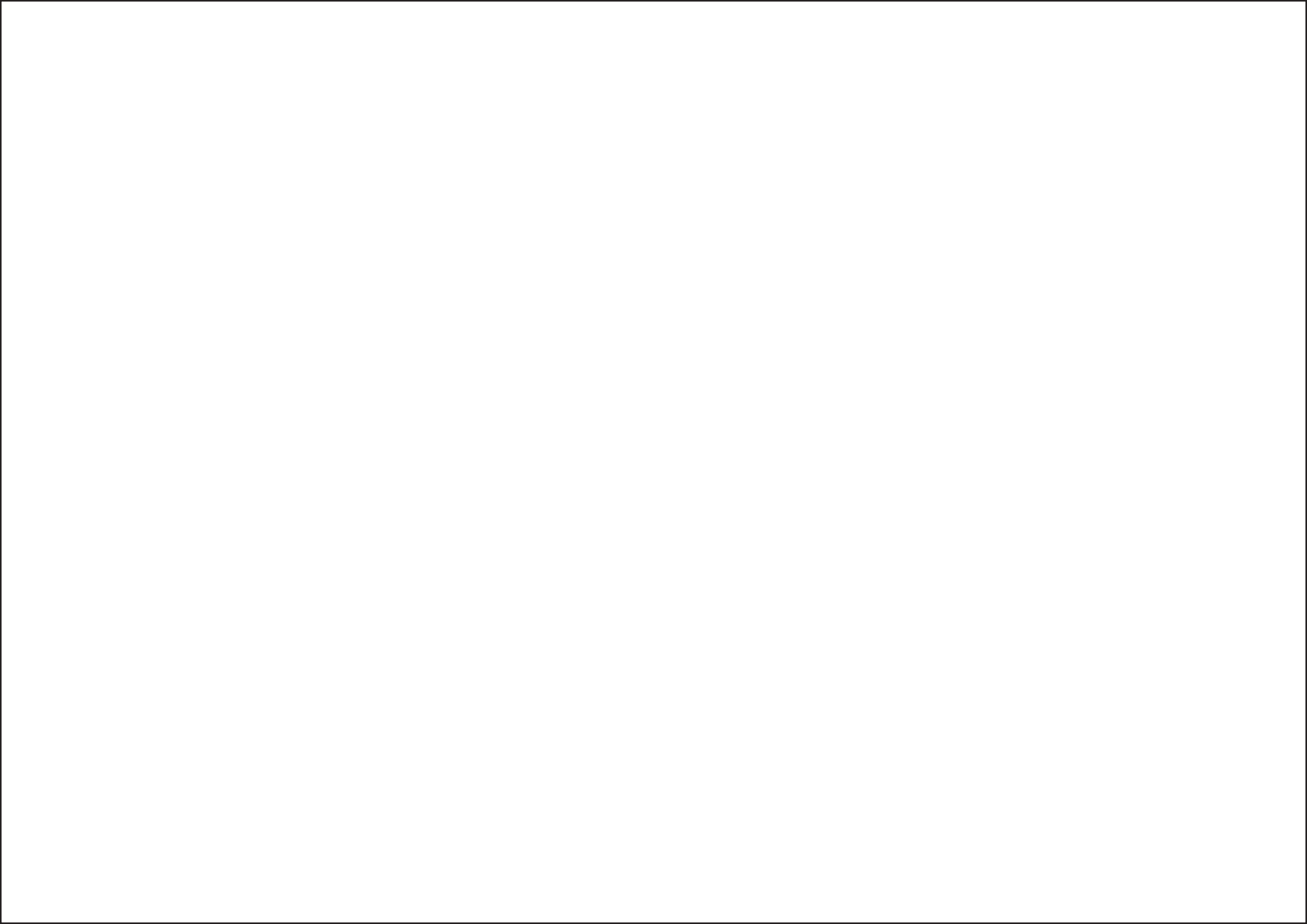




Understanding Refugee Rights and Protection

USER GUIDE

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Conceptualising Forced Migration

What is forced migration?

The International Association for the Study of Forced Migration uses the definition as ‘a general term that refers to the movements of refugees and internally displaced people (those displaced by conflicts) as well as people displaced by natural or environmental disasters, chemical or nuclear disasters, famine, or development projects.’

Categories of Forced Migrants

An asylum seeker is a migrant who leaves their country of origin and formally applies for asylum in another country but whose applications have not yet been concluded. An applicant remains an asylum seeker for as long as their application is pending. Whilst all refugees were initially asylum seekers, not all asylum seekers become refugees.

A refugee is 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 unable to or, owing to such fear, is unwilling to avail himself of the protection of that country» (The 1951 Convention relating to the Status of Refugees).

In 1992 the UN defined Internally Displaced Persons (IDPs) as ‘persons who have been forced to flee their homes suddenly or unexpectedly in large numbers, as a result of armed conflict, internal strife, systematic violations of human rights or natural or man-made disasters, and who are within the territory of their own country.’

Stateless Persons have been defined by UNHCR as follows: The international legal definition of a stateless person is “a person who is not considered as a national by any State under the operation of its law”. In simple terms, this means that a stateless person does not have a nationality of any country. Some people are born stateless, but others become stateless.» (<http://www.unhcr.org/stateless-people.html>)

A deportee is a person who has been or expects to be sent back from a third country to their country of origin against their will. Frequently this occurs when the person has been unable to legalise their stay in that third country, whether through visa procedures, residence permits, refugee status, etc.

