



THE UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

**I RECOMMEND THAT THIS DIRECTED RESEARCH UNDER MY
SUPERVISION**

BY

GIFT SUMAILI

ENTITLED

**“THE CURRENT REFUGEE SITUATION IN ZAMBIA AND THE
LAW RELATING TO THEIR RIGHTS”**

**BE ACCEPTED FOR EXAMINATION. I HAVE CHECKED IT
CAREFULLY AND I AM SATISFIED THAT IT FULFILS THE
REQUIREMENTS IN RELATION TO THE FORMAT AS LAID DOWN
IN THE REGULATIONS GOVERNING DIRECTED RESEARCH.**

Date.....*2003 1st December*.....Supervisor.....*G. Mulenga*.....

Mr G. Mulenga

CONTENTS

	Page
Dedications	i
Acknowledgements	ii
Introduction	1
CHAPTER ONE: Definition of Refugees	5
1.1 Distinction between a refugee and other aliens	7
1.2 The brief historical background to the refugee situation in Zambia	9
CHAPTER TWO: THE REFUGEE SITUATION IN ZAMBIA	12
2.1 Patterns of refugee generation: Causes	13
2.1.1. Congolese refugees	15
2.1.2. Angolan refugees	16
2.2 Determination of refugee status in Zambia	17
2.3 The Refugee (control) Act 1970	21
2.4 Short comings	22
2.4.1 Definition of refugee	22
2.4.2 Refugee permit	23
2.4.3 Naturalisation	23
2.4.4 Economic and social rights	24
CHAPTER THREE: THE UNITED NATIONS HIGH COMMISSION FOR REFUGEES	27
3.1 Historical background of the UNHCR	27
3.2 The role and responsibility of the UNHCR in Zambia	28

3.3	The role of voluntary organizations and forms of assistance rendered	31
CHAPTER FOUR: RIGHTS OF REFUGEES		33
4.1	International protection of refugee rights	34
4.2	The enforceability of refugee rights in Zambia	36
4.3	Right to seek asylum	38
4.4	The principle of non-refoulment	41
CHAPTER FIVE: REPATRIATION		45
5.1	Voluntary repatriation	46
5.2	Repatriation of Angolan refugees form Zambia	49
5.3	Summary	52
5.4	Proposals	55
5.4.1	Reconsideration of the definition in the Zambian law	55
5.4.2	Citizenship	56
5.4.3	The approach to refugee problems	57
BIBLIOGRAPHY		58

DEDICATION

To my brother Dr. F. K. M. Sumaili and the family for their support, encouragement and prayers rendered. Thank you very much. I could not have come this far without your support. God bless you.

To my sister Agnes Sumaili. Thank you very much for your love and support. You are simply the best. I love you.

ACKNOWLEDGEMENTS

First and foremost I want to acknowledge my Lord and Saviour Jesus Christ for seeing me this far, for his divine protection and provisions.

I wish to acknowledge all the people who helped me in carrying out this research.

My special thanks go to my supervisor Mr Geoffrey Mulenga whose guidance and advice saw this research to completion. My appreciation go to Mr Syakwasia, the National Registration Officer, Ministry of Home Affairs for all the information, material, advice and time he accorded me. My appreciation further goes to Mr Mulenga Nkule, the National Policy Officer at Jesuit Refugee Service (JRS) for the information and material rendered to me. Gratitude also extends to Mr Kondwani Kaonga for his encouragement and assistance as well as for his friendship. Thank you very much for taking care of me. I will always be grateful for the value you have added to my life. My appreciations also go to William Phiri and Andrew Mwansa. You guys are incredible. Thanks very much for your assistance rendered to me when I needed it most. God bless you.

INTRODUCTION

The history of refugees goes as far back as the known history of mankind. Grahl Madsen¹ contends that, according to the Bible, Adam and Eve were driven out of Eden and thereby became the first refugees. Mary and Joseph had to seek refuge in Egypt with the child Jesus Christ. Thus, from time immemorial, the refugee problem has persisted due to internal and external political conflicts.

In the world today, millions of men, women and children have been forced to leave their own countries and take up temporary shelter in foreign countries in order to find peace and security, which they lack in their own countries.

Zambia has been one of Africa's active states in keeping an open door to an enormous influx of refugees as far back as 1964. She has been able to harbour thousands of refugees from neighbouring countries such as Angola, Namibia, Mozambique, Democratic Republic of Congo and other neighbouring countries.

Zambia is a party to the most important international instruments in existence relating to refugees, that is, the 1951 Geneva Convention, the Protocol and the 1969 Organisation for African Unity (OAU). She has enacted refugee legislation of its own in order to

¹ Grahl Madsen, The Status of Refugees in International Law. Vol. 1. 1966. p.9.

implement on the national level the obligations entered into upon ratifying the convention.

The refugee problem is a worldwide problem and as such, there are certain organizations that were established to assist whenever such a problem arose. For example, in 1951², the United Nation High Commissioner for Refugees (UNHCR) was established shortly after the Universal Declaration of Human Rights was proclaimed to help protect the refugees.

The problems of refugees are most severely felt in the country of first asylum. It is the responsibility of the host country to take care of the basic needs of the refugees at the early phase of a refugee flow before the international refugee assistance machinery has been able to respond.

Looking at Zambia's current economic performance, the majority of its population is wallowing in poverty. The question is, how is the Zambian government managing the ever-increasing number of refugees in this poverty stricken country? Despite support for refugees from the donor communities, the country continues to face serious problems as a result of the constantly increasing number of uprooted people. For instance, in the year

² Ray Wilkinson. UNHCR: Refugees. Report. Vol. 111.1998.at.8

2001³, over 2,000 Congolese refugees in Northern Zambia fled to their country due to starvation. The reduction of food at the Mwange refugee camp also resulted in a fight among refugees, which left one person dead.

The refugees' fundamental rights are not fully enjoyed. For instance, some rights are suspended such as the right to participate freely in political activities, freedom of movement and association and the right to vote. A refugee is like any other human being entitled to enjoy life. A refugee has the right to safe asylum and should receive at least the same rights and basic help as any other legal resident.

The camps in which they live are in a deplorable condition, not befitting human habitation. For instance, in the year 2002, the Kala camp in the Northern Province reached a maximum capacity of 25,000 refugees⁴, a situation that called for an urgent creation of a new camp. In Western Province, the area around the Nangweshi and Mayukwayukwa camp is flooded for several months every year during the rainy season, making life more difficult for refugees.

It is from this background that this dissertation shall endeavour to analyse the current refugee situation in Zambia and the effectiveness and assess the weakness/strength of the

³ UNHCR: World News. September. 2001

⁴ Ray, Wilkinson (ed.), UNHCR: Global Appeal, 2002.

law governing their rights. It shall also analyse the role of the UNHCR, the non-governmental organizations concerned with the welfare of refugees in Zambia, point out the short-comings of the various organisations dealing directly with the refugee situation such as the UNHCR and to establish the immediate, the short-term and the long term strategies with regard to the refugee problem in Zambia.

Chapter one of this dissertation will briefly define the term `refugee` and distinguish it from other aliens, and the historical background to the refugee situation in Zambia.

Chapter two shall discuss the various causes of flight into Zambia from the various areas, the determination to refugee status in Zambia and the Refugee Control Act.

Chapter three will analyse the historical background of the UNHCR, its role and responsibility in Zambia as well as the role of the voluntary organizations and the forms of assistance rendered.

Chapter four of this dissertation shall endeavour to discuss the rights of refugees, focusing on international protection of refugee rights, the enforceability of refugee rights in Zambia, the right to seek asylum and the principle of non-refoulement and, Chapter five will look at repatriation followed by proposals and recommendation as well as a conclusion.

