

WORKSHOP DISCUSSION ON REFUGEE STATUS DETERMINATION  
(RSD) AND RIGHTS IN SOUTHERN AND EAST AFRICA

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COUNTRY OVERVIEW: ZAMBIA

‘THE ADMINISTRATION OF REFUGEES IN ZAMBIA’

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## **Abbreviations**

ACHPR	African Charter on Human and Peoples' Rights
ACRWC	African Charter on the Rights and Welfare of the Child
AU	African Union
CAT	Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment
CEDAW	Convention on the Elimination of all forms of Discrimination Against Women
CERD	Convention on the Elimination of all forms of Racial Discrimination
COMESA	Common Market for Eastern and Southern Africa
COR	Office of the Commissioner for Refugees
CRC	Convention on the Rights of the Child
DJOC	District Joint Operational Committee
DRC	Democratic Republic of Congo
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
NEC	National Eligibility Committee
NGO	Non-governmental Organisation
PJOC	Provincial Joint Operational Committee
RSD	Refugee Status Determination
UNHCR	United Nations High Commissioner for Refugees
SADC	Southern African Development Community

## **1. Introduction**

### **1.1 Outline**

This paper will briefly discuss the legal system and refugee situation in Zambia. The paper will then highlight the various international and regional refugee and human rights instruments to which Zambia is a party. Domestic legislation that addresses refugees will be analysed and pertinent provisions will be emphasised. The Refugee Bill 2008 which is draft legislation will also be examined to determine whether it improves on existing legislation or not.

Zambia has two parallel RSD procedures, and both will be explained. Furthermore, there will be an examination of select refugee rights and durable solutions. The paper will conclude with recommendations.

### **1.2 Country Profile**

#### **1.2.1 Common Law**

Zambia is a former British colony. Consequently, the legal system that pertains is that of common law operating parallel to a customary law system.<sup>1</sup> Zambia is a democratic state with a written constitution that is the supreme law of the land.

#### **1.2.2 Dualist Jurisdiction**

Zambia is a dualist state or has a dualist jurisdiction. Accordingly, international law and national law are fundamentally different and domestic law making is required to transform or incorporate international law into national law,<sup>2</sup> also referred to as domestication.

#### **1.2.3 Brief Review of the Refugee Situation**

##### **a) Numbers**

According to UNHCR statistics dated January 2010, Zambia hosts 56,785 refugees and 78 asylum seekers. The number of refugees and asylum seekers residing in Zambia has reduced from 78,000 in mid June 2009.<sup>3</sup>

##### **b) Location**

Refugees of various nationalities reside in both rural and urban areas. Some prominent figures and nationalities include:<sup>4</sup>

- i) 18,700 Angolan refugees were located in Mayukwayukwa and Meheba settlements while 8,200 were settled among local communities;
- ii) About 25,200 Congolese refugees live in Kala, Mwange and Meheba camps whereas government estimates state that about 15,000 Congolese are spontaneously settled within local communities; and

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<sup>1</sup> Darwin, C (2005) *Report on the situation of refugees in Zambia*.

<sup>2</sup> Viljoen, F (2007) *International Human Rights Law in Africa* p 18.

<sup>3</sup> 2010 UNHCR country operations profile – Zambia <http://www.unhcr.org/cgi-bin/texis/vtx/page?page=49e485ba6>. Accessed on 27 October 2010.

<sup>4</sup> n 3 above; note that the figures expressed herein reflect figures from mid-2009 and may have changed.

- iii) About 4,500 refugees of various nationalities and about 2,000 refugees of various nationalities were settled among local communities. These various nationalities are made up of, although do not exclusively consist of, people of Burundi, Rwandans and Somalis.<sup>5</sup>

The settlements, camps and local communities referred to above are based in rural areas situated away from the main towns. Section 12 of the Refugees (Control) Act stipulates a policy of encampment and the majority of refugees reside in camps and settlements.