Economic Migrants are people who move to another country to work or seek better life. Often, economic migrants leave a country voluntarily and therefore select as and when to return to their countries of origin from which they continue to receive protection of their home government.

Key Legal & Policy Frameworks Governing Forced Migration

International:

1. 1948 UDHR
2. 1951 Convention of Refugees
3. 1967 Optional Protocol to the Convention
4. Guiding Principles on Internal Displacement 2004
5. The Urban Refugee Policy, 2009

Regional:

6. 1969 OAU Convention
7. Cartagena Declaration on Refugees, colloquium on the international protection of refugees in Central America, Mexico and Panama, 1984

National/ domestic:

8. The Constitution of Uganda, 1995
9. The Refugees Act, 2006
10. The Refugee Regulations, 2010
11. Uganda National IDP Policy 2004



Protection of Refugees and Asylum Seekers in Uganda

A) Policy Frameworks

The Urban Refugee Policy, 2009

The Comprehensive Refugee Response Framework (CRRF)

Self-Reliance Strategy

Development Assistance to Refugee Hosting Areas

Settlement Transformative Agenda

The Refugee and Host Community Empowerment (ReHoPE) strategy

The Koboko Action Plan

B) Institutional Stakeholders:

UNHCR

Office of the Prime Minister (OPM)

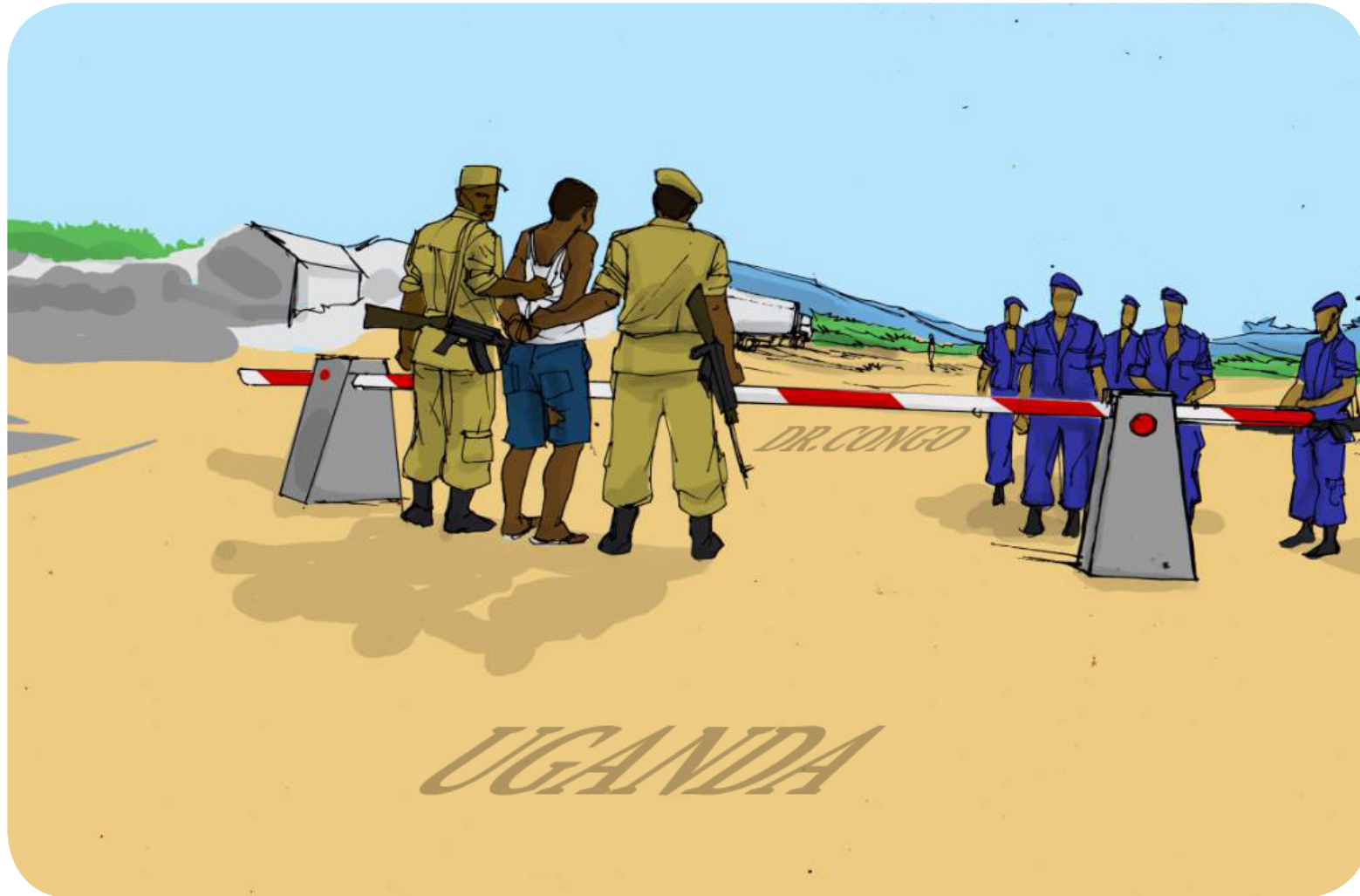
Uganda Police Force (UPF)