CHAPTER ONE

1. DEFINITION OF REFUGEES

The word 'refugee' is derived from the noun 'refuge' which is described as, "shelter or protection from danger or trouble: an asylum or retreat: recourse in difficulty".⁵ A refugee is 'one who flees for refuge to another country, especially from religious persecution'.⁶ The term refugee has been understood differently. For example, Simpson⁷ said, "The essential quality of a refugee may be said to be that he has left his country of regular residence, of which he may not be a national, as a result of political events in that country which render his continued residence impossible or intolerable and has taken refuge in another country, or, if already absent from home, is unwilling or unable to return, without danger to his life or liberty as a direct consequence of the political conditions existing there."

However, the definition of the term 'refugee' has shifted from the above narrow and restrictive approach towards a wider concept which takes into account other aspects and forms of any displacement of persons.

According to the statute of the United Nations High Commissioner for Refugees and the Convention Relating to the status of refugees, both of 1951, the term 'refugee' applies to

⁵ Chambers Twentieth Dictionary. 4th ed. at. 1136.

⁶ Ibid p. 1136.

⁷ J.H. Simpson. The Refugee problem.. (1939). P. 677.

any person who (1) *had been considered a refugee under the major refugee arrangements and Conventions of the 1920s and the 1930s* and (2) *had left his country of nationality as a result of events occurring before 1st January 1951 owing to well – founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or for political opinion, and was unable or unwilling to return because of the fear of persecution*⁸. The Protocol Relating to the status of refugees of 1967 eliminated a major short coming of the convention of 1951 by extending it to person who for the same reasons has become refugees after 1 January 1951. The protocol also eliminated the eurocentrism built into the convention by applying the definition to refugees anywhere in the world⁹. Thus, the drafters of the Charter of Organization for African Unity (OAU) with the nature of the African Refugee problem in mind, deemed it imperative to remove the rule contained in the 1951 convention that the *refugee has to justify his fear*. Thus Article 1 paragraph 2 provides as follows:

“The term refugee shall also apply to any person who, owing to external aggression, occupation, foreign dominion or events seriously disturbing public order in either part or the whole of his country of origin of nationality is compelled to leave his place of habitation residence in order to seek refuge in another place outside his country of origin or nationality”.

The above definition reflects a desire to avoid complicating the procedure for admitting refugees especially those from rural areas who would have great difficulty in justifying their fears. The refugees who come under the OAU definition are the ones referred to as ‘

⁸ The 1951 Convention Relating to the Status of Refugees Article 1.

⁹ H. Hakovirta. Third World Conflict and Refugeeism (1986) at 120.

defacto' refugees as opposed to the convention refugees. De facto refugees are persons not recognised as convention refugees who are nevertheless, for political reasons and other events seriously disturbing public order are unable or unwilling to return to their country of origin ¹⁰. The existence of 'de facto' refugees is a consequence of the definition of refugee under the 1951 convention or rather the interpretation and application of this definition¹¹.

In other words, a person is considered a refugee when he has fled from his state of nationality or habitual residence because of political, race religions, ethnic or other kind of persecution or to avoid warfare or other violence and he ceases to be a refugee if he returns to his country of origin or becomes a citizen of that country of reception.

1.1 DISTICTION BETWEEN A REFUGEE AND OTHER ALIENS.

In an increasingly complex world of economic migration and people smuggling, who actually qualifies as a refugee to deserve international protection? Accordingly, as already mentioned above, the 1951 Convention relating to the status of refugees is the key legal document in defining who a refugee is.

¹⁰ G. Melander . Africa and the Law. (1978) at 17.

¹¹ P. Weis . Convention Refugees and De Facto Refugees: African Refugees and the Law.(1977) at 16 .

Refugees must be distinguished from other aliens. This is important especially to the organizations that deal with refugee problems such as the UNHCR, UN and others to enable them direct their assistance to deserving persons.

An international refugee is by definition an alien, but he is not an ordinary alien ¹². An ordinary alien travels from one state to another as a visitor or might reside in that state more or less permanently. The entry and sojourn of the ordinary alien is usually regulated on the strength of a national pass port, a certificate of nationality or some other document issued by the authorities of the state of his nationality. In Zambia, the office responsible for this is the Ministry of Home Affairs in conjunction with other offices such as the Immigration, Ministry of foreign Affairs, the Police Department and others related offices.

The important feature here is that, the relation of an ordinary alien with his country of nationality is normal. Whenever the need arises he can turn to them for assistance or protection and he can return to his country anytime he wishes without fearing persecution, things which a refugee cannot do.

These aliens fall in different categories. For instance:-

¹² Grahl Madsen . Supra note 1 at 75.

- (a) Voluntary international migrants, who leave their home countries for settlement in another country to improve their standard of living, join relatives, experience adventure, or for other basically voluntary reasons;
- (b) Internally displaced persons, whose movement may be motivated by the fear of persecution or violence but who stay within the borders of their home countries and last but not the least;
- (c) The victims of natural catastrophes. These flee earthquakes, floods, famine or other typically non- man made catastrophes. Mostly, these stay within the borders of their countries.

“ Refugees are distinguished from displaced persons on geographical criteria and from various other kind on international migrants on the basis of motivation”.¹³

1.2 THE BRIEF HISTORICAL BACKGROUND TO THE REFUGEE SITUATION IN ZAMBIA.

Zambia was among the first states to obtain independence in Southern Africa. She was surrounded by colonized states and apartheid regimes in Namibia and South Africa. Zambia Harboured thousands of refugees and freedom fighters as a result. Even before

¹³ Harto Hakovirta. Third World Conflicts and Refugeeism. (1986).at p.18.

its independence, it took the unique step of making serious provision for the problem through the establishment of the International Refugee Council of Zambia.¹⁴

Zambia has been faced with the problem of refugees from neighbouring countries as far back as 1964. The first influx of refugees was from Mozambique in December 1965 and these were victims of the conflict between Liberation and Portuguese forces in Tete District of North- Western Mozambique¹⁵. From then on, there has been an almost uninterrupted flow of refugee problems requiring the attention of the government and refuge aid organization.

Though Zambia in the early stage of independence freely took refugees and freedom fighters from South Africa, West Africa via Botswana, it did so at its own risk. Zambia's assistance of these refugees was perceived as rendering assistance to the liberation movement and consequently this help was seen as a threat to these countries. However, despite the threats Zambia had received, it continued to maintain the open door policy to refugees.

The most significant step that the Zambian government took in making sure that it carried on with the work of accepting and assisting refugees was its accession in 1969 to the

¹⁴ Sven Hamiell . Refugee Problem in Africa. (1967). at 60.

¹⁵ Louise W. Holborn, Refugees : A problem of our time Vol. 11.(1975). at. 1130.

Organization of African Unity convention governing specific aspects of refugee problems in Africa and the 1951 United Nation Convention and its protocol relating to the status of refugees of 1967. Later in 1971, the Refugee (Control) Act was enacted.

In this chapter, a refugee has been defined under the 1951 Convention as well as under the Organisation for African Unity Charter. The latter is an extension of the 1951 definition in that it includes; every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public or 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 nationality. Further, a refugee has been differentiated from other aliens in that, ordinary aliens still have the protection of their government even though they are outside their country of origin. These are more like visitors. They can go back to their country at anytime unlike a refugee whose life is in danger. In this chapter we have been concerned in part with the background to the refugee problem in Zambia We have seen that Zambia despite its economic difficulties, she has maintained an open door policy. The proceeding chapter will discuss the refugee situation in Zambia, looking at the various causes of flight into Zambia, the determination of refugee status and the Refugee (control) Act of 1970.

CHAPTER TWO

THE REFUGEE SITUATION IN ZAMBIA

INTRODUCTION

Many African countries are today experiencing armed conflict. This has caused great suffering and displacement of large numbers of people. The chaos and confusion that accompanies war has forced many people to flee their countries of origin in search of safety and asylum¹⁶.

