interfered with. Governments, as well as any other organisation that exercises governmental functions (like UNHCR in refugee camps), ought to realise that the violation of the rights of *one* person already constitutes a breach of the law.

We have very little in common, politically or ideologically, with the views of those who criticise international organisations from a nationalist standpoint. We do not wish to see fewer or less influential international organisations. It is precisely because we believe that international organisations are important – and that, more specifically, refugees the world over *need* a system of international protection with a committed and accountable international organisation at its heart – that we want to draw attention to shortcomings in current practices and to what could appear as a tragic irony: those entrusted with the protection of refugees can, in some circumstances, become the enemies of refugee rights. We agree with Justice Albie Sachs’s final remark on the focus of the book. In fact, if we could start our research from scratch, we would probably try to identify another country which could, as far as possible, be an example of ‘good’ practice – to convey the positive message that both governments and international organisations can get it right on refugee assistance. Nevertheless, there was hardly anything exemplary about the situation we found in Kenya and Uganda at the time of the research. The competence and commitment of various individuals, including some working for the governments and for UNHCR, did not compensate for the consequences of ill-conceived policies and flawed *modus operandi*. However, it is encouraging that, judging by some of the first public statements of representatives of the Kenyan government voted into power in December 2002, Kenya might well be the country offering examples of good practice on refugee rights in the near future, provided that this political will is translated into policy.

Another limitation of the book, of which we are aware, is that we pay little or no attention to the events that prompted refugees to leave their countries of origin. Until their arrival in Kenya or Uganda, their main persecutors had *not* been the host governments, let alone UNHCR or NGOs: their persecutors had been the governments, warlords, and rebel movements in their countries of origin. Yet, we wanted to write about the treatment of refugees in their countries of asylum, and this justifies our focus. At the same time, however, a complete ethnography of suffering and injustice would have to include, and indeed give prominence to, the violations of human rights committed in the countries of origin.

The Introduction to this book offers some estimates of the number and nationalities of the refugees in Kenya and Uganda at the time of the research and a brief review of the history of these two countries as hosts.

It describes the origins of the book and gives an account of the methods that were applied to collect the data. It also reviews the assumptions underpinning the study and comments on the roles of the different actors that are responsible for upholding the rights of refugees. In the Introduction, we also present our main findings.

Chapter 1, discussing the legal and policy framework for responding to refugees in both countries, begins to challenge the predominant view that power is the exclusive domain of the state. This view overlooks the complex and stratified structure of the power that derives from the interplay of various actors in a globalised environment (international organisations, foreign and local NGOs, donors, and governments). In particular, in both Kenya and Uganda, responsibility for refugee matters has been transferred from the state to humanitarian organisations – UNHCR and NGOs – which together control access to international humanitarian aid. It is argued that this transfer of power has given host states in the ‘developing world’ a pretext for abdicating their legal obligations vis-à-vis refugees. On the other hand, the impact that this reconfiguration of power has on the observance of human rights standards by non-state actors has also been overlooked. Through a detailed analysis of the *modus operandi* of humanitarian organisations, beginning in this chapter and continuing throughout the book, it is shown that, while the weakening of states and the promotion of ‘powerful humanitarians’ to act in their place may at first glance be viewed as emancipatory, the consolidation of power in the hands of organisations that are, in practice, unaccountable for upholding human rights represents an often underestimated threat to individual liberties (Verdirame 2001b). Indeed, a disquieting finding of the research is that some of the most glaring abuses of the rights of refugees result from the policies, actions, and omissions of the humanitarian organisations dealing with refugees.

The problems of ‘getting in’ to countries of asylum, discussed in Chapter 2, are drawn from the experiences of refugees who have already entered Kenya or Uganda; the numbers who never get past this first hurdle are unknown, despite the provision in the OAU Convention that equates rejection at the frontier with *refoulement* (art. 2(3)). Chapter 3 analyses the process of refugee status determination, which was characterised in both Kenya and Uganda by the anomaly of the pervasive role of UNHCR, due in part to the incorrect assumption that these countries had neither the will nor the capacity to conduct status determination themselves. We argue that assuming an adjudicative role in asylum determination compromises the protection role that UNHCR was established to fulfil.