Immigration

KEY MESSAGES

- Everyone has a right to seek and enjoy asylum from persecution in other countries (Principle enshrined in the Universal Declaration of Human Rights)
- People seek asylum when staying in their country of origin is no longer an option
- The state has the primary obligation to protect forced migrants
- A person granted asylum or refugee status should not be forced to return to their country of origin if their life would be at risk there (Principle of *non refoulement*) Non refoulement is a principle of international Customary law
- Protecting refugees is the core mandate of UNHCR
- Protection and management of refugees and asylum seekers in Uganda is by Office of the Prime Minister
- Uganda has had *progressive* refugee policies since independence

- Extradition should be in line with The Extradition Act
- In principle, there are 3 durable solutions (Voluntary Repatriation, Local Integration and Resettlement)
- After 20 years in Uganda, a refugee can apply for citizenship /local integration
- Voluntary repatriation can be applied for when it is safe to return
- Only about 1 percent of refugees get resettled to a third country



Refugee Status Determination Process

Settlement Refugees:

- Arrival in the host country
- Taken to a Collection point
- Transferred to a Reception centre
- Interview with OPM and UNHCR
- Refugee status granted or denied

Urban Refugees:

- Arrival in the host country
- Report to the Refugee Desk at Old Kampala Police Station
- Interviewed and file forwarded to OPM
- OPM schedules interview
- File forwarded to REC
- Refugee status granted or denied
- If application is denied: Review before the Refugee Eligibility Committee (REC)
- If still denied, appeal to the Refugee Appeals Board (RAB)
- If denied again, judicial review
- After final denial, you have 90 days to exit the territory of Uganda



* **1 Prima facie refugee status-is granted by the Minister (Relief, Disaster Preparedness & Refugees)**

2 In exceptional circumstances, «Mandate status» can be issued by UNHCR

Rights and Obligations of Refugees and Asylum-seekers

Refugees have the right:

- To life
- To safe asylum
- To own property (cannot own land except under leasehold)
- To work (do not need work permits but if the employer insists, they can apply for a fee nil work permit)
- To access health care
- To access education
- To identification
- To a fair hearing and trial (bail is a Constitutional right enjoyable by nationals & refugees a like)
- To practice religion
- To non-discrimination
- Freedom of association
- Freedom of movement
- Freedom of expression
- Freedom from torture, cruel, inhumane and degrading treatment

Refugees have obligations to;

- Respect the laws and regulations of Uganda
- Conform to measures taken for the maintenance of public order
- Pay taxes if gainfully employed
- Not to engage in activities which may endanger state security
- Not to engage in political activities in the host country and in the country of origin

*Supporting both refugees and host community to become self- reliant is a win-win situation that benefits individuals, households, and communities.

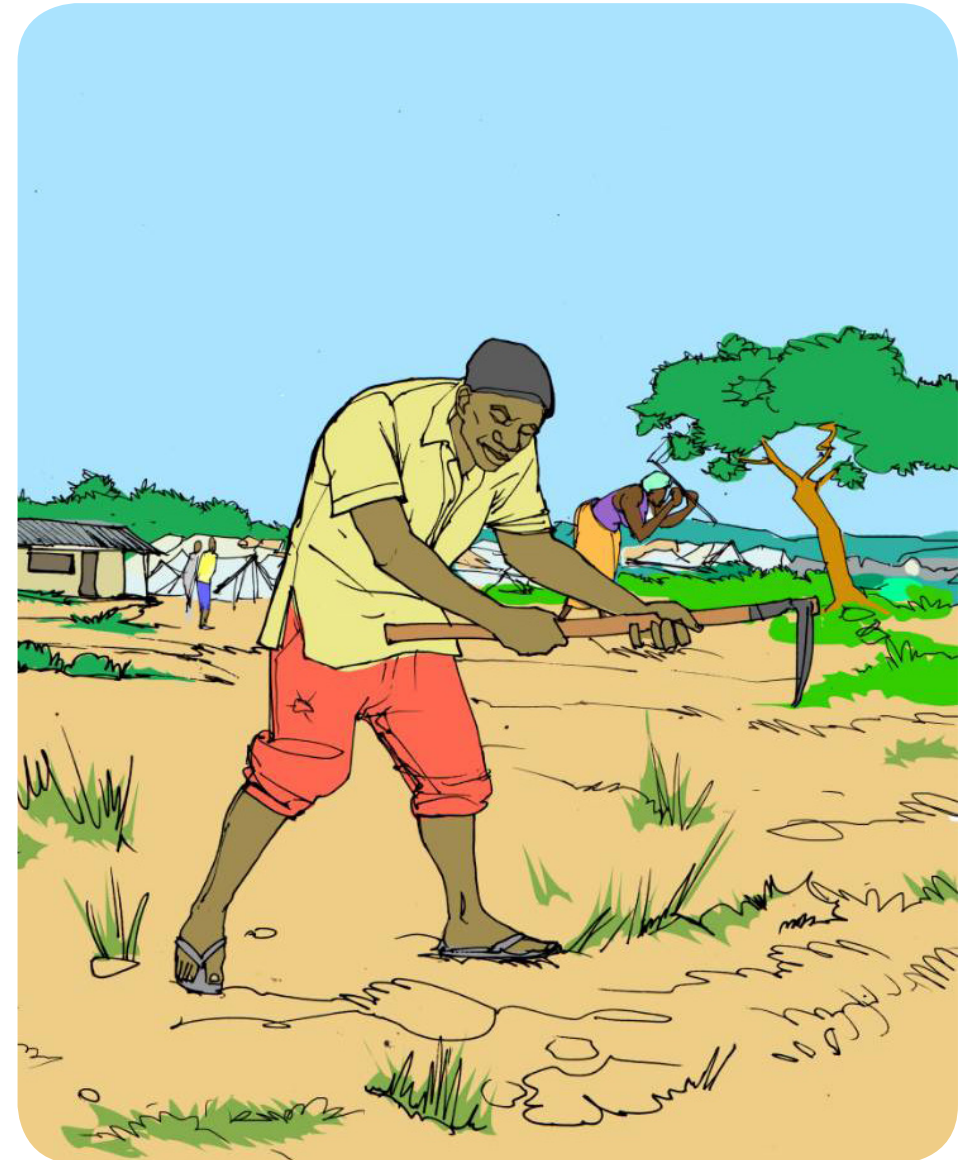
Torture in the Context of Forced Migration