Shortly after independence, Zambia took a moral position to welcome the victims of war or colonial dominations. Zambia became a safe haven for large numbers of refugees from its neighbouring countries. Today, because of its political stability, Zambia has continued to host thousands of refugees from the war-torn neighbouring states of Angola, and the Democratic Republic of Congo, and countries further afield such as Burundi, Rwanda, Sudan and Somalia. These refugees have continued to flow into Zambia as a result of the conflicts going on in their countries. The numbers of refugees is ever increasing. For instance, in the year 2000, Zambia hosted more than 220,000 refugees¹⁷

¹⁶ Ibid

¹⁷ UNHCR: Report, Zambia June 2000.

with the majority originating from Angola. In 2002, Zambia hosted nearly 250,000¹⁸ refugees including some 190,000 from Angola, more than 50,000 from Congo-Kinshasa, 5,000 from Rwanda, 1,000 from Burundi and 1,000 from various other countries. Currently, according to the information from the office of Commissioner for Refugees which is under the Ministry of Home Affairs, as of September 2003, Zambia hosts 271,090 refugees. All these refugees are distributed accordingly in the six refugee camps in existence in Zambia¹⁹. Thus, from time immemorial, Zambia has maintained an open door policy despite its poor economic performance.

2.1. PATTERNS OF REFUGEE GENERATION: CAUSES

There are a number of reasons why we have so many people fleeing their countries of origin. For example, it could be persecution, torture, harassment, sexual violence, detention, other violation of human rights, threats to a person's life or liberty and well-founded fear of persecution. These are some of the things that could drive a person to leave his/her country of origin. In Africa, we find some of the largest and most serious refugee problems in the world. Many of these problems have been caused by colonial

¹⁸ UNHCR: World Refugee Survey Report. June. 2003 accessed through website:<http://www.uscr.org>

¹⁹ These are Mayukwayukwa, Nangweshi, Kala, Mahebe, Ukwimi and Mwange.

oppression followed by liberation war. Thus, the continent's refugee movement can be placed into one or more of the following causes²⁰.

1. Conflict due to secessionist tendencies
2. Anti-colonial or independence war
3. Political repression
4. Interethnic hostilities
5. Religious persecution

However, it is not our concern to discuss these in detail but it should be noted that, it is/was from the above that most refugee movement were stimulated.

Nowadays, the chief promoter of the refugee situation is political instability which is often followed by coup de` tat, massive killings of innocent people and other atrocities. In such situations, people are left with no choice but to flee for safety to other countries.¹⁷ In Zambia, we have huge numbers of refugees as a result of different factors. According to the UNHCR study, it is maintained that, "people flee their countries for a variety of reasons and usually as a result of a combination of factors rather than one: war and insurrection, the breakdown of law and order, oppression, persecution and denial of opportunities". Each refugee situation bears its own characteristics.

²⁰ John R. Rogge, Too Many, Too Long. Sudan's Twenty-year Refugee Dilemma, 1985, at 1.

¹⁷ Ibid

There are two groups of people who are displaced as a result of conflicts in their states; we have those who flee their homes to seek refuge within the borders of their country of origin who are known as *internally displaced persons*. There are also those who cross the border of their home country to seek refuge in another country who may after individually going through refugee status determination procedures or as a group, on the basis of their circumstances be recognized as refugees. It is the latter group that this dissertation is concerned with.

In Zambia today, we have refugees from Angola, Burundi, Democratic Republic of Congo, Uganda, Somalia and others. All these refugees flee their countries of origin with almost similar reasons – war as a result of political instability, discrimination well-founded fear of being persecuted as a result of belonging to a particular social group etc. Thus, for an illustration, two countries shall be used as a case study – Angola and Congo DR.

CONGOLESE REFUGEES

The influx from the Democratic Republic of Congo is as a result of fighting around the towns of Pepa and Pweto, between government and rebel forces. Also the ethnic groups in the same country have been in intense conflict. The flights are however centered

mainly on military violence. For example, according to the United States Committee for Refugees²², approximately 12,000 fled the outbreak of civil war in late 1998, as many as 15,000 refugees fled continued warfare in 1999. In 2001, a rebel offensive caused a new influx of refugees in Zambia.

In addition, there are a large number of Congolese who flee due to fear of government persecution based on actual or imputed political activities²³. Thus, due to the above mentioned factors, Zambia has up to date continued receiving refugees from Congo DR. As of September 2003, the office of Commissioner for Refugee, recorded approximately 44,972 refugees from Congo DR.

On the other hand, Congo DR has foreign armies from other countries and various guerrilla groups on its territory fighting for control of the country's vast natural resources. This too has contributed to the fleeing into Zambia.

ANGOLA REFUGEES

The war in Angola started as far back as 1961 in pursuit of national liberation. The main cause was the reluctance of the Portuguese to follow the example set by other colonial

²² <http://www.unchr.ch/cgi-bin/texis/vtx/home> Country Information: Zambia. 2002.

²³ UNHCR, 2002 Global Appeal at 125.

powers in withdrawing from Africa²⁴. Fighting in Angola began immediately after two liberation movements UNITA and MPLA came into conflict. A number of Angolans were left with no choice as a result of the violence which broke but to flee the country. From the time Angola gained its independence in 1975 to mid 2002, there was a power struggle between the late Jonas Savimbi's UNITA Movement and the government of Eduardo Dos Santos. This power struggle has been the main cause of civil war, which led most Angolans to flee their country for refuge. For instance, in 1999²⁵, about 20,000 Angolan refugees fled into Zambia, in 2002, Zambia hosted approximately 210,000 refugees from Angola. The current information from the office of the Commissioner for Refugees show that, as of the month of September 2003, Zambia is hosting 212,839 refugees from Angola. It is somewhat ironical that in spite of the end of the war in Angola, Zambia continues to host thousand of them.

2.2 DETERMINATION OF REFUGEE STATUS IN ZAMBIA

Refugee status on the universal level is governed by the 1951 convention and the 1967 protocol relating to the status of refugees. The determination process takes place in two stages:

²⁴ Supra note 20 at 402.

²⁵ <http://www.uscr.org/world/articles>: World Refugee Survey 2003.

(a) It is necessary to ascertain the relevant facts of the case,

(b) The definition of the 1951 convention and the 1967 protocol having to be applied to the facts ascertained²⁶

Despite having these international instruments governing refugees, these instruments, that is, the 1951 convention and the 1967 protocol relating to the status of refugees, set non-binding guidelines on procedures and criteria for determining refugee status yet it is a key to protection. Each state establishes its own status determination procedure to determine a person's own standing and rights in accordance with their own legal systems.

The main concern of UNHCR regarding the same is simply to offer advice as part of its mandate to promote refugee law, protect refugees and supervise the implementation of the Conventions that have been ratified. In countries that are not party to international refugee instruments but who are willing to accept refugees in their countries and request UNHCR's assistance, the agency may determine a person's refugee status and offer its protection and assistance.

In Zambia, two methods have been advanced: *group and Individual determination*. Generally group determination is common due to the nature of refugee movement. The

²⁶ Handbook on Procedure and Criteria for Determining Refugee Status. 1992

reason being that, when refugees are coming into the country in masses, it is impractical if not impossible to examine individual asylum requests, even when there may be doubt that the people should be recognised as refugees. In such circumstances, particularly when it is established that people are fleeing for similar reasons, it may be appropriate to declare *group determination* as refugee status. This allows for basic protection and assistance to be extended to those in need pending arrangements for their status determination. The most common means of refugee determination in Zambia is by group determination. This entails screening only a few of the thousands of people that may arrive at a border from a country where it is known that civil or other strife is on going. On the basis of these few, all who arrive are then granted the status.

Once the refugees are in the country, it is the responsibility of the Zambian authorities to decide whether they will recognise such a one as a refugee or not. The determination procedure is set out in the Refugee (Control) Act²⁷ in Section 3(1) that:

“.....the Minister may declare, by statutory order, any class of persons who are or prior to their entry into Zambia, were ordinarily resident outside Zambia to be refugees for the purpose of this Act”.

The above provision must be read in conjunction with statutory order No. 240 of 1970 which provides in Section 3(2) as:

²⁷ 1970. of the Laws of Zambia.

“Persons who are, prior to their entry into Zambia, or were ordinarily resident outside Zambia and who sought asylum in Zambia owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion are declared to be refugees for the purpose of this Act”.