According to UNHCR 4,800 refugees of various nationalities are residing in Lusaka (the capital city of Zambia). Refugees based in Lusaka and other main towns are referred to as urban based refugees. However, Darwin disputes such figures stating that they are not accurate and the numbers could be as high as 10,000.<sup>6</sup>

**c) Camps and Settlements**

There are five camps and settlements in Zambia: Mayukwayukwa, Meheba, Kala, Nangweshi and Mwange. Mwange camp is to be closed by the end of 2010.<sup>7</sup>

**d) Refugee Populations and Movements**

The government, UNHCR and various stakeholders are engaged in a voluntary repatriation exercise of Congolese refugees in 2010. This exercise follows on the heels of a voluntary repatriation exercise for Angolan refugees from 2003 to 2007. From 2007 to date about 40,000 Congolese refugees have been repatriated according to a UNHCR report on its website.

By the end of 2010 about 7,000 Congolese are expected to be repatriated to the DRC. While parts of DRC remain volatile, refugees are being repatriated to secure locations that include Moba and Pweto provinces in the DRC.

**e) Availability of Information Concerning Refugee Laws and Practices**

Refugee laws and practices are not widely disseminated in Zambia. The laws that address refugee protection and administration include the Refugees (Control) Act, the Immigration and Deportation Act and the Anti-Human Trafficking Act. They are available in a number of places, for instance on a legal database (Kas Legal Library) sold to lawyers in particular and the public, on the National Assembly of Zambia website and they can be bought at Government printers. These sources of Zambian laws are not widely known to the public, which includes refugees. Additionally, the laws are usually accessed mainly by lawyers, government departments or NGOs that deal with refugee, immigration or trafficking issues.

Information on refugees and relevant laws and practices is not readily available to the population at large. Because RSD is administrative in Zambia, most information on cases is only available at either COR or UNHCR's Lusaka office.

Academically, courses on refugee studies are offered by a handful of universities in the country. For instance the University of Zambia's School of Law used to offer Refugee Law as an optional course

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<sup>5</sup> Darwin, C (2005) *Report on the Refugee Situation in Zambia*.

<sup>6</sup> n 5 p 7; note that the figures stipulated by Darwin stem from research conducted in 2005 and while the figures may have changed the problems of self settled refugees who are not registered with the office of the Commissioner for Refugees and not reflected in statistics still remain.

<sup>7</sup> 2010 UNHCR country operations profile – Zambia <http://www.unhcr.org/cgi-bin/texis/vtx/page?page=49e485ba6>. Accessed on 27 October 2010.

to fourth year law students. The School of Humanities also offers a course on refugee studies. Zambia Open University offers refugee law as a component of Immigration Law in the School of Law. In most of the aforementioned cases, the course is offered as an optional subject and only for one semester which means that only the basics are taught to a handful of students.

Not many law firms within the country represent refugees. This is mainly because most refugees are based in camps and settlements located far away from the towns in which the law firms are situated and secondly, (urban based) refugees cannot afford the steep legal fees. However, the Legal Aid Board which is a statutorily created institution is mandated to provide legal aid to indigent persons in Zambia.<sup>8</sup> The Legal Aid Act does not provide that legal aid shall be available to Zambian citizens only, but stipulates indigent persons.<sup>9</sup> Thus refugees should be able to apply for legal aid in civil and criminal matters, especially matters that involve refugee protection. According to UNHCR, refugees benefit from legal aid provided by the Legal Aid Board.<sup>10</sup>

Not many NGOs in the country have a mandate for refugee protection and attendant issues. A number of NGOs cooperate with UNHCR on refugee matters, for instance Zambia Red Cross and Legal Resources Foundation.

## **2. International Legal Framework**

### **2.1 International and Regional Refugee Instruments**

Zambia is a party to the 1951 Refugee Convention and its 1967 Protocol.<sup>11</sup> Zambia has entered reservations to this Convention regarding the rights to education, work, freedom of movement and the provision of travel documents. Zambia is also a party to the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa.<sup>12</sup>

### **2.2 International and Regional Human Rights Instruments**

#### **2.2.1 International Instruments**

Zambia has ratified the ICCPR and its Optional Protocol I, ICESCR, the CAT, CEDAW, CRC and CERD.<sup>13</sup>

Zambia entered a reservation to article 13(2)(a) of the ICESCR declaring that the full implementation of the right to free primary education for all could not be realised at the time. This was in reference to the postponement of the application of article 13(2)(a) due to its financial implications.<sup>14</sup>

#### **2.2.2 Regional Instruments**

Zambia is a member of the AU, a regional political organisation, COMESA and SADC. COMESA is a sub-regional economic organisation while SADC is a sub-regional political and economic organization; the two are similar in their firm resolve towards market integration and trade liberalization.<sup>15</sup>

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<sup>8</sup> The Legal Aid Act, Chapter 34 of the Laws of Zambia.

