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WORKING PAPER ON ZAMBIA'S

REFUGEE LEGISLATION

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1. Introduction

- 1.1 Zambia is a refugee accepting country and has always been considered a generous host to refugees. ¹ Zambia has ratified the 1951 Refugee Convention² and adopted the 1967 protocol³. However, the legislation predominantly used is that of the 1969 African Union Convention⁴. Zambia has a reservation to the 1951 Refugee Convention to do with refugees not having the right to employment, however, in practice refugees are employed and self employed. Further, there is a restriction to movement which limits refugees' abilities to get work.⁵
- 1.2 Currently, there are 83,485 refugees in Zambia and 57 asylum seekers.⁶ Refugees must live in designated camps and settlements. There are some exceptions to this, with permission from the appropriate authorities. The main camps are Mwanze [1999], Kala [2000], and Nangweshi [2000]. The main settlements are Mayukwayukwa [1966], Meheba [1971] and Ukwimi [2000].⁷ According to the United Nations High Commission of Refugees ('UNHCR'), Zambia began hosting refugees from nearby war torn countries two years after being granted independence in 1966.

¹ Walusiku, Percy M (2004) Provincial Coordinator Zambian Initiative, Interview October 14 and October 15, 2004 as cited in Zambian Refugee Policy, security, repatriation and local integration Johan Brosche and Maria Nilsson Uppsala University Department of Peace and Conflict Research, Minor field study, fall term 2004.

² Convention relating to the Status of Refugees, 189 UNTS 150, entered into force April 22, 1954.

³ Protocol relating to the status of refugees, 606 UNTS 267, entered into force October 4 1967.

⁴ Convention governing the specific aspects of refugee problems of in Africa, 1001 UNTS 45, entered into force June 20, 1974.

⁵ <<http://www.unhcr.org/cgi-bin/teaxis/vtx/page?page=49e485ba6>>

⁶ ID.

⁷ <<http://www.jrs.net/jrs/zmb/refugees.htm> as checked on 18 August 2009>

The most refugees that Zambia ever hosted was 280,000 in 2001. The main countries where refugees came from were the neighboring countries of Angola, Democratic Republic of Congo ('DRC'), Mozambique, Zimbabwe and Namibia. Additionally, there is a significant amount from Rwanda, Ghana, Sudan and Somalia. In 1995, Zambia was considered to have the third highest intake of refugees in Southern Africa.⁸

- 1.3 In respect of human rights, the rule of law is generally ignored.⁹ International law may only be relied upon, even if Zambia is a signatory, when it is incorporated into Zambian domestic law. However, in practice, international law can be directly relied upon.¹⁰

2. There is a wide range of information available concerning Zambia's laws. In 2005, Amera sponsored a detailed report¹¹ on the situation of refugees in Zambia, however, nothing further has been done to update this report. It is difficult to find up to date information on practices and policies. Human Rights Watch, UNHCR and

⁸ It was also Malawi and Zimbabwe. Mijerie, Nsolo (1995) Introduction: refugee resettlement models in southern Africa, African Refugees and human rights in host countries the long term demographic, environmental, social and psychological impacts of Angolan refugees in Zambia Vantage Press, Inc. 1995 p 8 as cited Zambian Refugee Policy supra note (1) p11.

⁹ Human rights, the rule of law, and development in Africa Tiyambe Zeleza, Philip J. McConnaughey University of Pennsylvania Press, 2004 p 215-222.

¹⁰ Longwe v International Continental Hotels (1993) 4 LRC (Const.) 221 as cited in International law and human rights litigation in Africa: Making a case in a labyrinth of systems and actors Horace Adjolohoun.

¹¹ Claire Darwin Report on the situation of refugees in Zambia 2005 written on behalf of Amera <www.amera-uk.org/Files/Zambia_AMERA_Report_FINAL.pdf>

US Department of State offer yearly reports on the Human Rights situation in Zambia. These are overview reports detailing specific human rights violations and statistics of the asylum seeker and refugee population.

It is also difficult to find out the progress of the ratification of the new Refugee Bill 2002. Additionally, there has been dialogue for years regarding changing the Constitution, however nothing tangible has come of it. There has been an establishment of the National Constitutional Conference¹² mandated to undertake a constitutional reform process.