Chapters 4 and 5 detail the violations of the full range of human rights protected under international law,¹³ as well as the 1951 Convention and the OAU Convention. While emphasising the interdependence of all of these rights, these chapters go through the catalogue of civil, political,

economic, cultural and social rights and identify the dynamics of the violations, elucidating the role of the different actors (host governments, UNHCR, NGOs, and refugees). We have chosen to follow the categorisation of rights to be found in human rights treaties rather than in the 1951 Convention because the human rights one is more comprehensive. Interestingly, the 1951 Convention has more to say on socio-economic rights than on civil and political rights. Moreover, in some cases the refugee standard has been superseded by a more generous human rights one. As far as primary education is concerned, the International Covenant on Economic, Social and Cultural Rights (ICESCR) provides that it shall be 'compulsory and available free to all' (art. 13(2)(a)), whereas the 1951 Convention simply stipulates that refugees are to receive the same treatment accorded to nationals (art. 22(1)). In some cases, we have subsumed refugee-specific standards under human rights. For example, state parties to the 1951 Convention 'shall not impose penalties' on refugees who 'enter or are present in their territory without authorisation' if they were 'coming directly from a territory where their life or freedom was threatened' (art. 31). We have dealt with the cases of refugees penalised in breach of this provision under liberty and security of the person, as it is a deprivation of liberty that, under international law, should not be imposed.

In Chapter 6, we attempt to answer the question 'What is going wrong with refugee protection?' A synergy of dysfunctions among the various actors dealing with refugees is identified and it is shown how this has led, among other things, to the entrenchment of segregation and encampment of refugees in countries in the 'developing world', leaving them with neither a voice nor an effective advocate. In addition, and more importantly, having arrogated powers from states, international actors constitute an exogenous apparatus that has acquired effective control over refugee policy and is not subject to the checks and balances that ordinarily constrain state bureaucracies, at least in liberal democracies.

There is a great disparity between the 'face' of humanitarian aid as it is viewed by its donors and the 'face' of that same aid as seen by its beneficiaries. Humanitarian organisations declare their commitment to respect human rights and humanitarian values, but, in practice, their 'beneficiaries' experience unfettered and unaccountable power. Given the immunity of international organisations from the jurisdiction of national courts, their actions cannot even form the object of independent and impartial adjudication. Furthermore, these international actors are shielded from local political control because of the absence of a constituency, either of nationals or refugees, with sufficient power to hold them to account. In camps, human rights violations can thus be perpetrated with impunity. The debate on solutions to the refugee 'problem' has to start from the premise that warehousing refugees in camps and respecting their human rights cannot be rec-

onciled. The availability of resettlement to only very few and the unpredictability of repatriation make refugee integration the best solution for assistance programmes to promote.

Notes

1. See, e.g., these reports which identified similar problems to those analysed by us: Iranian Refugee Alliance, Inc. 1995; Sperl 2001; UNHCR 2000e; Obi and Crisp 2000; Kuhlman 2001.
2. This motto of legal pragmatism is attributed to Oliver Wendell Holmes.
3. The book is out of print, but is available at <http://www.sussex.ac.uk/Units/CDE> and <http://www.forcedmigration.org>.
4. See, e.g., Keen 1992, 1994 and de Waal 1997. The *Journal of Refugee Studies*, launched in 1988, has been the major outlet for such empirical work.
5. 'You talk of refugees as though human rights did not exist which are broader and more important. Once an individual, a *human being*, becomes a refugee, it is as though he has become a member of another race, some other sub-human group' (Rizvi 1984).
6. They had also been prominent in the work of its predecessor, the League of Nations (see Skran 1998).
7. E.g. art. 4, religion; art. 14, artistic rights and industrial property; art. 15, right of association; art. 16, access to courts; art. 17, wage-earning employment; art. 20, rationing; art. 22(1), elementary education; art. 23, public relief; art. 24, labour legislation and social security (with certain limitations); and art. 29, fiscal charges.
8. E.g. art. 13, right to movable and immovable property; art. 18, right to self-employment; art. 19, liberal professions; art. 21, housing; art. 22(2), post-elementary education; and art. 26, freedom of movement.
9. Arts. 27–28.
10. Art. 3.
11. Art. 33.
12. The 1951 Convention defines a refugee as a person who 'owing to a 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 as a result of such events, is unable or, owing to such fear, is unwilling to return to it' (art. 1). The OAU Convention adds that 'the term "refugee" shall also apply to every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality' (art. 1(2)).
13. These include (but are not limited to) the rights protected under: the International Covenant on Civil and Political Rights (ICCPR); the International Covenant on Economic, Social and Cultural Rights (ICESCR); the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW); the Convention on the Rights of the Child (CRC); the African Charter on Human and Peoples' Rights.