<sup>9</sup> Preamble of the Legal Aid Act, Chapter 34 of the Laws of Zambia.

<sup>10</sup> UNHCR (2007) *Zambia: Analysis of the Gaps in Protection of Refugees* p 42.

<sup>11</sup> Darwin, C (2005) *Report on the Refugee Situation in Zambia* p 13.

<sup>12</sup> USCRI *Zambia* (2009) <http://www.refugees.org/countryreports.aspx?id=2348>. Accessed on 24 October 2010.

<sup>13</sup> n 10 above p 12.

<sup>14</sup> Viljoen, F. (2007) *International Human Rights Law in Africa* p 123.

<sup>15</sup> Economic Commission for Africa Southern Area Office *The role of population and migration in enhancing regional integration in the SADC and COMESA regions* ECA-SA/SADC/TPUB/2008/3 p 13.

Zambia is party to the ACHPR and has ratified the Protocol on the Rights of Women in Africa, and the ACRWC as well as the SADC Charter on Fundamental Social Rights.

The rights enshrined in all the above mentioned instruments apply to refugees.

### 3. Domestic Legal and Policy Framework

#### 3.1 Refugees (Control) Act 1970

The Refugees (Control) Act was promulgated in 1970 ‘to make provision for the control of refugees; and to provide for matters incidental thereto.’ As Rutinwa points out, this Act addressed only a specific aspect of the refugee problem and did not comprehensively attend to refugee protection – the Act intended to (and does) control refugees.<sup>16</sup>

The Act originally did not define refugees, however, the Refugee (Control) (Declaration of Refugees) Order Statutory Instrument No. 240 of 1971 in section 2 defines refugees as ‘Persons who are, or prior to their entry into Zambia were, ordinarily resident outside Zambia and who have sought asylum in Zambia owing to 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 purposes of the Act.’ The broader definition of the 1969 OAU Convention was not incorporated into the Act.

The Act grants the Minister broad and sweeping powers over refugees. For instance the Act provides that ‘the Minister may at any time order any refugee to return by such means or route as he shall direct to the territory from which he entered Zambia.’<sup>17</sup> This allows for the expulsion of refugees to territories where their lives may be in danger in a manner that amounts to *refoulement*.<sup>18</sup> Although the particular Minister referred to in the Act is not stipulated, the reference is to the Minister of the Ministry of Home Affairs as the ministry that administers refugee affairs.

The Act also provides for the confiscation and slaughter of animals belonging to refugees as well as the detention and use of vehicles owned by refugees without assurance of compensation.<sup>19</sup>

The Act in section 12 stipulates that refugees are supposed to reside in refugee settlements and camps and makes it an offence for a refugee to fail to reside in the camps and settlements or if residing there, makes it an offence for a refugee to leave such places of residence without the necessary authorisation. This is a restriction on the movement of refugees.

No one is allowed to enter or leave the camps and settlement (if not a refugee) unless permitted by the Minister or other authorised personnel.<sup>20</sup> Additionally, the right of refugees to assemble freely is seriously hampered by section 14(2) of the Act.<sup>21</sup>

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<sup>16</sup> Rutinwa, B *Asylum and refugee policies in Southern Africa: A historical perspective* <http://www.sarpn.org.za/documents>. Accessed on 24 October 2010.

<sup>17</sup> s. 10 of the Refugees (Control) Act.

<sup>18</sup> n 16 above.

<sup>19</sup> n 16 above; s. 8 and 9 respectively of the Refugees (Control) Act 1970.

<sup>20</sup> s. 14 of the Refugees (Control) Act 1970.

<sup>21</sup> The said section states; ‘No person other than the Commissioner or a refugee officer may in a refugee settlement address an assembly or meeting of more than ten refugees, whether or not such meeting is held in a public place.’