Thus, under the Refugee (Control) Act, the Minister has been given the powers to give refugee status to whom he feels it is due. However, the UNHCR advocates that governments adopt rapid, flexible and reliable procedures since it is often difficult for refugees to document and prove persecution²⁸.

Besides the Minister declaring refugee status, the Eligibility Committee²⁹ also assists in determining refugee status. This Committee consists of the Commissioner for Refugees, the Senior Refugee Officer in the Ministry of Home Affairs, one representative from each Immigration headquarters, Police headquarters, Office of the President, National Registration and Passport Office and a representative from UNHCR. The UNHCR conduct an interview and if satisfied recommends the application to the Minister of Home Affairs. However, the Zambian authorities are not bound to respect the decision made by the UNHCR and this has been a source of conflict. It must be pointed out that, the Refugee (control) Act does not give a detailed procedure for refugee determination.

²⁸ Hollmann, A, Protecting Refugees, UNHCR, 2001 at pp.30-31.

²⁹ Mwaba L, “Refugee Law in Zambia” Refugee Participation Network, 1989.

2.3 THE REFUGEE (CONTROL) ACT 1970

The only piece of legislation that has been passed in Zambia that deals directly with refugees is the Refugee (Control) Act of 1970. As the name suggests, this Act was passed to determine who is a refugee, the movement and activities of those to whom Zambia has granted refugee status. The Act was adopted by the National Assembly on 28th of August, 1970 in order to implement some of the provisions on refugees as stipulated in the 1951 Convention and the 1967 protocol.

There are many areas where the law has failed to bring out the refugees' exact rights and the nation's responsibilities towards the refugees. The first point of argument is the question of what exactly happens if a national rule or decision of a national court or authority is in conflict with an international instrument ratified by the state in question? The fact that Zambia is a party to the international instruments governing refugees, the national law is supposed to be at least in line with the international conventions. The Act places so many restrictions upon refugees contrary to most international instruments governing the status of refugees. As the following discussion will show, the Zambian Refugee (Control) Act has to a great extent failed to implement or enhance the provisions of the international instrument relating to refugees.

SHORT COMINGS

DEFINITION OF A REFUGEE

Our Act does not necessarily define precisely who a refugee is. It simply declares as indicated in Section 3 of the Act. As a result of this, there is confusion as to who is a refugee and who is an asylum seeker. The authorities themselves are likely to abuse their authority in dealing with either a refugee or an asylum seeker. What the drafters of the Act could have done was to incorporate some though not all central elements in international refugee law. They could have for example, expressed all the requisites of the definition in the Organisation of African Unity (OAU) Convention rather than simply prescribing that the minister could declare aliens as refugees every time there is an influx. A standard definition could have been more appropriate.

The Act does not incorporate a detailed procedure of refugee determination. The Act simply empowers the Minister to declare any class of persons on the basis of their country of origin. Even if this Section is to be read with Section 3 of the 1971 Act, one would still consider this procedure to be inadequate.

REFUGEE PERMIT

Section 11 of the Act requires every refugee to obtain a permit to remain in the country of asylum within Seven (7) days of his entry into the country or face deportation or imprisonment for being unlawfully in the country. This requirement would work injustice to refugees who fail to obtain permits through no fault of theirs. In practice however, and according to the Commissioner for Refugees³⁰, there has never been a situation when a refugee has been deported or detained for being in the country unlawfully after failing to obtain a permit. The Act does not provide any grace period.

Further, if a permit is denied, the Act does not provide for an appeal procedure. The authorities are not obliged to give reasons or explanation for the denial. However, the High Court may in the exercise of its judicial review power, be moved to quash such an order if it can be shown to have been irrationally done, procedural defective and illegal.

NATURALISATION

The question is, how long should a refugee remain a refugee? In the case of post-war Europe, refugees were generally given citizenship of an asylum state within a relatively

³⁰ An interview with Mr. Syakwasia-National Registration Officer, Ministry of Home Affairs

short time span³¹. In Zambia, refugees remain indefinitely as aliens and even their children who are born in exile become refugees. It is almost impossible for a refugee to acquire citizenship in Zambia. Long-term refugees are still regarded as aliens even though it is apparent that many of them or their children are unlikely ever to be able or willing to be repatriated to their country of origin. It is necessary to take a step to incorporate into the Act a Section dealing with grant of citizenship of refugees after a certain number of years.

ECONOMIC AND SOCIAL RIGHTS

It has strongly been argued that if refugees are socially and economically integrated into life of the host country they need not be a burden for the country of asylum³². Skilled refugees can contribute to the host country's economic strength. The African Charter on Human and People's Rights contains a number of individual social rights including the right to work, education and social security. The Refugee (Control) Act does not stipulate these rights. The government could uphold these rights of the refugees by specifically incorporating them into the national refugee law.

³¹ John R. Rogge, Too many, Too Long, 1985 at 6

³² Louise H. Refugees: A Problem of our time, Vol. 1, 1975 at 310

Further, Section 12 of the Act requires that refugees reside within a reception area or refugee settlement. This is unreasonable where it has been established that these refugees are not a threat to a nation. By section 14(2) of the same Act, only the Commissioner of Refugees or a Refugee Officer in charge of the camp can address a gathering of more than ten refugees. Refugees are prohibited from bringing animals to Zambia. Section 7 prohibits refugees from acquiring or possessing a firearm while in Zambia.

From the above, it is clear that the scope of the Act is very limited. It must be seen as having a very narrow purpose of that of preserving national security in the face of continuing influx of large numbers of aliens and not necessarily to protect and provide the refugees with the required protection and freedom. There are therefore too many restrictions.

In this chapter, an account of the refugee situation has been given as well as the reasons why people flee their country of origin, taking Angola and the Democratic Republic of Congo as examples. Further, the determination of refugee status in Zambia has been discussed. We have seen that procedure under the Zambian law is not detailed enough and that section 3 of the Refugee (control) Act Chapter 120 of the laws of Zambia empowers the minister to declare anyone a refugee whom he deems fit. This Act was

passed in 1970 to implement some of the provisions on refugees as stipulated in the 1951 convention and the 1967 protocol. However, it has been discovered that the Act does not bring out the refugee's exact rights as well as the responsibilities towards the refugees. The Act tends to place too many restrictions on refugees contrary to most international instruments governing the status of refugees. The short - comings of the Act have also been discussed. The proceeding chapter will discuss the United Nations High Commission for Refugees, its role and responsibility in Zambia as well as other voluntary organisations and the form of assistance rendered to refugees.

CHAPTER THREE

THE UNITED NATIONS HIGH COMMISSION FOR REFUGEES

3.1 HISTORICAL BACKGROUND OF THE UNHCR

The UNHCR came into existence as a result of the United Nations General Assembly Resolution 428 (V) of 1950³³. Prior to the establishment of the UNHCR, the body which was responsible for the protection of refugees was the League of Nations. The League of Nations was responsible for the protection of the right of refugees and was given mandate to find solutions to the refugee problem.

As a result of the World War I, the Russian Revolution and the collapse of the Ottoman Empire, there was a mass movement of people in Europe and Asia Minor.³⁴ Refugees were defined by the League of Nations as a specific group of people who were deemed to be in danger if they returned to their home countries.

In 1921, the League of Nations, forerunner of the United Nations, appointed Norwegian scientist and explorer Dr. Fridtjof Nansen as the first High Commissioner For Refugees, marking the start of the modern international system for protecting refugees.³⁵ As new refugee situations emerged over the years, it was felt that there was need to set up a new organisation and agreements to handle refugees. Upon the replacement of the League of Nations by the United Nations, the International Refugee Organisation (hereinafter “IRO”) was established in 1947.

³³ UNHCR, *The State of The World's Refugee: The Challenge of Protection*. 1993. At 5

³⁴ Ibid. at 10

³⁵ UNHCR: Refugees. 1998 at 9.