3.

3.1 Ratification of international and domestic refugee instruments:

Zambia has its own Refugees (Control) Act, 1970 ('Act'). The Act was amended by the Refugees (Control) (Declaration of Refugees) Order (No.2) of 1971 ('Control Act'). The Control Act defined refugees as:

"Persons who are, or prior to their entry in Zambia were, ordinarily resident outside Zambia and who have 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 purposes of the Refugee Control Act, 1970"

¹² Act No 19 of 2007.

The Act restricts freedom of movement¹³ and freedom of speech and assembly¹⁴, and allows refoulement with exception to cases where a refugee 'may be tried, or detained or restricted or punished without trial, for an offence of a political character' in their country of origin.¹⁵ The Minister may grant refugee status to any class of persons, prima facie, however the minister may declare any member of a class of person not to be a refugee for the purpose of the Act.¹⁶

Zambia is a party to the United Nations Refugee Convention 1951¹⁷ ('1951 Convention') and the 1967 Protocol¹⁸, as well as the 1969 Convention of the Organization of African Unity ('OAU Convention')¹⁹, however, these have not been incorporated into domestic law. Zambia maintains a reservation to the 1951 Convention regarding the right to employment, education, freedom of movement and international travel documents.

3.2 International and domestic norms relevant to refugees:

Refoulement

As discussed above, refoulement is allowable under the Act as long as refugees who 'may be tried, or detained or restricted or punished without trial,

¹³ Section 5 and 9.

¹⁴ Section 14.

¹⁵ Section 10.

¹⁶ Section 3.

¹⁷ Convention relating to the Status of Refugees, 189 UNTS 150, entered into force April 22, 1954.

¹⁸ Protocol relating to the status of refugees, 606 UNTS 267, entered into force October 4 1967.

¹⁹ Convention governing the specific aspects of refugee problems of in Africa, 1001 UNTS 45, entered into force June 20, 1974.

for an offence of a political character' are exempted.

Seeking Asylum

It is the Minister whom decides whether the class of person or the individual is a refugee. The definition of a refugee may be found in the Control Act. Further, there is no deference made in terminology between a refugee and an asylum seeker. The Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment²⁰ ('CAT') has not been fully implemented. This added to the acceptance of refoulement leaves refugees vulnerable to deportation to a country that condones torture.

3.3 International and Regional Human Rights instruments ratified, reservations and declarations:

CAT was ratified 13 November 2002, however, it has not been fully implemented.²¹ CAT has not been incorporated into Zambia's legislation nor has it introduced provisions to implement CAT. A few examples would be that there is no definition nor criminalization of torture. This in unison with the allowance of refoulement would mean that refugees are vulnerable to being deported to places that condone torture.

²⁰ Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment G Ares 39/46, annex, 39 UN GAOR Supp. (No 51) at 197 UN Doc A/39/51 (1984), entered into force June 26, 1987.

²¹ Committee against torture Concluding observations of the committee against torture fortieth session CAT/C/ZMB/CO/2 26 May 2008.

Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the UN Convention against Transnational Organised Crime²² was ratified on 24 April 2005.

The International Covenant on Economic, Social and Cultural Rights²³ ('ICESCR') was ratified on 10 July 1984 with reservations.²⁴

The International Covenant on Civil and Political Rights²⁵ ('ICCPR') was ratified on 10 July 1984 with no reservations.

The International Convention on the Elimination of All Forms of Racial Discrimination²⁶ was ratified in 1972 with no reservations.

The Convention on the Elimination of All Forms of Discrimination Against Women²⁷ was ratified on 21 June 1985 with no reservations.

²² Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the UN Convention against Transnational Organised Crime UN Doc. A/55/383 at 25 (2000); UN Doc. A/RES/55/25 at 4 (2001); 40 ILM 335 (2001)

²³ International Covenant on Economic, Social and Cultural Rights, G Ares 2200A (XXI) 21 UN GAOR Supp (No. 16) at 49, UN Doc A/6316 (1966) 993 UNTS 3 entered into force 3 January 1976.