- The term ‘torture’ encompasses many things, including narratives of rape – **Remember:** The use of the term ‘torture’ can hide many other things including sexual violence
- Freedom from torture is an absolute right and non derogable under the Constitution of the Republic of Uganda, 1995. Torture is therefore not justifiable
- Any person can report cases of torture to police and/or Uganda Human Rights Commission
- The state has the obligation to protect all individuals from torture, cruel, inhuman, degrading treatment or punishment
- Upon conviction, a person can suffer life imprisonment for aggravated torture
- Victim-centered approach to redress is fundamental when seeking remedies for victims of torture
- Enforcement mechanisms for ensuring redress exist at international, regional and national level for victims of torture
- Victims of torture have remedies available to them (compensation, restitution, rehabilitation, guarantees of non-repetition, satisfaction)
- Stakeholders including the police, prisons, UPDF, Immigration officers are responsible for preventing torture within their institutions



Natural resource ownership, access and usage both in and outside the refugee settlement(s)

- Natural resources include Land, Forest, Hills and Rocks, Birds, Grazing, Fruits, Water, Swamps, Woodlocks, Grass, Wild Animals (Biomass)
- Land in refugee settlements in South Western Uganda is gazetted while the land in northern Uganda is communally owned in accordance with different tenure systems
- Refugees cannot own land in Uganda – However, they can rent it through lease
- There are four land tenures and ownership systems in Uganda;
 - Lease,
 - Mailo
 - Freehold
 - Customary
- Land owners have a right to sell their interest in the land, for example it can be inherited, and/or subleased
- There are various types of interests in the land. This includes;
 - Kibanja owners
 - Squatters, and
 - Bonafide occupants



Customary vs Written Laws;

- Customary laws include laws in accordance with the existing customs in Uganda
- Written laws include The Constitution of the Republic of Uganda, The Refugees Act, Domestic Violence Act, etc, which set standards within which human beings exist
- Refugees also come along with their customs and practices depending on their ethnic origins (for example, the Dinkas, Nuer, Lutugu, Acholi, Nande, & Hutu etc.)
- Customary laws are applicable to specific individuals within specific ethnic group while written laws are applicable to all
- Where there is a conflict between customary and written law, written law takes precedence