The Act permits the use of force: *'authorised officers and any person acting with the authority of an authorised officer may use such force, including the use of firearms, as may be reasonably necessary to compel any refugee to comply with any order or direction made or given under this Act in relation to such refugee.'*<sup>22</sup> Consequently, the Act grants immunity to officers from any liability, claim, action or demand arising from their actions in enforcing the Act.<sup>23</sup>

In conclusion, the Refugees (Control) Act does not contain any refugee rights and does not stipulate rules and regulations for RSD. Therefore, it does not meet (minimal) international standards for the protection of refugees.

### **3.2 The Refugee Bill 2008**

The Refugee Bill 2008 is draft legislation intended to replace current refugee legislation and improve the administration and protection of refugees in Zambia. The Bill incorporates the 1951 Refugee Convention and 1969 OAU Convention definitions including instances of exclusion and cessation of refugee status and the procedure to be followed.

The Bill re-establishes the DJOC, PJOC and NEC as a single entity, the Refugee Status Determination Committee and creates an Appeals board that reviews appeals to the Minister. Whereas the Bill maintains that the Minister may designate places of residence for refugees in Zambia, it does not outline urban residency application procedures.

While the Bill does not expressly set out various refugee rights, it provides that refugees in Zambia shall be entitled to the rights and subject to the duties contained in the 1951 Refugee Convention and the 1969 OAU Convention. Furthermore, the Bill expressly enshrines the principle of *non-refoulement*.

The Bill provides for travel documents without the return clause and makes it relatively easier (in theory at least) for refugees to obtain work or study permits and refugee children will not require a study permit to attend primary school.

Finally and notable is the absence of durable solutions in the Bill. This renders the Bill a document that considers the refugee problem temporary in nature and it fails to adequately address the effects of protracted conflicts or the continuous presence of refugees in Zambia (both of which Zambia has experienced and continues to) leaving refugees and the government itself without solutions.

While the Bill contains positive changes that incorporate international standards, it does not address the pertinent issue of durable solutions for refugees despite the fact that a large population of refugees in Zambia are affected by protracted conflict (Congolese refugees) and many Angolan refugees are reluctant to return to Angola despite the restoration of peace.

### **3.3 The Immigration and Deportation Act 2010**

The Immigration and Deportation Act was repealed and a new Act was promulgated this year. The repealed Act allowed for temporary permits to be granted to asylum seekers whose application for refugee status was denied.<sup>24</sup> The present Act explicitly provides for an asylum seekers permit to be

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<sup>22</sup> s. 16(1) of the Refugees Control Act 1970.

<sup>23</sup> USCRI (2009) *Zambia* <http://www.refugees.org/countryreports.aspx?id=2348>. Accessed on 24 October 2010.

<sup>24</sup> s. 17 of the Immigration and Deportation Act No. 18 of 2010.

granted to any person seeking refuge or asylum in Zambia in accordance with the Refugees (Control) Act.<sup>25</sup> The section provides an expiry period for the permit, providing that if an asylum seeker does not report to the office of Commissioner for Refugees within the time period specified s/he will be declared an illegal immigrant and dealt with accordingly.<sup>26</sup> The Act makes it an offence for a refugee to be outside a refugee settlement without a permit.<sup>27</sup>

### 3.4 Refugee Status Determination (RSD) Procedures

UNHCR conducted RSD in Zambia until 1993 when it handed over RSD to COR, a department under the Ministry of Home Affairs.<sup>28</sup>

Zambia has two separate administrative RSD systems; provincial and Lusaka-based RSD. Each system is based on the location of the individual when s/he applies for recognition of refugee status and the treaty on which an individual's claim is based.<sup>29</sup>

#### 3.4.1 Provincial Based RSD

The provincial system determines refugee claims based on the 1969 OAU Convention and recognition is on a *prima facie* basis. Refugees who arrive in the provinces have their claims heard by one of two bodies: the DJOC or the PJOC. The two are located at entry points on the Zambian border and are made up of staff of either the Zambian police or immigration.<sup>30</sup>

The two bodies have no fixed meeting dates for the determination of refugee claims.<sup>31</sup> When the DJOC or the PJOC makes a decision, it sends it to the COR for confirmation.<sup>32</sup> If the DJOC or the PJOC is presented with a claim that falls under the 1951 Refugee Convention, the two bodies are obliged to refer the case to Lusaka to be processed under the Lusaka RSD procedure which involves NEC.<sup>33</sup> This process is not provided for in the law.