²⁴ 'The Government of the Republic of Zambia states that it reserves the right to postpone the application of article 13 (2) (a) of the Covenant, in so far as it relates to primary education; since, while the Government of the Republic of Zambia fully accepts the principles embodied in the same article and undertakes to take the necessary steps to apply them in their entirety, the problems of implementation, and particularly the financial implications, are such that full application of the principles in question cannot be guaranteed at this stage.'

²⁵ International Covenant on Civil and Political Rights G Ares 2200A (XXI) 21 UN GAOR Supp (No. 16) at 52, UN Doc A/6316 (1966) 999 UNTS 171 entered into force 23 March 1976.

²⁶ International Convention on the Elimination of All Forms of Racial Discrimination 660 UNTS 195 entered into force 4 January 1969.

The Convention of the Rights of the Child²⁸ was ratified on 5 January 1992 with no reservations.

Zambia is not a signatory of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.²⁹

Zambia is not a signatory of the Universal Declaration of Human Rights.³⁰

3.4 Zambia's Constitutional protection of refugee's human rights

Part III of the Zambian Constitution outlines the protection offered to the fundamental rights and freedom of the individual. Article 11 states that:

"every person in Zambia" is "entitled to the fundamental rights and freedoms of the individual ... whatever his race, place of origin, political opinions, colour, creed, sex or marital status ... to each and all of the following, namely: (a) life, liberty, security of the person and protection of the law; (b) freedom of conscience, expression, assembly, movement and association ..."

²⁷ Convention on the elimination of all forms of discrimination against women, G Ares 34/180 34 UN GAOR Supp (No 46) at 193, UN Doc A/34/46, entered into force 3 September 1981.

²⁸ Convention on the right of the child, G Ares 44/25 annex 44 UN GAOR Supp (No 49) at 167 UN Doc A/44/49 (1989), entered into force 2 September 1990.

²⁹ International convention on the protection of the rights of all migrant workers and members of their family, GA res 45/158 annex 45 UN GAOR Supp (No 49A) at 262 UN Doc A/45/49 (1990), entered into force 26 June 1987.

³⁰ Universal declaration of human rights (1948) G Ares 217A(III).

However, Article 11 is subjected to:

"... such limitations designed to ensure that the enjoyment of the ... rights and freedoms by any individual does not prejudice the rights and freedoms of others or the public interest."

Part III of the Constitution additionally protects a person's right to life³¹, personal liberty³², freedom from slavery and forced labour³³, freedom from torture or degrading punishment³⁴, due process of law³⁵, freedom of assembly and association³⁶, freedom of movement³⁷, and freedom from discrimination.³⁸

However, these Constitutional protections offered to all persons come with limitations and exceptions applicable to refugees.

Personal Liberty

Article 13 of the Constitution allows deprivation of personal liberty "for the purpose of preventing the unlawful entry of that person into Zambia" and in the "execution of a lawful order requiring that person to remain within a specified area within Zambia or prohibiting him from being in such area".

Protection from slavery and forced labour

³¹ Article 12.

³² Article 13.

³³ Article 14.

³⁴ Article 15.

³⁵ Article 18.

³⁶ Article 21.

³⁷ Article 22.

³⁸ Article 23.

Article 14 excludes from the expression of "forced labour", "labour required of any person while he is lawfully detained ... for the maintenance of the place at which he is detained".

Freedom of Assembly and Association

Article 21 allows exceptions to be made "under the authority of any law" as long as it falls with the provisions within the article, namely that it is:

"(a)...reasonably required in the interests of defence, public safety, public order, public morality or public health; (b) that is reasonably required for the purpose of protecting the rights or freedoms of other persons'.

Freedom of Movement

Article 22 allows an exception to freedom of movement "in accordance with any other written law". Under Article 26, when a person is detained he will receive within 14 days of his detainment a statement detailing the grounds upon which he is being detained. However, in Mifiboshe Walulya v The Attorney General³⁹ the Supreme Court held that the provision did not apply to refugees or prohibited immigrants.

Article 28 of the Constitution provides the procedural protection to address a contravention of the protective provisions [Articles 11 to 26] against a person.

4. Overview of Zambia's Refugee legislation

³⁹ Mifiboshe Walulya v The Attorney General 1984 ZR 89.