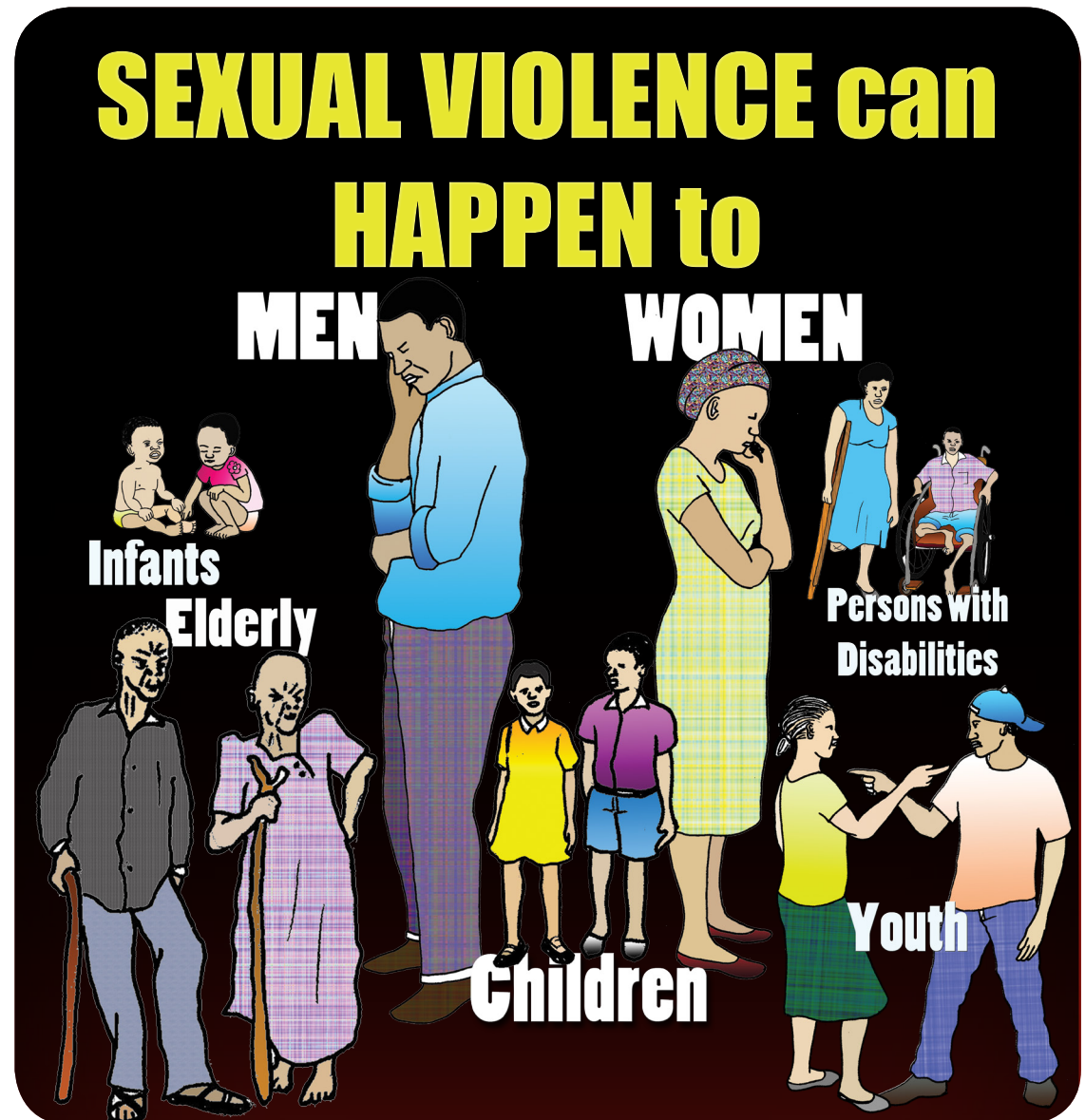
Human Trafficking

- Anybody can be a victim of human trafficking
- Uganda has firm laws against trafficking
- Trafficking has profound mental, physical, psychological and legal consequences
- You will be protected for reporting and or whistle blowing trafficking
- Upon successful legal recourse, victims can get compensation



Understanding Sexual Violence in Conflict

- Sexual violence includes rape, forced impregnation, forced sterilisation, forced marriage and any other attack of a sexual nature, including sexualised torture
- Sexual violence can be perpetrated against women and girls, men and boys
 - Perpetrators can be either male or female or both
- Survivors/victims of sexual violence in conflict can be women, men, girls and boys.
- The prevalence of sexual violence is difficult to measure, but it nearly always has devastating impacts on its victims/survivors
- During conflicts, some groups including ethnic groups may be more frequently targeted for acts of sexual violence than others



International Normative and Institutional Framework

Addressing Sexual Violence in Conflict

- Tackling Sexual Violence in conflict requires collective and multi-sectoral approaches
- Positive steps taken towards ending sexual violence in conflict in many countries demonstrate that it is possible to fight SV
- Many survivors/victims of sexual violence in conflict continue to suffer in pain, and without remedies
- Proper investigation and documentation facilitates the process of bringing justice to victims and addressing impunity
- The State has an obligation to protect both victims and witnesses of sexual violence