Refugees can appeal against the decision of the DJOC or PJOC to NEC. If refugees are recognised as such, they are sent to refugee camps.<sup>34</sup> If the DJOC or PJOC does not recognise refugee claims, they may recommend such claims be assessed on an individual basis based on the 1951 Refugee Convention by NEC in Lusaka.

#### 3.4.2 National Eligibility Committee (Lusaka)

The second system of RSD occurs in Lusaka for refugees that arrive in Lusaka as opposed to the provinces, as well as for those whose claims are referred to Lusaka by the DJOC or PJOC. NEC determines refugee claims based on the 1951 Refugee Convention and 1970 Refugees (Control)

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<sup>25</sup> s. 31(1) of the Immigration and Deportation Act No. 18 of 2010.

<sup>26</sup> s. 31(2) and (3) of the Immigration and Deportation Act No. 18 of 2010.

<sup>27</sup> s. 31(4) of the Immigration and Deportation Act No. 18 of 2010.

<sup>28</sup> Darwin, C (2005) *Report on the Refugee Situation in Zambia* p 14.

<sup>29</sup> n 28 above.

<sup>30</sup> UNHCR (2007) *Zambia: Analysis of the Gaps in Protection of Refugees* p 22.

<sup>31</sup> n 30 above; UNHCR states that the bodies meet as often as there are new arrivals of asylum seekers in Zambia.

<sup>32</sup> Darwin, C (2005) *Report on the Refugee Situation in Zambia* p 15.

<sup>33</sup> USCRI Zambia (2009) <http://www.refugees.org/countryreports.aspx?id=2348>. Accessed on 24 October 2010.

<sup>34</sup> s. 12 of the Refugees (Control) Act; Requirement to reside in ... refugee settlement.

Act.<sup>35</sup> NEC is chaired by the Commissioner for Refugees and includes representatives from the police, immigration department, Ministry of Foreign Affairs, Office of the President (Special division), Ministry of Labour and Social Services, a legal advisor from COR and a representative from UNHCR who sits in as an observer.<sup>36</sup> NEC meets every fortnight to hear cases.

Applications received from refugees that arrived in Lusaka begin with interviews with one of three legal advisers of COR. The legal advisor prepares a file. If the refugee falls within the ambit of the 1969 OAU Convention, the individual is recognised as a refugee and transferred to the camp.

If a refugee falls within the ambit of the 1951 Refugee Convention, the file is passed on to NEC for further interviews and determination. During interviews with NEC, refugees are not permitted representation by lawyers.<sup>37</sup> Additionally, refugees are not supplied with copies of their interview transcript with either the COR legal advisor or NEC. Relevant country of origin information and eligibility assessments are presented to members of NEC before interviews.<sup>38</sup> NEC considers the information and makes a decision which must be approved by the Commissioner for Refugees in order to represent a final decision.<sup>39</sup> Results are in the form of a letter typed in English and given to refugees. COR is supposed to advise refugees of their right to appeal a rejection although this is not a legally established right and is often delivered verbally.

If refugees are recognised by NEC, they are transferred to camps. If an application is rejected, the refugee may appeal. This consists of requesting a second interview from NEC. Alternatively, rejected applicants can appeal to the Minister of Home Affairs, requesting a review of the case.<sup>40</sup> If a refugee's application is rejected by the Minister, there is still a possibility of application for judicial review to the High Court of Zambia. However, there is no known case in which a refugee has applied for judicial review.<sup>41</sup> The Minister uses her/his discretion in the review of each case. There are no stipulated time limits for appeals although a refugee is supposed to apply within reasonable time. Results of an appeal are supposed to be communicated by written notification.

Despite section 12 of the Refugees (Control) Act, refugees may live in urban areas if they possess an employment, investors or study permit,<sup>42</sup> have family living in urban areas, suffer from health problems not treatable in the districts or are at risk of serious harm in the camps.<sup>43</sup> Authority to live in urban areas based on any of the aforementioned conditions is determined by the Committee on Urban Residence. Refugees granted urban residence are issued with electronic refugee cards that expire after three years and need to be renewed with conditions of possession of requisite Department of Immigration issued permits. Camp based refugees do not have such cards.