4.1 Legislation affecting refugees

Zambia has its own Refugees (Control) Act, 1970 ('Act'). The Act was amended by the Refugees (Control) (Declaration of Refugees) Order (No.2) of 1971 ('Control Act'). The Control Act defined refugees as:

"Persons who are, or prior to their entry in Zambia were, ordinarily resident outside Zambia and who have 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 purposes of the Refugee Control Act, 1970"

The Act restricts freedom of movement⁴⁰ and freedom of speech and assembly⁴¹, and allows refoulement with exception to cases where a refugee 'may be tried, or detained or restricted or punished without trial, for an offence of a political character' in their country of origin.⁴² The Minister may grant refugee status to any class of persons, prima facie, however the minister may declare any member of a class of person not to be a refugee for the purpose of the Act.⁴³

⁴⁰ Section 5 and 9.

⁴¹ Section 14.

⁴² Section 10.

⁴³ Section 3.

The Constitution gives Parliament discretion to exclude refugees from applying for citizenship.⁴⁴

The Immigration and Deportation Act⁴⁵ ('Immigration Act') states that the presence in Zambia of a "prohibited immigrant" is illegal.⁴⁶ The Second Schedule of the Immigration Act defines who is a prohibited immigrant. A prohibited immigrant includes those who fail to establish that they are the holder of a valid passport,⁴⁷ any person who fails to appear before an immigration officer,⁴⁸ any person who the Chief Immigration Officer believes is not of good character⁴⁹, those in Zambia who have been issued a permit but it has expired,⁵⁰ any person in Zambia without a valid permit who is likely to "become a charge on the Republic in consequence of his inability to support himself and any of his dependants",⁵¹ and any "person who is infected or inflicted with or is a carrier of a prescribed disease and who is capable or likely to become capable of infecting any other person".⁵² Additionally:

"Any person whose presence in Zambia is declared in writing by the Minister to be

⁴⁴ Article 6(3):

"Parliament may provide that any period during which a person has the right to reside in Zambia by virtue of a permit issued under the authority of any law relating to immigration shall not be taken into account in computing the period of 10 years" residency required to apply for citizenship.

⁴⁵ Immigration and Deportation Act Chapter 123 of the Laws of Zambia.

⁴⁶ Section 24(1).

⁴⁷ Class F.

⁴⁸ Class G.

⁴⁹ Class H.

⁵⁰ Class D.

⁵¹ Class E.

⁵² Class A.

inimical to the public interest shall be a prohibited immigrant in relation to Zambia"⁵³

4.3 The UNHCR has acknowledged that there have been positive steps by the Government of Zambia to replace the Act with a revised Refugee Bill which will meet international standards for the protection of refugees.⁵⁴ The 2002 Refugee Bill was rejected by parliament. Additionally, there has been dialogue for years regarding changing the Constitution, however nothing has come of it. There has been an establishment of the National Constitutional Conference⁵⁵ mandated to undertake a constitutional reform process.

5. Rights of Refugees

5.1 Acceptance of the category of refugee

5.1.1 Process by which refugee status is recognised

According to the Act,⁵⁶ upon arrival in Zambia, the asylum seeker must present themselves to an Immigration Office or to a police station within seven days.⁵⁷

There are two different systems for refugee status determination ('RSD'). There is the first system which uses the 1969 OAU Convention, which awards refugee status on a prima facie basis.⁵⁸ This system is used by

⁵³ Section 22(2).

⁵⁴ Input provided by the United Nations High Commissioner for Refugees into the Office of the High Commissioner for Human Rights' Compilation and Stakeholder reports for the Universal periodic review of Zambia, December 2007.

⁵⁵ Act No 19 of 2007.

⁵⁶ 'no refugee shall remain in Zambia unless within seven days of his entering Zambia he is issued with a permit to remain by an authorised officer' Section 11.

⁵⁷ ID 8 p 14.

⁵⁸ Supra.

two bodies, either the District Joint Operational Committee ('DJOC') or the Provincial Joint Operational Committee ('PJOC'). DJOC and PJOC are located at border points and are made up of immigration officials and police.