Acknowledgements

The research for *Rights in Exile: Janus-Faced Humanitarianism* was part of a collaborative and multi-disciplinary investigation into the health and welfare of refugees living in the camps and settlements of Kenya and Uganda, or outside them living among the host population. This project, entitled *Health and Welfare of Refugees* and funded by the European Union (EU),¹ was initiated by Dr Wim Van Damme, the Institute of Tropical Medicine, University of Antwerp, Belgium, and included teams of researchers from the Institute of Public Health, Makerere University, Uganda, the Centre for Refugee Studies, Moi University, Kenya, and the Refugee Studies Centre, University of Oxford, UK. Within this 'umbrella' project, field studies on refugee rights were initiated with funding from the EU, the Ford Foundation, the Norwegian Ministry of Foreign Affairs, the Nuffield Foundation, and the Rotary Foundation. The research was 'action-oriented', involving a number of projects designed to alter the status quo. Funding for two of these – the Workshop on Legal Aid held at the Fédération Internationale des Droits de l'Homme (FIDH) and courses on refugee law at the Faculty of Law at Makerere University in Kampala in which police participated – came from the EU.² A seminar on refugee law for judges and magistrates was funded by the Nuffield Foundation through the Faculty of Law, University of Warwick.

Startup funding for the legal aid programme for refugees in Uganda that ensued from the research, the Refugee Law Project (RLP) at Makerere University, was provided by the Amberstone Trust, later supported by the UK Department for International Development (DFID) and the Ford Foundation, Nairobi. The Friedrich Ebert Stiftung furnished the seminar room at the Makerere Institute of Social Research (MISR), providing accommodation for seminars and other regular meetings on refugee issues. A generous personal grant to Barbara Harrell-Bond from the Ford

Foundation, New York, allowed for shortfalls and for the implementation of many other projects as part of the research.

We also thank the United Nations Development Fund for Women (UNIFEM), the Lutheran World Federation (LWF), DanChurchAid, the Danish International Development Agency (DANIDA), Human Rights Watch (HRW), the Lawyers Committee for Human Rights (LCHR), and Article 19 for hiring us to undertake consultancy work that enabled us to collect other data from Kenya, Uganda, and Tanzania.

The research in Uganda had an institutional base, MISR, where Barbara Harrell-Bond was appointed visiting professor. She was involved in teaching at the Faculty of Law and in the supervision of theses. We thank all of the staff at Makerere University for their hospitality but we must especially single out Professor P.J.M. Ssebuwufu, vice-chancellor, and Professor J. Epelu-Opio, deputy vice-chancellor. At MISR special thanks are due to Professor John Munene and Dr Nakanyike Musisi, respectively acting director and director of MISR, for the use of facilities that went far beyond the flat, which became a residence and an office. Dr Nakanyike Musisi was also noticeable for the zeal with which she promoted social activities that included refugees. We want to acknowledge the assistance of Patrick Mulindwa, MISR, Dr Joseph Oloka-Onyango, dean of the Faculty of Law 1999–2002, Mr Sam Tindifa, at the time acting director and currently director, Human Rights and Peace Centre (HURIPEC), and Dr Sylvia Tamale. Special thanks go to Avitus K.M. Tibarimbasa, secretary to Council, Makerere University, who announced the decision of the 79th University Council meeting (August 1998) that henceforth refugee students would pay the same fees as Ugandan students.

Zachary Lomo and Hannah Garry were the main researchers in Uganda. Their study and work obligations did not allow them to participate in the writing of the book. However, their contribution deserves more than an ordinary acknowledgement. Both have had an opportunity to read and comment on various versions of the manuscript, and share our interpretation and analysis of the data.