The IRO's mandate was to protect the already existing refugee group and other new categories of refugees who were scattered throughout Europe after the World War II. The office of the UNHCR replaced the IRO in 1951, at a time when international protection was firmly enshrined as the new organisation's principal *raison d'être*³⁶

Initially the UNHCR was to function on a temporary basis for three years to help resettle millions of refugees left homeless as a result of World War II. As it became evident that refugee issues required continued attention, its mandate began to be extended; "consequently the Assembly has renewed UNHCR's mandate for successive five year periods."³⁷

The reason for the establishment of the UNHCR was to provide international protection to refugees as well as to seek permanent solutions to the refugee problem. Thus, since January 1951, the UNHCR has been responsible for protecting refugees and promoting lasting solutions to their unending problem.³⁸

3.2 THE ROLE AND RESPONSIBILITY OF THE UNHCR IN ZAMBIA

The UNHCR's founding statute³⁹ provides a guideline of what the organisation's role, function and duties are. According to this statute, UNHCR is competent to assist

"any person who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, or political opinion, is outside the country of his nationality and is unable or owing to such fear or for reasons other than personal convenience, is unwilling to avail himself of the protection of the country; or who, not having a nationality of being outside the country of his former habitual residence, is unable or owing to such fear or for reasons other than personal convenience, is unwilling to return to it"

³⁶ UNHCR: *supra* note 29 at 12.

³⁷ *Ibid.*

³⁸ UNHCR: Introduction to International Protection at 7.

³⁹ Resolution 428(v) of UN General Assembly.

The UNHCR's role is that of humanitarian nature and clearly non-political. Its two main functions are "to protect refugees and to promote durable solutions to their problems".⁴⁰

Zambia being a signatory to the 1951 Convention Relating to the Status of Refugees, the 1967 Protocol as well as the 1969 Organisation for African Unity (OAU) Convention, the country assumed the obligation to co-operate with UNHCR and to facilitate the application of these international refugee instruments. UNHCR first began working in Zambia in 1966.⁴¹

Generally, the following are the main objectives of UNHCR Zambia:

1. To provide protection and material assistance to refugees from various nations;
2. To seek long lasting solutions for refugees, naturalization, repatriation whenever it is feasible and resettlement where appropriate;
3. To enhance programme implementation, service delivery and monitoring through training in all sectors, with particular emphasis on operational security, administration and management, as well as emergency preparedness and response mechanisms;
4. To provide some assistance to communities that host refugees with the aim of promoting;
5. Local integration while at the same time playing a central role in sensitizing donors to assist these communities;
6. To maintain a high level of emergency preparedness to readily assist new refugees;

⁴⁰ UNHCR: Supra note 29 at 169.

⁴¹ UNHCR: 2001 Global Appeal, "Zambia in Short", at 128

6 To continue with the provision of systematic support to the Zambian authorities in maintaining the civilians and humanitarian character of the refugee camps.

The UNHCR's role in Zambia⁴² is to assist the Zambian government in the provision of international protection to asylum-seekers and refugees, as well as to assist in the search for durable solution. The UNHCR also plays a supervisory role, to ensure that the asylum seeker and refugees are treated in accordance with established international standards. In addition, the UNHCR supervises and works closely with its implementing partners in the provision of material assistance to some asylum-seekers and refugees.

The UNHCR Zambia work largely through its partners such as the World Vision, Africare, Care International etc. To ensure that its mandate is carried out,

UNHCR funds these partners and makes sure that these organisations are monitored. However, there are conditions governing the granting of material aid by the UNHCR to refugees. There must be a request for assistance from the government, secondly, that a problem cannot be solved by the host government alone and thirdly, that the solution proposed by the host government to the refugee problem with which it is confronted should be practical and based on humanitarian consideration only, thus removing the problem from its political context.

If these conditions are met, the UNHCR encourages the host government and assists it in the elaboration of an assistance programme for the new refugees. Thus, the Zambian government has been working hand in hand with the UNHCR since 1966. The Zambian

⁴² UNHCR: Guide for Asylum-seekers and Refugees in Zambia. 1998 at 2

government through its agents such as the Commissioner for Refugees monitors the implementation of the law governing refugees in Zambia.

UNHCR Zambia also carries out environmental awareness, education and protection in the refugee camps through training. These programmes cater for all refugees regardless of where they are from⁴³. Furthermore, the office aims at improving services for the disabled. The office also identifies and provides relevant and necessary assistance to the elderly within the refugee communities.

3.3 THE ROLE OF VOLUNTARY ORGANISATIONS AND FORMS OF ASSISTANCE RENDERED

In Zambia, beside the UNHCR, the government and other funded partners of the UNHCR such as the Young Men's Christian Association (YMCA), AFRICARE, there are also other non-governmental organizations who have taken upon themselves to help refugees in various settlements. For example, we have the Jesuit Refugee Service (JRS) and the Society for Red Cross as well some churches like the Evangelical Fellowship of Zambia and World Lutheran Federation. These organizations help refugees in various ways. The JRS' main mission towards the assistance of refugees is⁴⁴ to accompany, service and defend the rights of refugees and other people who have been forcibly displaced from their homes due to war and violence. Their areas of specialization include⁴⁵:

- Education and training;
- Social service, psycho-social support and counseling;
- Pastoral care;
- Emergency and material assistance;

⁴³ The UNHCR helps refugees from both developed and undeveloped countries and treats them equally.

⁴⁴ An interview conducted at JRS with the National Policy Officer Mr Mulenga Nkule

- Legal assistance;
- Research, public education and advocacy;
- Health;

The JRS embraces all persons who are driven from their homes by conflict, humanitarian disaster or violation of human rights. Besides the above mentioned specialized areas, JRS in special cases takes up resettlements.

The Society for Red Cross is also not funded by the UNHCR and its mandate is to help war victims. It does so by providing the necessary medical facilities to the victims.

This chapter has endeavoured to point out the UNHCR's major mandate toward protecting refugees, what led to its formation as well as its role and responsibility in Zambia. We have seen that UNHCR's goals in Zambia are realized through coordinated work with the government, UNHCR's partners as well as the non-governmental organisations. The next chapter shall look at the rights of refugees with reference to international protection, the enforceability of refugee rights in Zambia, the right to seek asylum and the principle of non-refoulement.

CHAPTER FOUR

THE RIGHTS OF REFUGEES

INTRODUCTION

As seen in the previous chapter, the refugee problem is essentially a human rights problem. People flee their countries of origin simply because in one way or the other, their rights have been violated. Every human being regardless of geography, gender, race, ethnic group, religion, political opinion, social status, national origin, is entitled to human rights. Human rights are meant to protect human dignity and ensure justice and peace⁴⁶. The Universal Declaration of Human Rights stipulates the rights that states are obliged to protect. These rights are given a binding nature in the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). State parties are expected to defend or observe these rights.

All human rights are universal, indivisible, interdependent and interrelated. States have a duty regardless of their political, economic and cultural system to protect and promote all human rights and fundamental freedoms⁴⁷. The rights of refugees are governed, *inter alia*, by the right to seek and enjoy asylum in other countries as well as by the principle of non-refoulement. These fundamental rights of refugees will be discussed in this chapter

⁴⁶ A. W. Chanda, *Human Rights in Zambia's Third Republic: An overview*, 1998 at 59

⁴⁷ Kourula, Pirkko, *supra* note at 72

as well as the international protection of refugee rights and the enforceability of refugee rights in Zambia.

4.1 INTERNATIONAL PROTECTION OF REFUGEE RIGHTS

Refugees are entitled to rights in the countries where they seek asylum. International protection expects states not to discriminate against refugees. They should enjoy at least some civil, social and economic rights that are enjoyed by other legal immigrants. National governments and state institutions are the key “players” in guaranteeing and protecting the rights of their citizens, but where it has been recognised that there is lack of national or state protection, international protection is invoked as an alternative.

In the context of refugees, international protection refers to a situation where the international community extends protection when “it recognises the specific needs of the people who have valid reasons to fear that their own government will not or cannot provide safeguards against abuse” ⁴⁸. International protection is merely a means of providing a temporary substitute for the normal protection that is provided by the state of one’s nationality, until such a time as the refugee can once again be accorded national protection.