The second system of RSD is by the Eligibility Committee which operates through the 1951 Convention and the Act. The Eligibility Committee are based in Lusaka and may hear an application for asylum. Additionally, the Eligibility Committee hear the appeals from decisions made by the DJOC and PJOC. The Eligibility Committee is operated by a department of the Ministry of Home Affairs named the Commissioner for Refugees ('COR'). The Eligibility Committee is chaired by the Commissioner of Refugees and operated by "individuals from the police, immigration, Minister for Foreign Affairs and from the President's Office."⁵⁹

If refugees are accepted then they are transferred to a camp or a settlement, where they will be issued with a green card.⁶⁰

If the Eligibility Committee rejects the asylum seeker's claim then they may write a letter of appeal to the Minister of Home Affairs.

5.2 Civil rights

All persons in Zambia have the right not to be discriminated against⁶¹, have the right to due

⁵⁹ Supra p 16.

⁶⁰ Supra p 17.

process of the law⁶² and freedom of conscience and religious⁶³ practices, as protected by the Constitution.

5.2.4 Freedom of Movement

5.2.4.1 Choice of Residence

Article 22 of the Constitution allows an exception to freedom of movement "in accordance with any other written law'. The Act requires that the Minister may, "require any refugee to reside within a reception area or refugee settlement". Additionally, the Minister may require any refugee to move to another camp or settlement. For a refugee to leave the camp they must have been issued a permit from an authorised officer.⁶⁴ Permission may be granted for certain refugees to live outside the camps/settlements by a subsidiary organ of the Eligibility Committee, called the Residency Sub-Committee. However, a residence permit does not allow a refugee to work or study unless it specifically states it. The residency permit correlates with the Electronic Refugee ID card which expires after three years. To have a new card issued, the refugee must show evidence of employment or a study permit or resettlement.⁶⁵

5.2.4.2 Freedom from detention

⁶¹ Article 23.

⁶² Article 18.

⁶³ Article 19.

⁶⁴ Section 12 of the Act.

⁶⁵ Supra note 8 p 24.

If a refugee violates the Act then they may be detained. Under Article 26, when a person is detained they will receive within 14 days of their detainment a statement detailing the grounds upon which he is being detained. However, in Mifiboshe Walulya v The Attorney General⁶⁶ the Supreme Court held that the provision did not apply to refugees or prohibited immigrants. Refugees are not separated from the regular prison population and there are no separate holding cells for women and children. However, refugees can challenge their detention in court.⁶⁷

5.2.5 Documentation

5.2.5.1 Right to Administrative Process

Refugees have a right to apply for asylum and a right to appeal if refugee status is denied. However, it has been identified that police officers and immigration officials are not properly trained in refugee protection which made lead to harassment and refoulement of asylum seekers. Additionally, there are no⁶⁸ codified screening procedures at entry points for border officials to allow for proper screening of asylum seekers

5.2.5.2 Right to Identity Document

⁶⁶ Mifiboshe Walulya v The Attorney General 1984 ZR 89.

⁶⁷ <<http://www.refugee.org/countryreports.aspx?id=2348>>.

⁶⁸ UNHCR project concept notes under the 2009 global needs assessment for Zambia pl.

Under Section 6.2 of the Act, every refugee must be issued with an identity card and they must keep that card on their persons while in Zambia. Two types of identity cards are issued: Electronic refugee identification cards for those living outside the camps or settlements and Green Cards for those living in the camps or settlements.⁶⁹ However, the government had stopped issuing the Green Cards but agreed to issue them in 2009. Even with the electronic refugee identification cards, refugees are being detained.⁷⁰ It is difficult for refugees to obtain birth certificates and there are no death certificates issued.⁷¹

5.2.5.3 Right to Travel Document

For a refugee to leave the camp they must have been issued a permit from an authorised officer.⁷²

Zambia has reservations to the 1951 Convention's right to international travel documents and reserves the right to refuse entry to refugees that have left Zambia. However, refugees may apply to the UNHCR which forwards their applications to the Passport and Citizenship office which may issue travel documents. Like nationals, refugees must

⁶⁹ Supra Note 8 p 8.

⁷⁰ <http://www.refugee.org/countryreports.aspx?id=2348>.

⁷¹ Supra Note 68 p 3.