In addition to the authors of this book, a number of other people in Kenya and Uganda contributed to the research: Makerere students conducting masters degree research, supervised by Barbara Harrell-Bond; individuals employed as research assistants; individuals serving as self-funded volunteer interns from many different universities who conducted in-depth research on specific issues; and various people attached to MISR as visiting fellows or students, conducting doctoral or other research for their home universities. Thanks go to Tania Kaiser, Professor Adelaida Reyes, Mauro De Lorenzo, Trine Lester, Deborah Mulumba, Neil J. Resnick, Anna Schmidt, Kate Reuer, Lucy Weir, Ellen Lammers, Cindy Horst, Mary Byrne, Alicia Samike, Magellan Kazibwe, Jessica Munson, Jude Murrison, Charles Njuguna, Justine Mwiinga, Clifton Taylor,

Sungwon Jin, Michela Machiavello, Ann Mwiriza, Christine Birabwa, Dr Gregory Elder, Ekuru Aukot, Doreen Lwanga, Ronald Kalyango, Dr Jill Craig, Dr Unni Karunakara, Patricia Kununka, Hassan Shiekh, Ibrahim Farah, Marirosi Marcellin, Julius Kayiira Lutaakome, Thomas Hertz, Elly Asiku, Paul Kapia, Thierry-Noel Mageni, Nicolas Nibikora, Willie Gisita, Cyrin Rantango, Gervais Abayeho, John Otim, Augustine Nsanze, Marie Nahimana, and Efraim Ahmed Said (who, a child herself, collected many children's testimonies). Much of their work is cited in the references. Special thanks go to Elias Lubega for managing the logistics of the research in Uganda, and to Lisa Finch and Pamela Reynell for agreeing to become the first directors of the RLP, a direct outgrowth of the research. In Cairo, where the book was written, Gina Bekker, Michael Chu, Mark Pallis, and Ahmed Siabdallah helped to organise data. Mark Pallis also helped at various stages with editing and commenting on drafts.

Other research and training activities were spawned by the EU umbrella project and it is appropriate that we acknowledge the institutions that funded them. Deborah Mulumba, funded by the Ford Foundation, Nairobi, carried out a study entitled *Towards the Integration of Health Services in Refugee Affected Areas in Uganda*. Dr Jill Craig, employed as a research assistant, began developing a project on the integration of refugee education; on her departure this was taken over by Dr Silus Oluka, Faculty of Education, Makerere University, who conducted research in Moyo and Adjumani districts. This research was funded by the International Development Research Centre (IDRC), Canada. Professor Adelaida Reyes, an ethnomusicologist whose research had until then focused on Vietnamese refugees, spent three months in Uganda and taught at the Department of Music, Dance and Drama. In 1999, a link between Makerere University and the Health and Forced Migration degree programme, Columbia School of Public Health (CSPH), Columbia University, New York, was established to provide an annual two-week course for agencies working with refugees in the health sector.³ Funding was also obtained from IDRC to support a workshop in 1999 at Makerere University for 'stakeholders' (government officials, representatives of NGOs, and UNHCR) to identify the major policy issues requiring research. Funding from the Mellon Foundation made it possible for the hardware to be purchased to establish a computerised catalogue of library materials on human rights and forced migration at Main Library, Makerere University.⁴ In 1998, funding was obtained through the Ford Foundation, the LWF, and personal sources, to allow the participation of members of the research team in the conference of the International Association for the Study of Forced Migration (IASFM) in East Jerusalem. Papers were presented by: Douglas Asiimwe, Aukot Ekuru, Gilbert Lukhoba, Deborah Mulumba, Tania Kaiser, Zachary Lomo, Kate Reur, Kenneth Porter, Anna Schmidt, Guglielmo Verdirame, and Michael

Wafula. The last session was chaired by Sam Tindifa, acting director, HURIPEC.⁵

We thank the Office of the President in Kenya and the Uganda National Council for Science and Technology for granting permission for the research. We also need to thank various government officials in both countries. In Uganda they include: John Cossy Odomel, inspector general of the police; Mr Dan Mudumba, director of training, Uganda Police Force; the Hon. Justice J.W.N. Tsekooko, justice of the supreme court and chairman of the judicial training committee; Mr Jerome Byesigwa, commissioner of prisons; Yorokamu Bamwine, acting chief registrar; the Hon. Dr Ruhakana Rugunda, minister for the presidency, Office of the President; Major Tom Butime MP and minister for disaster preparedness and refugees; Carlos Twesigomwe, deputy director for refugees (for facilitating the research in the settlements in Uganda); Douglas Asiimwe, the protection officer in the Directorate of Refugees (DoR); the late John Opio and Michael Wafula,⁶ desk officers, Adjumani and Arua. In Kenya, we express our very deep appreciation to Nimrod Waweru, Arthur Andambi, Dr Kip Cheluget, Professor John Okumu, Dr Monica Kathina, Enoch Opondo, Joseph Gitari, Abi Gitari, Eugene Birrer, Sister Louise Radmeier, the Jesuit Refugee Service (JRS) staff in Kakuma in 1997, the late Chris Mulei, Ahmednassir Abdulhai, Binaifer Nowrojee, Dr Philista Onyango, Lucy Hannan, Goretty Omala, Praxidice Wekesa, Mary Ann Fitzgerald, Njoki Ndung'u, Karimi Kinuthi, Father Schönecke, Bethuel Kiplagat, Jean Damascène Karara, Eroni Nakagwa, and the Sudan Women's Association in Nairobi (SWAN).