⁴⁸ UNHCR: Introduction to international protection, emergency movement programme 1996 at 2

At the World Conference on Human Right held in Vienna, June 1993, certain declarations were made in respect of certain specific rights that have a bearing on the international protection of refugees. It was thus declared and reaffirmed, inter alia, that⁴⁹;

1. Victims (refugees) have a right to be assisted by humanitarian organisations as set out in the 1949 Geneva Conventions and other relevant instruments of international humanitarian law, calling for the safe and timely access for such assistance;
2. Extreme poverty and social exclusion constitute violation of human dignity;
3. Gross and systematic violation of human rights include torture and cruel, inhuman and degrading treatment or punishment, ...other denials of economic, social and cultural rights, religion
4. Freedom from torture is a right that must be protected under all circumstances including in times of internal disturbances or armed conflict.

The basic principle here is that, all people irrespective of their legal status within a country must be treated with humanity and in a way that preserves their right to dignity and physical, mental and integrity. This principle was brought out in the decision of Re Vs. London Borough of Hammersmith ex parte A and London Borough of lamseth ex parte X⁵⁰ where it was decided that a total denial of social support to a certain asylum-

⁴⁹ Ibid

seeker would almost certainly put the United Kingdom in breach of the European Convention on Human Rights and the 1949 Geneva Conventions.

Further, international protection was sought to be achieved in two ways; by creation and adoption of an international convention and by establishment of international agencies. Under the international convention and among others, we have the 1951 Convention Relating to the Status of Refugees which was the first universal instrument to set a basic framework to deal with the refugee problem. The organisation of African Unity (OAU) Convention regarding the Specific Aspects of Refugee Problems in Africa is the other instrument, which deals specifically with refugees under the international agencies. The core agency is the UNHCR. Besides its two main functions mentioned already, as part of its protection function, the UNHCR also promotes refugee rights in such fields as education and employment. The office performs roles depending on the agreement it has with the host country. In Zambia, for example, it helps with certifying the eligibility of refugees, it intervenes on behalf of individual refugees if they are to be returned to countries where their lives would be at stake, it also intervenes whenever other rights are likely to be or are denied, abused or violated.

4.2 THE ENFORCEABILITY OF REFUGEE RIGHTS IN ZAMBIA

⁵⁰ HC 8th October 1996

As already mentioned in chapter two of this dissertation, the only piece of legislation that has been passed in Zambia that deals directly with refugees is the Refugee (Control) Act of 1970. This Act was intended to regulate the movement and activities to those whom Zambia had granted refugee status. It does not guarantee rights to refugees in Zambia. However, once refugees have been recognised as refugees, they are entitled to the following rights⁵¹:

1. The right not to be deported to the country of origin or some other country where they fear persecution;
2. The right to engage in wage –earning employment or self-employment, and to practice the liberal profession upon satisfaction of any applicable local requirements in Zambia, such as professional affiliation to regulatory bodies in a given profession;
- 3 The right to acquire moveable and immovable property;
- 4 The right to a refugee identity card;
- 5 The right to be issued with a travel document for valid travel reasons, and upon satisfaction of the established criteria for the issuance of such documents;
- 6 The right to be re-united with his/her family, if the degree of relationship satisfies the Zambian definition of family and dependants;
- 7 The right to associate in non-political and non-profit making associations;

⁵¹ UNHCR: Guide for asylum-seekers and refugees in Zambia 1998 at 4

8 The right to elementary education.

Despite having these rights in place for recognised refugees, refugees in Zambia do not as such benefit from the laws passed for the protection of the nationals. For example, in Redebe Vs. The People⁵², the refugee in question tried to rely on the constitution of the Republic of Zambia. The court stated that he could not since he was not a citizen of the state. Thus, the Refugee (Control) Act of 1970 does not guarantee right to refugees

In Zambia therefore, refugee rights are largely unenforceable. The main reason being that, their rights are not legally recognised within Zambian laws and therefore unenforceable. The Government if it so wishes can treat a refugee in an unfriendly manner and his/her chances of successfully appealing to the judiciary or police are very slim. The rights so guaranteed can only be enforced on an international plane. Zambia can be liable for not honouring her promises only before an international court or tribunal.

4.2 .THE RIGHT TO SEEK ASYLUM

This right is not expressed in the 1951 convention or the 1967 protocol. When people speak of the right of asylum, more often than not, they mean the right to be granted asylum. No such right was recognised under the customary international law. However,

the “right of asylum” is understood as the right of a state to grant asylum to individuals in its territory or in other places under the control of certain of its organs⁵³.

Two international instruments provide for such a right; the Universal Declaration of Human Rights 1948. Article 14 reads:

“Everyone has a right to seek and enjoy in other countries asylum from persecution”

This was not the exact wording of the draft of the declaration. The above is rather a weak and watered version. The draft read:

“Everyone has the right to seek and to be granted asylum in other countries from persecution.”

The African Charter on Human and Peoples Right uses a much stronger language. Article 12 (3) states that *one has the right to seek and obtain asylum*.

Asylum is the major form of international refugee protection. It is the principal means through which states meet their obligations towards refugees on their territory⁵⁴. Unfortunately, states are not bound to grant asylum. There is no treaty or convention that obliges states to grant asylum. While an individual has a right to seek asylum, a state on the other hand has discretion to decide whom to grant asylum. In the Columbia Peruvian

⁵² (1972) Z.R. at 298.

⁵³ Atle Grahl-Madsen, The status of refugees in international law. 1972 at 6

⁵⁴ UNHCR: Supra note 33 at 32

Asylum Case⁵⁵, the International Court of Justice found that the right of a state to grant territorial asylum implies “only the normal exercise of the territorial sovereignty”, and needs no further justification. There is, therefore, no express obligation on a state to admit refugees to its territory.

The OAU convention on the other hand and in trying to promote asylum, has strengthened the individual’s right to territorial asylum by obliging the signatory states to use their best endeavours to receive refugees and to secure settlement for them. The convention deems the granting of asylum as a legal obligation of states and stipulates in Article 11(2) that *the granting of asylum to refugees is a peaceful and humanitarian act and should not be regarded as an unfriendly act by any member state*.

In Zambia, this right is not constitutionally recognised but it is implied under the Refugee (control) Act. The Minister of Home Affairs’ decision on whether one is a refugee or not is final. No appeal system exists. If one has been declared a refugee but the state is not willing to grant asylum, then the UNHCR has to look for a third country willing to take the refugee.

⁵⁵ (1950) I.C.J. at 266

4.4 THE PRINCIPLE OF NON-REFOULEMENT

This principle of non-refoulement “prohibits the expulsion or forcible return of refugees to a country where they may have reasons to fear persecution or other threats to their lives, liberty or security⁵⁶.” This principle is interrelated to the right to seek and enjoy asylum from persecution as expressed in Article 33 of the UN:

“No contracting state shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion”

This principle is very vital as it protects refugees whose rights to remain in their country of origin have been violated. This principle is also expressed in Article 11 (3) of the OAU convention governing Specific Aspects of Refugee Problems in Africa and Article 3 (1) of the Covenant Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment which extends the principle to any state party thereto. The European Convention on Human Rights likewise has a similar prohibition on refoulement in Article 3 (1).

The principle of non-refoulement is not however an absolute principle. Article 33 (2) of the 1951 convention states:

⁵⁶ CRDD No. 215, No. 195-7647 (QL)

“The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country.”

Therefore, a refugee who is guilty of a common offence is not exempted from legal sanctions. If he commits a crime in his country of asylum, he should be tried and if guilty be punished according to the law of that country. Where the crime is very serious, such a refugee may be deported to his country of origin.

Violations of this principle of non-refoulement have taken place. For example, the case of Sale Vs. Haitian Centers Council (1993), the issue was the return of refugees from a state's frontiers. In this case, the Supreme Court of the United States of America upheld the view that the interception of international asylum-seekers on the High Seas was not a violation of the letter and spirit of the 1951 convention. This decision has been described by the High Commissioner for Refugees “as a setback to modern international refugee law.”