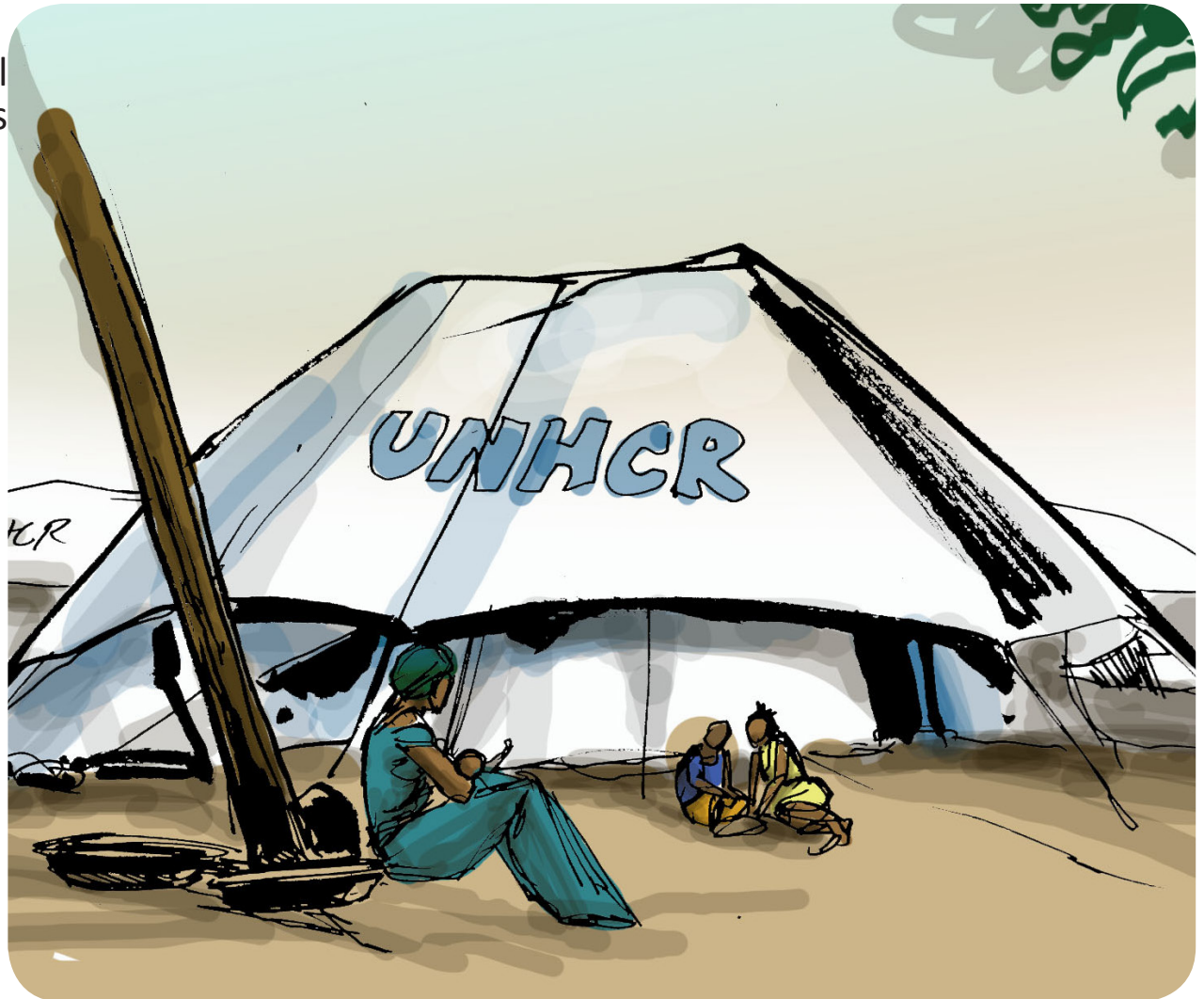
Forced Migration and Mental Health

- Mental health affects how we feel, think and behave
- Mental health challenges are very common but often go un-noticed
- Mental health challenges can affect anyone, any time, and any stage of life
- Forced migrants are at a greater risk of suffering from PTSD and other mental challenges during experiences of violence and persecution prior to, during, and after flight
- With appropriate knowledge, everyone can support people struggling with mental health challenges
- With consistent support and quality care, people with mental health challenges recover and regain stability



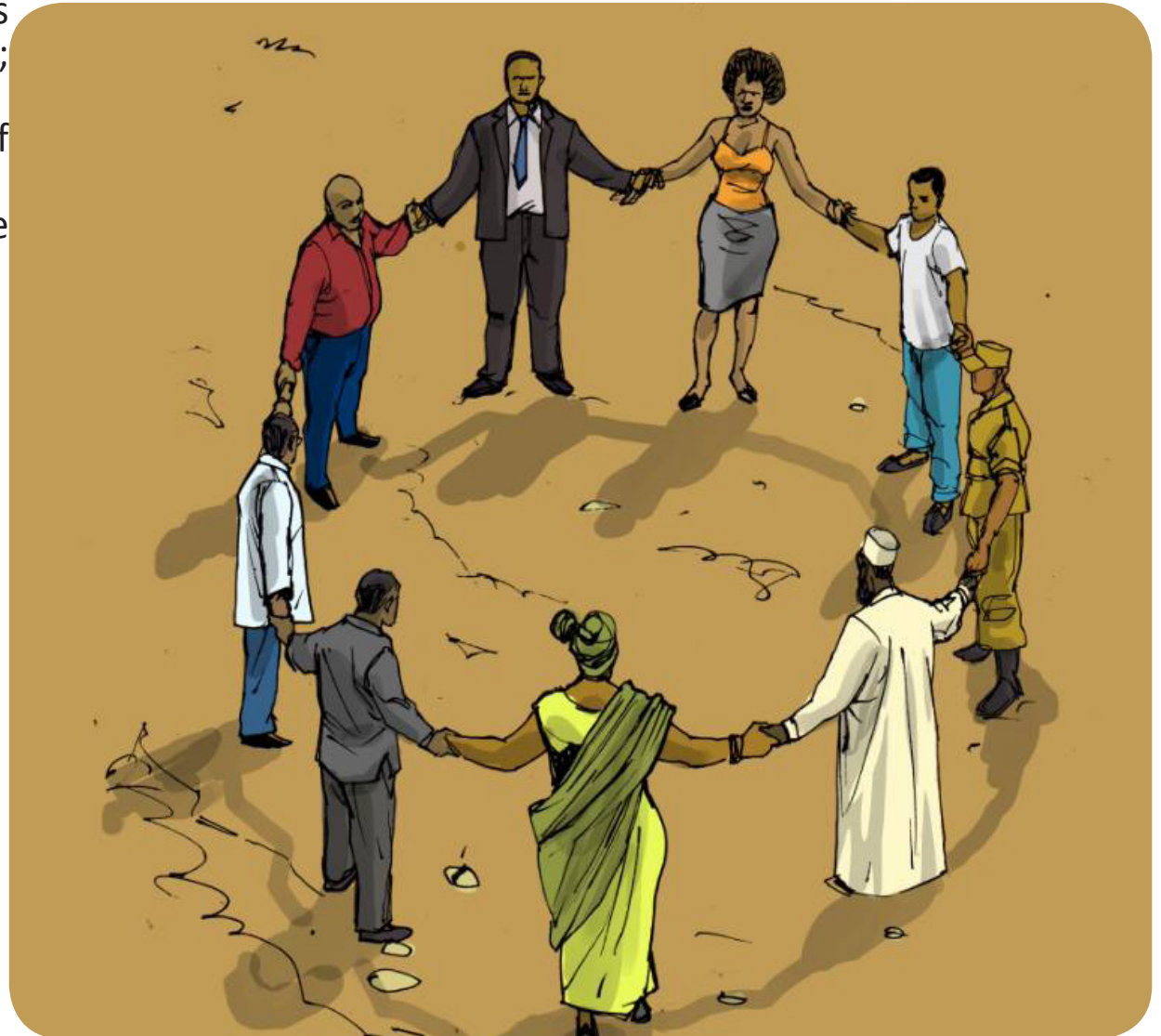
Understanding Trauma and Post Traumatic Stress Disorder