Many UNHCR staff in both Kenya and Uganda facilitated the research and we especially thank Abel Mbilinyi, Yvette Stevens, Pia Prütz Phiri, Dr Wandhe, Dr Michael Deppner, and Hans Thoolen. Many others inside UNHCR who have preferred anonymity and have not been mentioned in this book were also extremely helpful in providing documents and other information critical to our analyses. We also thank Martin Zak, head of delegation, International Federation of Red Cross and Red Crescent Societies (IFRC), the staff members of the Uganda Red Cross Society (URCS), and International Aid Sweden, an agency that worked with self-settled refugees and nationals in Moyo district. We also thank Nancy Baron of the Trans-cultural Psycho-Social Organisation (TPO) for her insightful observations at various times.

Numbers of others have helped. We thank all our colleagues at the Refugee Studies Centre, University of Oxford, but especially Belinda Allan, Sean Loughna, and Monika Porada. Professor Guy Goodwin-Gill, now at All Souls, University of Oxford, helped us devise the questionnaire for the police survey in Uganda. Colleagues who read parts or the whole of the manuscript included Michael Alexander, Rodger Haines, Mike Kagan, Dr Ken Porter, and Justice Albie Sachs. Marguerite Garling

deserves special mention not only for the pivotal role she played in providing the funding for the Kenya research, but also for her comments on drafts of parts of this book and for sharing with us her insight into the situation of refugees in Kenya when we first arrived there. Sally Carpenter has carefully read and edited the first complete draft of the book, and has given us useful comments. Marion Berghahn welcomed our book proposal with enthusiasm and, together with the editors of the series, Dr Stephen Castles and Dr Dawn Chatty, took our continuous delays with considerate patience.

We want to single out Mauro De Lorenzo for special thanks. He spent a year with the research project in Uganda and quickly became a key member of the research team, conducting interviews with refugees, particularly those who spoke French, and writing a report on the situation of refugees living in Kampala. Later, we gained useful insight from discussing the concept and organisation of the book with him. In 2001–02, he gathered and wrote up some of the materials that appear in the Introduction, and was always forthcoming with details on the sociopolitical context and historical background. Last but not least, without his scanning of all the individual case files and his patient assistance with computer problems, we would have found ourselves stuck on numerous occasions.

Since the completion of the research, we have moved to different research institutions. Barbara Harrell-Bond has advised on the establishment of the Forced Migration and Refugee Studies Programme at the American University of Cairo. Cairo has been our main meeting point and workplace for writing the book. We have relied on the support of many colleagues and friends. Setting up the legal aid project in Cairo might have taken some time away from the writing, but it also acted as a constant reminder of the fundamental reasons for which we had undertaken to write this book. Guglielmo Verdirame spent three years at the London School of Economics where he wrote a doctoral thesis on UN Accountability for Human Rights Violations, which consisted of a detailed international law analysis of some of the issues raised in this book; the supervisor was Professor Christine Chinkin, whose insight and guidance were invaluable. He is also grateful to the Warden and Fellows of Merton College, Oxford, for electing him to a three-year fellowship, and to other colleagues, students, and members of staff at Merton who have helped create a most conducive and stimulating environment in which to work.

On a personal level, our families and partners supported us throughout and, on occasions too numerous to recall, they satisfied impossible demands for last-minute help on practical matters.

So many people have helped us, and we apologise if we have inadvertently omitted any of their names. The customary caveat is necessary: we alone are responsible for the contents of this book.