In Zambia, the Refugee (Control) Act, in section 10 and 11, provides protection from deportation to the territory from which a refugee came if he or she :

“may be tried, or detained or restricted or punished without trial, for an offence of a political character after arriving in the territory from which he came or is likely to be the subject of physical attack in such territory.”⁵⁷

Section 10 (1) allows the minister to order any refugee to return “to the territory from which he entered Zambia,” and Section 11 proscribes an Immigration Officer (“IO”) from refusing to issue a refugee permit if the IO “has reasons to believe” the above mentioned consequences will ensue.

It is clear therefore that, the principle of non-refoulement is not absolute and the violation of the principle occurs when⁵⁸:

1. Asylum seekers are rejected at the frontier when they have no possibility of seeking asylum elsewhere;
2. A refugee is expelled from the country of asylum to a territory where his/her life, liberty or physical security may be in danger; and/or when;
3. Refugees are forcibly returned to their country of origin where they fear persecution, or are sent to a country where they can be deported to their country of origin where they fear persecution.

⁵⁷ Section 10 (4)

⁵⁸ Protecting Refugees: A field Guide for NGOs. 2001 at 21.

Despite this principle not being absolute, states have an obligation under the refugee conventions to respect the principle of non-refoulement. Normally, when this principle is violated or threatens to be, UNHCR responds by intervening with relevant authorities. Persons facing refoulement may have recourse to relevant human rights mechanisms, such as the Committee Against Torture.

This chapter has spelt out the rights of refugees with reference to international protection of refugee rights. It has also discussed how enforceable these rights are in Zambia and shown that their enforceability is inadequate, the reason being that they are not legally recognised in the Zambian law. In particular, we have discussed the right to seek asylum and the principle of non-refoulement. The last and final chapter is going to look at repatriation, taking Angolan refugees as an example in the current repatriation programme.

CHAPTER FIVE

REPATRIATION

INTRODUCTION

International protection is a temporary substitute for the normal safeguards of national protection. International protection includes seeking solutions to the refugee problems. The best solution is voluntary repatriation; refugees freely choosing to return home. Thus, apart from providing international protection to refugees, the twin element of UNHCR's mandate is to find lasting solutions to refugee problems. There are basically three solutions to the refugee problems; voluntary repatriation, which occurs when conditions in the country of origin permit return and is considered the best and preferred solution, local integration, which means assimilation in the country of asylum and occurs when refugees have established sufficient strong cultural, social, economic or other links with their country of asylum and where return to the country of origin is not feasible in anytime frame, and finally resettlement, which means finding asylum in a third country due to exceptional circumstances (Robinson N. Convention Relating to the Status of Refugees. 1997). This chapter is going to focus on voluntary repatriation as a long-term solution to the refugee problem.

5.1 VOLUNTARY REPATRIATION

Voluntary repatriation means that, after reviewing all available information about conditions in their country of origin, refugees decide freely to return home.⁵⁹ Refugees should not be compelled to return to their countries of origin, nor should they be prevented from returning. UNHCR and Non-governmental Organisations (herein called NGOs) staff meet with the refugees who are considering return, talk to them about their decision and request written confirmation that the decision has been made freely and with full awareness of the conditions they will find in their home country.

According to its statutes, UNHCR may promote or facilitate voluntary repatriation. It does so when certain essential preconditions are met:⁶⁰

1. There must be an overall, general improvement in the situation in the country of origin so that return in safety and with dignity becomes possible for the large majority of refugees;
2. All parties must be committed to respect fully the voluntary character of the repatriation;

⁵⁹ UNHCR: Protecting Refugees; A field guide for NGOs, 2001 at 60.

⁶⁰ Ibid.

3. The country of origin must have provided a formal guarantee, or adequate assurance for the safety of repatriating refugees, as appropriate;
- 4 UNHCR must have free and unhindered access to refugees and returnees;
5. The basic term and conditions of return should, if possible, be incorporated in a formal repatriation agreement between UNHCR and the authorities concerned.

Therefore, whether or not refugees can eventually be repatriated depends most crucially on the development of the conditions in the refugee's home country. Refugees must be able to return in safety and with dignity.

Further, the UNHCR assists refugees who wish to voluntarily return to the country of origin, provided there is no on going armed conflict in the proposed area of return. Such assistance includes:⁶¹

1. Counseling on the current situation in the refugee's country of origin;
2. Some travel allowance and transport cost;
3. Obtaining of travel documents where these are required;
4. Completion of the voluntary repatriation declaration forms;

⁶¹ Jesuit Refugee Service: Guide for Refugees. At 10

5. Obtaining clearance from the authorities in the country of origin for safe return.

The UNHCR, the host government, the home government and interested non-governmental organisations together organise the return home of the refugees.

Although voluntary repatriation is the preferred long-term solution for the majority of refugees, because of an ongoing threat of persecution or other reasons, some refugees cannot repatriate. Local integration in the country of asylum as well as resettlement are such other solutions. Refugees can integrate themselves in the Zambian society by engaging themselves in lawful and meaningful developmental work such as:

(i) For refugees in settlements

The two Zambian settlements, Meheba and Mayukwayukwa, have been designed as agricultural centers. Therefore, refugees can farm for self-sustenance and also for producing surpluses for trade. Other economic activities, such as handcrafts, have also been developed in the settlements.

(ii) For refugees in Urban Areas

Under strict legal and economic conditions, refugees can be allowed to develop wage-earning employment or self-employment in urban areas. According to the Refugee

(Control) Act, to live outside a camp, a refugee must obtain through the immigration office a work permit or a study permit. Once legally residing in an urban area, a refugee can enroll him/herself in skill training programs for refugees to improve their professional abilities.

The Zambian authorities facilitate access to public education and health services to refugees. These also are effective integration mechanisms.

Furthermore, resettlement is a vital tool of international protection and a durable solution to the problems of refugees. Resettlement means relocation to a third country of asylum. Resettlement under the UNHCR is primarily geared to the special needs of refugees whose lives, liberty, safety, health or other fundamental human right is at risk in the country in which they sought refuge. Therefore, third country resettlement involves the transfer of refugees from the country in which they sought refuge to another state that has agreed to admit these people.

5.2 REPATRIATION OF ANGOLAN REFUGEES FROM ZAMBIA

Zambia has shown generosity to refugees over the years. Recently, the United Nation High Commissioner For Refugees (UNHCR) and the government of Zambia on 11th July

2003 launched the voluntary repatriation of Angolan refugees from Maheba refugee settlement in Zambia's North- western Province. This was the first return convoy from Zambia to Angola. About 387⁶² happy returnees volunteered to return home. Following the launch, several convoys averaging 1,000 refugees per week have been departing for Angola from Meheba refugee settlement.

Therefore, since the signing of the cease-fire agreement between UNITA and the Government of Angola in 2002 resulting in cessation of hostilities in that country, tripartite agreements have been signed with neighbouring countries in the region hosting Angolan refugees including Zambia. Angola signed tripartite agreements with the government of Zambia, Namibia, the Democratic Republic of Congo and the UNHCR for the voluntary repatriation of Angolan refugees in these countries. This has been the form of the legal basis for any organised voluntary repatriation.

Furthermore, more than 15,000⁶³ Angolan refugees have registered to return home from Meheba alone under the return programme to be carried out over the next two years. Apart from repatriation of Angolan refugees, the UNHCR and the government of Zambia

⁶² UNHCR: Voluntary Repatriation of Angolan refugees gains momentum. 2003 at 3.

⁶³ Ibid.

have continued to assist other refugees, for instance, as of August, 2003, some 62⁶⁴ Rwandan refugees had been assisted to return home. It is clear that voluntary repatriation is the preferred long-term solution for the majority of refugees.

This chapter has provided the lasting solution to the refugee problem. Repatriation is the most preferred solution among others. Repatriation should be voluntary. The host government, the home government of a refugee as well as the UNHCR and other voluntary organisations, organise the repatriation of refugees. Currently, Zambia has and is still repatriating thousands of Angolan refugees as well refugees from other countries.