- Mental Health challenges are invisible; they are not easily seen and yet impact very negatively on the general wellbeing of the affected persons to the extent that they don't function well.
- The effects of PTSD on affected persons can affect their communication Patterns and therefore influence the interview process
- It is very important to take note of the signs observed as well as the symptoms that the survivors report so as to get them assisted accordingly



Self-Care and Care for Care-givers

- Working with forced migrants can be very stressful and may lead to compassion fatigue
- When fatigued, a practitioner can unintentionally harm the client
- Taking care of one's self is an important social work and life skill
- Self-care is always a work in progress
- Self-care is a personal matter; everyone's approach is different
- Intentionally taking care of oneself can improve work-life balance
- To take care of others we need to be able to take care of ourselves too



Attitudinal Skills

- Attitudes (positive or negative) are learned and can be unlearned
- “Othering” describes the negative ways in which we sometimes treat people who are different from ourselves. Othering promotes discrimination and hinders healthy relationships
- People are different in many ways and no one should discriminate the other
- Interacting in a non-discriminatory manner can lead us into positive relationships
- Self-awareness is key to maintaining healthy relationships with different people.



Working with interpreters

- Interpreters are key in any documentation process where there are language differences
- Use of family members as interpreters may affect confidentiality
- It is important to know that some clients will only be comfortable with an interpreter of the same sex, or of the opposite sex



Testimony & Statement Taking

- Testimony is the type of information readily available to practitioners, but it's also one, which must be treated with most care.
- Testimonies can be from survivors/ witness of sexual violence, family members, members of the community, and service providers
- Observing the principle of informed consent is critical when gathering information about sexual violence, this ensures that the survivor/witness maintains full control and power over his/her experience
- To ensure that informed consent is observed, practitioners should take time to explain all relevant factors to the survivors, ensure the consent given is based on free will and obtain explicit consent for specific activities
- Confidentiality is an ethical principle in documenting SV
- Before initiating any documentation process, practitioners should endeavour to identify options for referring survivors for assistance and support

Interviewing

- Interviewing is a useful tool for gathering information from persons of concern
- Informed consent must be sought first before interview begins
- Interviewing must take place in a safe place
- Confidentiality is of utmost importance
- Survivors/witnesses must know why they are being interviewed
- While gaining information is the purpose of an interview, the survivor's wellbeing takes priority over data-collection
- Children's best interests must be prioritized in any interview with children
- Interviewers must be aware of referral pathways that may be needed
- Refugees in the News: Ugandan News Media should take coverage of refugees more seriously
- There is minimal reporting on refugees in media
- More reporting can be done on forced migrant issues

What is being reported? Looking beyond the negative impact of refugees

- Refugees have stories (their challenges & successes) that are worth reporting/writing about
- Refugees have both positive & negative impact (at both community & national levels)
- The media has an obligation to have balanced reporting on refugees' issues
- Commercialization of media should be stopped
- Reporting in the refugee context is challenging
- Media need to expose and explain issues in ways that make more sense to ordinary people including refugees and which invite reaction and participation



Media relationship with refugee-serving agencies

- Refugee serving agencies are eager to discuss refugee issues for the general public consumption
- Refugee serving agencies have some of the relevant information on refugee issues
- The media ought to contact refugee-serving agencies as part of accurate reporting
- Media ought to avail opportunities for refugee-serving agencies to discuss refugee issues



Journalism of Purpose: The ethics of reporting in refugee contexts

- Reporting on migration and refugees cannot be done outside parameters such as the socio-economic, cultural and political environment. Reporters who are not familiar with these could always make serious errors
- Journalism ethics must be abided by
- Mistakes made in reporting can have dire consequences for refugees
- As a cardinal principle of journalism, journalists must strive to balance their stories about refugees all the time.