The Immigration and Deportation Act is silent as to whether an asylum seekers permit can be extended during an appeal process. However, it does provide for the issuance of a temporary permit

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<sup>35</sup> n 32 above p 16.

<sup>36</sup> n 30 above.

<sup>37</sup> UNHCR (2007) *Zambia: Analysis of the Gaps in Protection of Refugees* p 42.

<sup>38</sup> Darwin, C (2005) *Report on the Refugee Situation in Zambia* p 16.

<sup>39</sup> n 38 above.

<sup>40</sup> USCRI (2009) *Zambia* <http://www.refugees.org/countryreports.aspx?id=2348>. Accessed on 24 October 2010.

<sup>41</sup> n 38 above.

<sup>42</sup> Sections 26, 28 and 29 of the Immigration and Deportation Act No. 18 of 2010.

<sup>43</sup> n 40 above.

at the Minister's request.<sup>44</sup> As the Act is relatively new, it is considered that this is the permit that will be issued to appellants under the RSD system.

There is no social or economic protection available to applicants or appellants under the Lusaka based RSD, although the most vulnerable are assisted by UNHCR.<sup>45</sup> Vulnerable refugees are catered for in UNHCR's refugee policy, however there is no official policy of special provisions for vulnerable groups among applicants for refugee status under COR.<sup>46</sup> Special arrangements are usually left to care providers or partners such as Zambia Red Cross that host such applicants and arrange transport to and from COR offices for interviews and follow up.

### 3.5 Durable Solutions

The Constitution and the Citizenship Act have a condition that requires ten years of ordinary residence in Zambia in order for one to be eligible for a grant of citizenship if a foreigner.<sup>47</sup> UNHCR states that refugees cannot be granted citizenship or long term residency because refugees are not considered 'ordinarily resident' in Zambia.<sup>48</sup> Neither the Constitution nor the Citizenship Act defines 'ordinarily resident.' Consequently, the government is reluctant to grant citizenship or permanent residence to long term refugees that have been socially and economically integrated into Zambia.

In a number of media reports UNHCR and the government have reiterated how refugees cannot permanently settle in Zambia as they are not eligible for naturalisation. Zambian government representatives stated that the most viable solution for refugees was voluntary repatriation as refugees do not have the option of local integration.<sup>49</sup> It appears the lack of laws permitting naturalisation as well as security and high unemployment concerns are some of the reasons behind government reluctance to permit local integration. Of the three durable solutions available to refugees, only voluntary repatriation and resettlement are proffered in Zambia. The repatriation option has been applied to Angolan, Congolese and Rwandan refugees in Zambia.

On the one hand, resettlement is conducted by UNHCR and has stringent conditions with very minimal numbers of refugees being resettled every year. Voluntary repatriation on the other hand is actively encouraged by various stakeholders especially the Zambian government.

The lack of proper application of durable solutions has led to many refugees being forced to return to their countries of origin when they are unwilling to do so.<sup>50</sup> Many are afraid to return home due to

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<sup>44</sup> s. 27 of the Immigration and Deportation Act No. 18 of 2010.

<sup>45</sup> Darwin, C (2005) *Report on the Refugee Situation in Zambia* p 17.

<sup>46</sup> UNHCR (2007) *Zambia: Analysis of the Gaps in Protection of Refugees* p 23.

<sup>47</sup> Article 6(1)(b) of the Constitution Chapter 1 of the Laws of Zambia and s. 16(2) of the Citizenship Act Chapter 124 of the Laws of Zambia.

<sup>48</sup> UNHCR (2007) *Zambia: Analysis of the Gaps in Protection of Refugees* p 50.

<sup>49</sup> *Time up for DRC refugees to return home despite resistance* Times of Zambia Newspaper 1 March 2010 <http://www.times.co.zm/news/viewnews.cgi?category-all&id=1267423944>. Accessed on 29 October 2010. Minister of Home Affairs Lameck Mangani stated 'it is not up to the refugees to decide whether they want to remain in Zambia or be repatriated. All that these refugees need to do is to psychologically prepare before the repatriation commences this year in May.' *Donors favour voluntary repatriation of refugees* THE POST Thursday April 29 2010. *Congolese refugees' reluctance to return saddens UNHCR* THE POST Friday April 30 2010.