⁷² Section 12 of the Act.

provide reasons to the government for their travels.⁷³

5.3 Economic Rights

5.3.1 Right to Property

5.3.1.1 Moveable and Immoveable Property

Article 16 of the Constitution offers protection from the deprivation of property without compensation. The Act gives the Minister discretion to have any animals imported from outside of Zambia to be slaughtered or sold, with the proceeds going to the refugee or to a "fund which shall be used for the benefit of refugees".⁷⁴ A refugee cannot use a vehicle owned by them in Zambia without "permission in writing from an authorised officer". Additionally, this vehicle can be taken possession of at any time.⁷⁵ Further, a refugee must surrender all firearms while in Zambia.⁷⁶

Refugees may have bank accounts but they may not own property.⁷⁷

5.3.1.2 Artistic Rights and Industrial Property

XX

5.3.1.3 Transfer of Assets

XX

5.3.2 Employment Rights

5.3.2.1 Wage Earning Employment

According to Sections 18 to 21 of the Immigration Act, a refugee may apply for an employment permit as long as they have a job

⁷³ Supra Note 67.
⁷⁴ Section 8 of the Act.
⁷⁵ Section 9 of the Act.
⁷⁶ Section 7 of the Act.
⁷⁷ Supra Note 67.

offer and no other Zambian is suitable for the position. This must be evidenced in writing. The additional requirement for refugees is that they receive a letter from the COR supporting the employment which costs a prohibitive fee.⁷⁸

5.3.2.2 Self Employment

Refugees applying for self-employment permits have to invest \$25,000 in Zambia.⁷⁹

5.3.2.3 Practice of a Liberal Profession

XX

5.3.2.4 Social Security

Refugees cannot receive state benefits such as pensions or old age and disability.⁸⁰

5.3.2.5 Freedom of Association

Article 21 of the Constitution allows exceptions to be made "under the authority of any law" as long as it falls within the provisions within the article, namely that it is:

"(a)...reasonably required in the interests of defence, public safety, public order, public morality or public health; (b) that is reasonably required for the purpose of protecting the rights or freedoms of other persons'.

However, Section 14.2 of the Act limits a refugee's freedom of association by stating that:

"No person other than the Commissioner or a refugee officer may in a refugee

⁷⁸ Supra Note 8 p 26 and Supra Note 68 p30.

⁷⁹ Supra Note 67.

⁸⁰ Id.

settlement address an assembly or meeting of more than ten refugees whether or not such meeting is held in a public place".

5.3.3 Public Relief

5.3.3.1 Rationing

There is food aid available in the camps and settlements, however, it was planned to be phased out in 2009 and 2010.⁸¹

5.3.3.2 Housing

XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

5.4 Right to Education

Zambia holds a reservation to the 1951 Convention's and the ICESR 's right of refugees to education. The UNHCR provides primary education to the camps and settlements, however, secondary education is unavailable due to school fees.⁸²

5.5 Prohibition on Expulsion and Refoulement

If a refugee finds themselves as a prohibited immigrant as outlined in the Immigration Act, they will be detained and may be deported. Additionally, as discussed above, refoulement is allowable under the Act as long as refugees who 'may be tried, or detained or restricted or punished without trial, for an offence of a political character' are exempted.

5.6 Prohibition on Prosecution for Illegal Entry

If a refugee does not report to an Immigration Office or a police station within seven days of arrival into Zambia, then they will be considered prohibited immigrants and will be detained.

5.7 Citizenship

⁸¹ Supra Note 67.

⁸² Supra Note 68.

A refugee may not apply for citizenship. A refugee may be married to a Zambian national, lived and worked in Zambia for a significant amount of time and will not be allowed citizenship. Refugee children are not granted citizenship at birth and there is no avenue for a stateless child to apply for citizenship.⁸³

6. Conclusion

Zambia needs for the Act to be replaced with legislation that is in line with international protection of refugees principles. The restrictions on freedom of movement and the right to employment inhibit the refugees right to self sustain. Further, the risk of refoulement is too high for vulnerable refugees.

Additionally, the Constitution must be amended to allow long term refugees to apply for citizenship.

⁸³ Id p 32.