Being a Reporter, Being Human: How to interview refugees

- Interviewing still remains one of the effective tools of gathering information
- Necessary considerations ought to be made before any interview ie consent, safety of refugee, confidentiality of information
- Journalists have to be clear as to why they are interviewing the refugee(s)



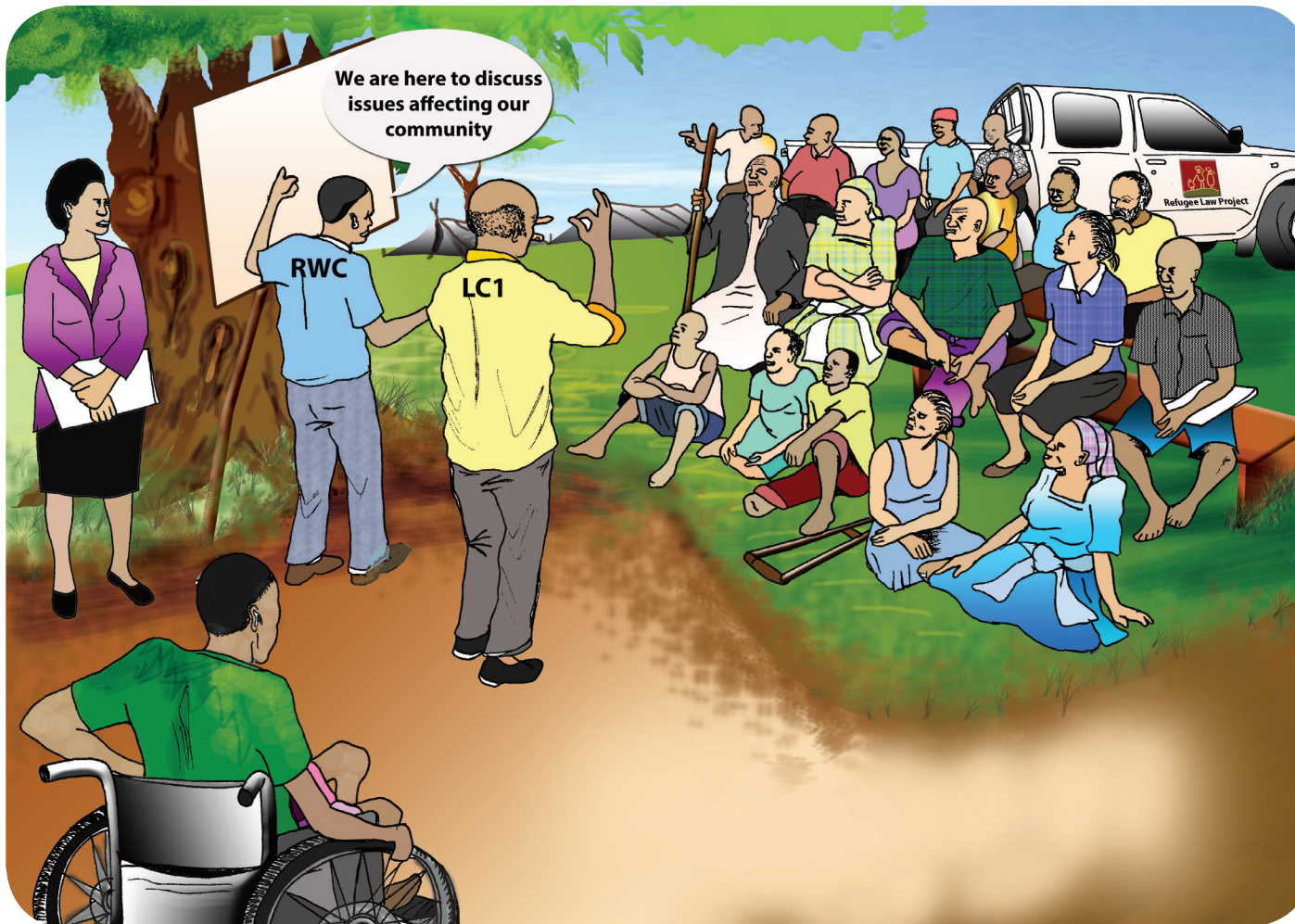
Conflicts

- Since independence Uganda has not rested from conflict
- Conflict is often understood as a serious disagreement/argument between two or more parties. They can be political, economic, socio-cultural and environmental conflicts.
- Conflict resolution mechanisms range from peace agreements to power sharing deals
- A multitude of approaches is needed to unravel the impact of decades of conflict or repression.
- Everyone is a potential refugee
- Conflict is not only armed



Governance

- Governance are structures and processes that are designed to ensure accountability, transparency, responsiveness, rule of law, stability, equity and inclusiveness, empowerment, and broad-based participation
- Poor governance and democratic deficits breeds conflicts, corruption, human rights violations and displacement(s)
- Good governance leads to sustainable peace and stability



Transitional Justice and Forced Migration (Enhancing Refugee-Host Relations)

- Transitional Justice (TJ) includes many different ways of dealing with past legacies of conflict
- TJ mechanisms include; criminal prosecutions, truth commissions, institutional reform(s), material and symbolic reparations for victims, Amnesty, memorialization, gender justice, and community-based or “traditional” justice processes have become critical for post-conflict nation building, given their promise of helping societies avoid past divisions through justice, truth, and reconciliation
- Victim-centered approach to redress is fundamental when seeking remedies for victims of human rights violations or torture.
- Since independence, TJ in Uganda has to a large extent involved State-led processes (mostly partial and unsatisfactory) however; the 2006 Juba peace process influenced civil society-led TJ initiatives
- When there is continued impunity for human rights violations (worse still in the country of refuge/asylum), then transitional justice mechanisms become even more essential
- Both hosts and refugees need TJ
- Mass influx creates a new TJ challenge
- Some of the ground work for TJ can take shape even when refugees are still in host countries



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