<sup>50</sup> *Time up for DRC refugees to return home despite resistance* 1 March 2010 Times of Zambia Newspaper <http://www.times.co.zm/news/viewnews.cgi?category-all&id=1267423944>. Accessed on 29 October 2010. This can especially be concluded from the low records of registration for the Congolese repatriation exercise; '...few

security concerns especially with regard to Congolese refugees, while a number of Angolan refugees having lived in Zambia for over a decade, have married Zambian citizens and built lives and businesses there. The structure of the resettlement solution is too rigid and largely inaccessible.

#### **4 Refugee Rights**

The Refugees (Control) Act does not enshrine any rights and while refugees have various rights under the 1951 Refugee Convention to which Zambia is party, the instrument has not been domesticated and the rights contained therein cannot be enforced in a court of law.

The Constitution of Zambia guarantees fundamental rights and freedoms to all persons within Zambian territory - not exclusively to Zambian citizens. These rights *inter alia* include life, liberty, privacy, property, protection from slavery, torture and inhuman treatment, protection from discrimination and protection of the law.

Refugees are entitled to enjoy most of the freedoms aforementioned, however, in practice they do not. For instance, refugees are not allowed to own real property in Zambia, protection from discrimination depends on whether various laws permit discriminatory treatment against foreigners, for instance investment laws. Additionally, refugees do not enjoy freedom of movement and are often subject to detention by immigration authorities for various reasons.

Economic and social rights are directive principles of state policy in Zambia and the government is not under legal obligation to fulfill these rights except as part of state policy. Nevertheless, refugees are able to enjoy various economic and social rights; they may engage in work if they have the requisite permits. In camps, UNHCR funds health facilities and refugees have access to these facilities. Urban refugees, however, face difficulties accessing health and other facilities as COR does not provide social or economic assistance to refugees.

Refugee children are provided with primary education of the same standard as Zambian citizens; this is despite the government's reservation to the right to education due to lack of financial capacity. Refugees above primary education level need study permits to attend school.

#### **5 Conclusion and Recommendations**

As previously stated, the Refugees (Control) Act does not enshrine any refugee rights and does not incorporate international refugee protection standards. The Minister has been allocated broad discretionary powers over refugee issues and there is a lack of established channels of appeal against the Minister's powers. Furthermore, there is a lack of interconnectedness among the various pieces of Zambian legislation that address refugee issues.

Due to the administrative nature of the RSD process and its lack of documentation, the process is vague. Results are presented to applicants and appellants only in the English language and refugees are not allowed to have legal representation during the process. This has resulted in refugees not adequately utilising or challenging the RSD process.

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*(Congolese) refugees have been coming forth to register for repatriation' and Donors favour voluntary repatriation of refugees* THE POST Thursday April 29 2010.

The government has prepared a Refugee Bill that is currently under review and incorporates many of the changes that are required to improve refugee protection. Notwithstanding, the Bill has a number of flaws; it has not stipulated the procedure for urban residence applications by refugees nor provided an appeal procedure. Secondly, while the Bill has set out the RSD procedure conducted by the RSD Committee, it is preferable that the procedure be at least partly judicial, which the Bill should expressly state. Dissatisfaction with decisions of the Minister, Refugee Status Committee or the Refugee Appeals Board should lie with the High Court of Zambia.

The Bill should also provide for legal representation of refugees and this can be incorporated in the Legal Aid Act that already stipulates the provision of free legal representation to Zambia's indigent.

With regard to durable solutions, UNHCR and the various stakeholders need to consider restructuring the resettlement system with regards to sub-Saharan refugees. The system needs to take note of refugees facing protracted conflicts, for instance Congolese refugees, and perhaps increase the number of places offered or encourage more African countries to provide resettlement for sub-Saharan refugees.

While Zambia has received and hosted refugees for many years, the process of RSD does not meet international standards and the protection offered to refugees is restricted. There is a need for an overhaul of the system. While this has begun with the Refugee Bill 2008 (which has been in existence since 2002), there are various issues that need to be effectively addressed, especially durable solutions to refugee problems.

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