⁶⁴ Ibid.

CONCLUSION AND PROPOSALS

SUMMARY

The term 'refugee' in the ordinary usage signifies someone in flight, who seeks to escape conditions or personal circumstances found to be intolerable. The reason for flight may range from war, civil strife, natural disaster, earthquake, flood to famine.

At international level, the term 'refugee' means a person who is forced to leave his country of origin for specific reasons such as persecution for reasons of race, religion, nationality, and membership in a particular social group or political opinion, and who is outside his country of origin and does not have its protection. Refugee definition in international law is of critical importance for it can mean the difference between life and death for an individual seeking asylum.

It has been established that the main reasons for flight are as a result of violation of human rights and threat to human security. Under the Zambian law, the minister has been empowered to give refugee status to any person whom he deems fit. There are no national guidelines with regard to status determination. Each state has its own procedure and the UNHCR is there to make sure that the refugee law is complied with. In Zambia, the Refugee (Control) Act of 1970 was enacted to help implement refugee law at national

level. However, this Act has not been very effective nor does not address the refugee problem adequately.

Further, it has been seen that, the UNHCR came into existence in 1950. Before then, the League of Nations was responsible for the protection of the rights of refugees and was given the mandate to find solutions to the refugee problem. The League of Nations was replaced by the International Refugee Organisation in 1947 whose mandate was to protect the already existing refugee groups and other new categories of refugee who were scattered throughout Europe after the World War II. Since 1951, the UNHCR has been responsible for protecting refugees and promoting lasting solutions to their unending problems. In Zambia, UNHCR works hand in hand with the government as well as other organisations in implementing its programmes.

When an individual's government is not willing or is unable to protect its citizens from such violations and threats, there is need to seek protection elsewhere. This is what is referred to as international protection. Refugees should enjoy at least some civil, social and economic rights that are enjoyed by other legal immigrants.

It has further been established that, in Zambia, refugees do not as such benefit from the law passed for the protection of the nationals. The Refugee (Control) Act does not guarantee rights to refugees in Zambia. Their rights are largely unenforceable the reason being that they are not legally recognised.

Further, it has been noted that refugees have a right to seek and attain asylum. This is a fundamental right as well as a basic human right. It is the cornerstone of international refugee protection. This right though not provided for in the 1951 convention, is provided for in the Universal Declaration of Human Rights of 1945. However, this right only means the right for a state to grant asylum and it does not entail a corresponding right of an individual to be granted asylum. In other words, it is dependent upon each state. States are not bound to grant this right. Under the 1969 OAU convention, article II provides for asylum. According to this convention, member states of the OAU should use their best endeavours in line with their respective legislation to receive refugees and to secure their settlement – Article II (2)

The principle of non-refoulement also plays a very important role in complementing the right to seek and attain asylum from persecution. This principle protects people whose right to remain in their home country has been violated. This principle basically demands

that refugees should not be forced to return to places where their lives or freedom would be threatened. However, this right is not absolute.

One of the solutions to refugee problem is repatriation. It has been noted that, voluntary repatriation is the most effective solution. Refugees must not be forced to return to their home countries if they feel that their lives are in danger. Currently, Zambia has launched a repatriation programme for Angolan refugees. This, in itself is a big achievement in the history of Zambia.

PROPOSALS

Reconsideration of the definition in the Zambian law

The Zambian Refugee (Control) Act of 1970 does not define who a refugee is. It merely empowers the minister under section 3 to declare whosoever he wishes a refugee. This in itself brings confusion in making a distinction between a refugee and other asylum seekers. The Zambian law governing refugees should be brought in line with either the 1951 Convention or the OAU convention. The minister should not be the one to decide who a refugee is, but rather it should be clearly stated in the Act itself. The way the Act is, it is possible for the minister to deny a genuine asylum seeker the status of a refugee. Therefore it is necessary that section 3 of the Act be amended by clearly stating who a

refugee is. The Zambian law fails to reflect the full range of phenomena that gives rise to involuntary migration. Further, the Act does not clearly spell out the rights of refugees and what should be done when these rights are infringed. In fact, it does not provide for any procedure. Their rights are largely unenforceable.

Furthermore, the Act places too many restrictions on refugees. For instance, refugees are not allowed to move freely or to bring animals from their countries of origin. Basically there is need to enact the Act to bring it into conformity with international instruments as well as to suit the current situation.

Citizenship

No matter how long a refugee has stayed in Zambia, there is no possibility of becoming a Zambian. The law of Zambia does not provide for such possibilities. Worse still, even the children born of refugee parents also become refugees. We have qualified refugee doctors, lawyers and teachers who have contributed greatly to the Zambian economy for years but still, they cannot be granted citizenship. The author would recommend that, depending on how long one has lived in Zambia, be granted the citizenship to facilitate their smooth contribution to the development of the country's economic performance. There is no need to keep a refugee for 30 years and still deny him citizenship. Therefore, there is need to provide in the law a section dealing with refugee citizenship.

The approach to refugee problems

The key to the protection of refugees is provision of the basic and fundamental amenities. These include food, reasonable shelter, access to education and health facilities. A failure by the host country to provide these basic amenities can lead to a situation where refugees are forced to return to their home country as was the case with the Congolese refugees who fled Zambia due to starvation in 2001 (From BBC World News). People that find themselves in refugee situations should not be encouraged to wholly depend on their host countries, UNHCR or other organisations for their livelihood. Their home government should be able to provide the necessary assistance as much as possible. Besides this, refugees should get involved in various activities to generate income for themselves. This will help to reduce pressure on the Zambian economy, which has limited resources. Refugees must be made as independent as possible.

BIBLIOGRAPHY

BOOKS

Grahl-Madsen, A.(1972): **The State of Refugees in International Law vol. II.**

Netherlands. A.W. Sythoff.

Hakovirta, H. (1986):**Third World Conflicts and Refugeeism.** Helsinki. Finland.

Hamrell, S.(1967): **Refugee Problem in Africa.** Nordiska Afrikainstitute.

Sweden.

Louise, H. Refugees;(1975): **A Problem of Our Time.** Rowanan & Ilanheld NewJersey .

Legal Resource Foundation ,(2002): **A refugee Guide to Refugees and Issues in**

Southern Africa, Lusaka. Zambia.

Melander, G.(1978): **African Refugees and the Law.** Nor diska Afrikainstitute. Sweden.

Miserez, D.(1987): **Refugees: The Trauma of Exile.** Dordrecht-Boston. London.

Rogge, J. R(1985): **Too Many Too Long: Sudan's Twenty Year Refugee Dilemma.**

Rowanan & Allanheld; New Jersey.

Simpson, J.H.(1939):**The Refugee Problem.** Oxford University. London

Weis, P.(1977):**African Refugees and the Law**

Magazines

UNHCR (1993): **The State of the World's Refugees: The Challenge of**

Protection. U.N. Penguin Books.

----- (1996): **Introduction to International Protection, Emergency**

Management Training Programme.

-----**(1997/1998): The State of the World's Refugees, A Humanitarian**

Agenda. Oxford University Press. Oxford.

-----**(1998): Refugees.**

-----**(1999): Rising from the Ashes.**

-----**(1999): Talking About Refugees.**

-----**(2001): Protecting Refugees: A Field Guide for NGOs.**

-----**(2003): Africa at Crossroads.** Geneva. Switzerland.

-----**(2003): Voluntary repatriation of Angolan Refugees Gains**

Momentum.

Legislation

Refugee (Control) Act, Cap. 210 of the Laws of Zambia

1951 Convention and 1967 Protocol Relating to Status of Refugees.

General Assembly Resolution 539 of the U.N., dated 4th February, 1952.

1969 O.A.U Convention Governing the Specific Aspects of Refugees Problems in Africa.

Resolution 428(V) of U.N. General Assembly.

Cases

R v. London Borough of Hammersmith *ex parte* A and London Borough of Lamseth *ex parte* XHC 8 October 1996

Redebe v. The People (1972) ZR 298.

Columbia Peruvian Asylum Case (1950) ICJ 266.