Bibliography

Papers

Zambian Refugee Policy, security, repatriation and local integration Johan Brosche and Maria Nilsson Uppsala University Department of Peace and Conflict Research, Minor field study, fall term 2004

International law and human rights litigation in Africa: Making a case in a labyrinth of systems and actors *Horace Adjolohoun*

<http://www.chr.up.ac.za/centre_projects/ildc/papers_2009/Adjolohoun.doc>

Human rights, the rule of law, and development in Africa Tiyambe Zeleza, Philip J. McConnaughey University of Pennsylvania Press, 2004

The implementation of international and regional human rights instruments in the Namibian Legal Framework, in Horn, Francois Xavier Bangamwabo N. & Bosl, A. (eds). 2008. *Human Rights and Rule of Law in Namibia*, Windhoek: Macmillan Namibia.

<http://www.unam.na/centres/hrdc/8_the_implementation_of_international_and_regional_human_rights_instruments_in_Namibian_legal_framework.pdf>

Walusiku, Percy M (2004) Provincial Coordinator Zambian Initiative, Interview October 14 and October 15, 2004 as cited in Zambian Refugee Policy, security, repatriation and local integration Johan Brosche and Maria Nilsson Uppsala University Department of Peace and Conflict Research, Minor field study, fall term 2004.

Introduction: refugee resettlement models in southern Africa, African Refugees and human rights in host countries the long term demographic, environmental, social and psychological impacts of Angolan refugees in Zambia Vantage Press, Inc. Mijerie, Nsolo (1995) 1995 p 8 as cited Zambian Refugee Policy

Report on the situation of refugees in Zambia 2005 written on behalf of Amera, Claire Darwin <[www.amera-uk.org/Files/Zambia AMERA Report FINAL.pdf](http://www.amera-uk.org/Files/Zambia%20AMERA%20Report%20FINAL.pdf)>

Input provided by the United Nations High Commissioner for Refugees into the Office of the High Commissioner for Human Rights' Compilation and Stakeholder reports for the Universal periodic review of Zambia, December 2007.

UNHCR project concept notes under the 2009 global needs assessment for Zambia.

Web Resources

Jesuit Refugee Service

<http://www.jrs.net/jrs/zmb/refugees.htm>

<http://www.refugee.org/countryreports.aspx?id=2348>.

Legislation

Refugees (Control) Act, 1970

Refugees (Control) (Declaration of Refugees) Order (No.2) of 1971

Immigration and Deportation Act Chapter 123 of the Laws of Zambia.

Convention relating to the Status of Refugees, 189 UNTS 150.

Protocol relating to the status of refugees, 606 UNTS 267.

Convention governing the specific aspects of refugee problems of in Africa, 1001 UNTS 45.

Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment G Ares 39/46, annex, 39 UN GAOR Supp. (No 51) at 197 UN Doc A/39/51 (1984).

Committee against torture Concluding observations of the committee against torture fortieth session CAT/C/ZMB/CO/2 26 May 2008.

Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the UN Convention against Transnational Organised Crime UN Doc. A/55/383 at 25 (2000); UN Doc. A/RES/55/25 at 4 (2001); 40 ILM 335 (2001).

International Covenant on Economic, Social and Cultural Rights, G Ares 2200A (XXI) 21 UN GAOR Supp (No. 16) at 49, UN Doc A/6316 (1966) 993 UNTS.

International Covenant on Civil and Political Rights G Ares 2200A (XXI) 21 UN GAOR Supp (No. 16) at 52, UN Doc A/6316 (1966) 999 UNTS 171.

International Convention on the Elimination of All Forms of Racial Discrimination 660 UNTS 195.

Convention on the elimination of all forms of discrimination against women, G Ares 34/180 34 UN GAOR Supp (No 46) at 193, UN Doc A/34/46.

Convention on the right of the child, G Ares 44/25 annex 44 UN GAOR Supp (No 49) at 167 UN Doc A/44/49 (1989).

International convention on the protection of the rights of all migrant workers and members of their family, GA

res 45/158 annex 45 UN GAOR Supp (No 49A) at 262 UN Doc
A/45/49 (1990).

Universal declaration of human rights (1948) G Ares
217A(III).

Cases

Longwe v International Continental Hotels (1993) 4 LRC
(Const.) 221.

Mifiboshe Walulya v The Attorney General 1984 ZR 89.