Notes

1. (IC18-CT96-0113 (DG 12 MUYS)).
2. (IC18-CT96-0113 (DG 12 MUYS)).
3. This course was co-sponsored by: the Institute of Public Health (IPH); the Human Rights and Peace Centre (HURIPEC), Makerere University; and African Medical Research Foundation (AMREF), an NGO, registered in Uganda, with headquarters in Nairobi. It continued under this management for three years and in 2002 it was provided independently of Columbia, the original aim.
4. At the time, Mellon also funded computers for the Legal Aid Project (LAP) and the Federación Internacional de Abogadas (FIDA), for their legal aid work with refugees.
5. Their papers may be found on <http://www.gcmhp.net>
6. He was also chairman of the committee drafting the refugee law and later wrote a thesis on the self-sufficiency project as conceived by UNHCR.

List of Abbreviations

AAH	Aktion Afrika Hilfe (a non-profit charitable organisation registered in 1996 in Munich, Germany. It took over the portfolio of 'Action "Africa in Need"', formed in 1990)
ACC/SCN	UN Administrative Committee on Co-ordination, Sub-Committee on Nutrition
ACF	Action contre la Faim (Action against Hunger)
ACORD	Agency for Cooperation and Research Development
ACTV	African Centre for Treatment and Rehabilitation of Torture Victims
ADF	Allied Democratic Forces (a Ugandan rebel group)
ADFER	Groupe d'Action pour la Défense des Droits de la Femme et de l'Enfant
AEF	African Education Fund (Japan)
AHA	African Humanitarian Action (an Ethiopian-based NGO that had Mrs Ogata's personal support. Employed all African staff)
AICF	Action Internationale contre la Faim
AMREF	African Medical Research Foundation (Kenya)
ANPPCAN	African Network for the Prevention and Protection against Child Abuse and Neglect
AREP	African Refugee Education Programme
AVSI	Associazione Volontari per il Servizio Internazionale (Italy)
BO	branch office (UNHCR)
CAO	chief administrative officer
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CC	camp commandant
CDW	community development worker

CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CHAD	Conflict and Humanitarian Affairs Department (part of DFID)
CIDA	Canadian International Development Agency
COREDA	Congolese Refugees Development Organisation (Uganda)
CRC	Convention on the Rights of the Child
CSM	community self-management
CTD	Convention Travel Document
DAFI	Deutsch-Afrikanische Frauen Initiative
DANIDA	Danish International Development Agency
DED	Deutscher Entwicklungsdienst (German Development Service)
DENIVA	Development Network of Indigenous Voluntary Associations
DFID	Department for International Development (UK)
DMO	district medical officer (Uganda)
DoR	Directorate of Refugees (Uganda)
DRC	Democratic Republic of Congo
ECOWAS	Economic Community of West African States
ECRE	European Council on Refugees and Exiles
EPRDF	Ethiopian People's Revolutionary Democratic Front
EPSR	Education Programme for Sudanese Refugees
ESO	External Security Organisation (Uganda)
EU	European Union
EXCOM	Executive Committee (of UNHCR)
FHRI	Foundation for Human Rights Initiative (Uganda)
FIDA	Federación Internacional de Abogadas (International Federation of Women Lawyers)
FIDH	Fédération Internationale des Droits de l'Homme
FONCABA	Fondation Catholique des bourses d'études pour Africains
FRC	Finnish Refugee Council
FT	<i>Financial Times</i>
GA	General Assembly
GLOBE	Global Learning Observation to Benefit the Environment
GoK	Government of Kenya
GoU	Government of Uganda
HAR	Hope after Rape
HPCT	Hugh Pilkington Charitable Trust
HRC	Human Rights Committee
HRW	Human Rights Watch
HURIPEC	Human Rights and Peace Centre (Makerere University, Uganda)
IARA	Islamic African Relief Agency

IASFM	International Association for the Study of Forced Migration
IC	individual case
ICARA II	Second International Conference on Assistance to Refugees in Africa
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICG	International Crisis Group
ICJ	International Commission of Jurists
ICRC	International Committee of the Red Cross
ICTR	International Criminal Tribunal for Rwanda
ICVA	International Council of Voluntary Associations
IFRC	International Federation of Red Cross and Red Crescent Societies
IGO	inter-governmental organisation
ILC	International Law Commission
IMF	International Monetary Fund
INTRAC	International NGO Training and Research Centre
IOM	International Organisation for Migration
IRB	Immigration and Refugee Board of Canada
IRC	International Rescue Committee (US)
IRIN	Integrated Regional Information Network (UN)
ISO	Internal Security Organisation (Uganda)
JPO	junior protection officer (UNHCR)
JRS	Jesuit Refugee Service
JVA	Joint Voluntary Agency (US resettlement agency)
Kcal	kilocalories
KHRC	Kenyan Human Rights Commission
KSh	Kenya shillings
LAP	legal aid project (Uganda)
LC	Local Council (Uganda)
LCC	Local Council Courts (Uganda)
LCHR	Lawyers Committee for Human Rights
LRA	Lord's Resistance Army (Uganda)
LWF	Lutheran World Federation
MISR	Makerere Institute of Social Research (Uganda)
MoLG	Ministry of Local Government (Uganda)
MoU	memorandum of understanding
MRG	Minority Rights Group
MSF	Médecins sans Frontières
NCKK	National Council of Churches of Kenya
NEC	National Eligibility Committee (Kenya)
NEP	North-Eastern Province

NGO	non-governmental organisation
NRA	National Resistance Army
NRM	National Resistance Movement
NRS	National Refugee Secretariat (Kenya)
OAU	Organisation of African Unity
OC	officer-in-charge
OCHA	Office for the Coordination of Humanitarian Affairs (UN)
ODA	Overseas Development Administration (UK)
ODI	Overseas Development Institute (UK)
OLS	Operation Lifeline Sudan (UN)
OPM	Office of the Prime Minister (Uganda)
PARinAC	Partners in Action (UNHCR)
PDA	Public Defenders Association (Uganda)
PTSS	post-traumatic stress syndrome
QIP	quick impact project
RAA	refugee affected area
RCD	Rassemblement Congolais pour la Démocratie
RCK	Refugee Consortium of Kenya
RDC	resident district commissioner (Uganda)
RDR	Rally for the Return of Refugees and Democracy
REC	Refugee Eligibility Committee (Uganda)
RLP	Refugee Law Project
RPA	Rwandan Patriotic Army
RPF	Rwandan Patriotic Front
RRAP	Refugee Rights Advocacy Programme
RWC	Refugee Welfare Committee
SCF	Save the Children Fund
SHRA	Sudan Human Rights Association
SIDA	Swedish International Development Agency
SitRep	situation report
SPLA/M	Sudan People's Liberation Army/Movement
SSLS	South Sudan Law Society
SSRA	South Sudan Relief Agency
SWAN	Sudan Women's Association in Nairobi
TBA	traditional birth attendant
TPO	Transcultural Psycho-Social Organisation (Uganda)
UAM	unaccompanied minor
UDHR	Universal Declaration of Human Rights
UHRC	Uganda Human Rights Commission
UK	United Kingdom
UN	United Nations
UNAMIR	United Nations Assistance Mission in Rwanda
UNDP	United Nations Development Programme
UNFPA	UN Fund for Population

UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
UNIFEM	United Nations Development Fund for Women
UNRF II	Uganda National Rescue Front – Two
UNRWA	United Nations Relief and Works Agency
UPDF	Uganda People's Defence Forces
UPE	Universal Primary Education (Uganda)
URCS	Uganda Red Cross Society
USCR	United States Committee for Refugees
USh	Uganda shillings
WFP	World Food Programme
WHO	World Health Organisation
WNBF	West Nile Bank Front
WVV	Women Victims of Violence

Introduction

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.¹ According to these estimates, which referred almost exclusively to encamped refugees, about 90 percent of the refugee population came from Somalia and Sudan;² there were smaller numbers of refugees from the Democratic Republic of Congo (DRC) (14,400), Ethiopia (8,500), Rwanda (17,900), and Burundi (100).³ In addition, Uganda and Kenya each gave refuge to a small number of the other's citizens,⁴ 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.⁵ 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),⁶ with the exception of an official 'urban' refugee programme for approximately 530 refugees in Kampala, Uganda.⁷ 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.⁸ 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).⁹ There was great uncertainty about their overall numbers.¹⁰

Main movements of refugees into Kenya and Uganda

In both Kenya and Uganda, forced migration predates independence.¹¹ 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.¹² 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 1965.¹³ 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).¹⁴ 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.¹⁵ 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'.¹⁶ 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,¹⁷ 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 1996–99.¹⁸ 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.¹⁹ 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.²⁰

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.²¹ 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?²² 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).²³

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.²⁴

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.²⁵

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.²⁶ 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.²⁷ 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: