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School of Law

I recommend that the obligatory Essay written under my supervision

by

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entitled:

AN ANALYSIS OF THE LEGAL STATUS OF REFUGEES IN ZAMBIA

be accepted for examination.

I have personally checked it carefully and I am satisfied that it fulfils the requirements relating to the format as laid down in the regulations covering obligatory essays.

Signed:..........
DR A W CHANDA (Supervisor)

Date....10/10/95.....

DEDICATION

This dissertation is dedicated to my family. Firstly, to my husband, Abel, whose telepathic encouragement I am greatly indebted to. Secondly, to my children, Masiye, Mwamba and Chimwemwe, as they were always a source of inspiration.

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The University of Zambia

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PREFACE

This dissertation analyses the legal status of refugees in Zambia. Specifically, it attempts to analyze the extent to which international treaties concerning refugees are implemented in Zambia.

This topic has been found to be important because the number of refugees in the world is rising every day and as such it is necessary to identify the implications of such mass movements of people both under International Law and National Law.

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ABBREVIATIONS

ILIRA	-	International Legal Instruments on Refugees in Africa
OAU	-	Organisation for African Unity
UNHCR	-	United Nations High Commission for Refugees

TABLE OF STATUTESA) INTERNATIONAL TREATIES AND OTHER INTERNATIONAL INSTRUMENTS

- 1948, 10 Dec. The Universal Declaration of Human Rights, GA Res 217 (III), (ILIRA, 1979, pp254-264)
- 1951, 28 July The Convention Relating to the Status of Refugees, 189 UNTS 137, (ILIRA, 1979, pp24-64)
- 1966, 16 Dec. The International Covenant on Civil and Political Rights, GA Res 2200(XXI), (ILIRA, 1979, pp160-179)
- 1967, 14 Dec. Declaration on Territorial Asylum, GA Res 2312 (XXII), (ILIRA, 1979, pp282-286)
- 1967, 31 Jan. Protocol Relating to the Status of Refugees, 606 UNTS 267, (ILIRA, 1979, pp66-74)
- 1981, 19 Jan. The African Charter on Human and Peoples' Rights, OAU Ministerial Meeting in Banjul, Gambia.
- 1981, The Recommendations from the Arusha Conference on the African Refugee Problem, Scandinavian Institute of African Studies, Uppsala.

B) ZAMBIAN LEGISLATION

1. Employment Act
2. Immigration and Deportation Act
3. Refugee (Control) Act, 1970

INTRODUCTION

The Purpose of the Study

In many African countries, there are political problems. In trying to solve some of these problems politicians do not in most cases accommodate contrary views. This often causes people to flee from their homes and villages; sometimes because they are involved in the conflict, sometimes because they are caught in the crossfire between rival forces, or are in one way or the other affected by the conflict.

By running away to a foreign country these people face a number of problems, such as lack of shelter, clothing and food which are basic necessities in life and under normal circumstances these facilities are available at home. The circumstances leading to their running away from their own country do not permit them to carry any material possession that they may have at home. What this means is that their basic requirements have to be provided for by someone in the country of asylum. What is the future of people who flee to Zambia in this manner? To what extent is Zambia ready to admit asylum seekers, to grant them asylum? These are some of the questions that this study attempts to address.

Further, under normal circumstances movement of people from one country to another is facilitated by being in possession of a valid passport and a visa, in some cases. In the absence of such documents immigration laws may be violated. In addition, even those who may have valid travel documents may not have genuine reasons for entering a foreign country. For example, some people may run away from their countries because of hunger, poverty, disease and so

on, hoping to find better facilities in their new environment. Under such circumstances, how do we determine who is a genuine asylum seeker to be accorded refugee status and who is a mere "economic migrant"? As it is in the interest of International Law to ensure that justice prevails in such issues, a number of International Treaties on Refugees have put in place an established criteria which define who a refugee is. We shall look at these treaties in great detail in Chapter 2 of this work so that we analyze the extent to which state parties, Zambia in particular, are bound by such criteria.

Another point of interest that this research shall attempt to analyze in Chapter 3 relates to the status of refugees as regards fundamental rights and freedoms. For example, when an asylum seeker has been granted refugee status, does he come under the jurisdiction of the host country or is he under that of the country of origin? In addition, some of the asylum seekers who are granted refugee status possess good education and professional skills; are such refugees allowed to work in Zambia?

Furthermore, it is a well known fact that one of the most important thing a refugee looks forward to is to cease being a refugee and to become an ordinary citizen of a country. Now, if for one reason or the other a refugee cannot return to his country of origin, can he acquire Zambian citizenship so that he is able to enjoy the same legal rights as an ordinary Zambian citizen? In other words, does Zambian law recognise naturalization of refugees where necessary? In addition, as a state party to the African Charter, Zambia is under International Law bound to accord every individual within its territory the right to freedom of movement and residence. In practice, is Zambia strictly observing this obligation? We shall attempt to answer these questions by looking at the present Zambian legislation and case law.

This study would be incomplete if some of the hardships that asylum seekers and refugees are, more often than not, exposed to are not highlighted. For this reason, Chapter 4 will attempt to bring to the attention of the reader some of the traumatic experiences that asylum seekers and refugees go through.

Finally, having identified problems that refugees face and the inadequacies in the present refugee law, it will be imperative to make suggestions on how the law could be improved so as to lessen problems that refugees face.

CHAPTER ONE

1.0 REFUGEES IN ZAMBIA: A HISTORICAL PERSPECTIVE

1.1 General Description of Refugees in Zambia

Zambia, situated in Central Africa, has served as host country for refugees for a very long time. The first known refugees in Zambia, then Northern Rhodesia, were Polish evacuees who were evacuated into British colonies during the second world war. The Polish refugees were settled in Abercorn (now Mbala), Bwana Mkubwa near Ndola and Makeni in Lusaka where refugee camps were established.¹

Even after attaining independence from Britain in 1964, Zambia continued to serve as host country for the refugees. Some of the reasons for the influx of refugees into Zambia can be attributed to her peace and stability. This is unlike some of her neighbours where soon after attaining independence, civil wars began as a result of ethnic and political differences. Due to Zambia's central location and political stability, the country became attractive to asylum seekers.

Depending on the wishes of refugees Zambia has served as transit country, as temporary host country and even as a settlement country. In fact before majority rule in South Africa and Namibia, African National Congress (ANC) and South West Africa Peoples Organisation (SWAPO) had their headquarters in Zambia.

As early as 1960s there was an inflow into Zambia of hundreds of refugees from South Africa as a result of the application of apartheid and

the reactions of the South African authorities towards the growing manifestation of opposition to apartheid². As Namibia was also under South African administration, we also had asylum seekers from that country.

In the mid 1970s there was a sudden new influx of refugees to Zambia. Over a thousand young people from South Africa fled from riots throughout the country. Apart from the South African and Namibian refugees, Zambia also received asylum seekers from Zimbabwe the then Southern Rhodesia. The intensification of the liberation struggle in that country forced people to flee to other countries, including Zambia. In fact Zimbabwean refugees, particularly those who belonged to the Zimbabwe African people's Unity (ZAPU) had their guerilla bases in Zambia. After the agreement, in December, 1979 between the Patriotic Front consisting of the two guerilla movements, Zimbabwe African National Unity (ZANU) and ZAPU on the one hand, and the Salisbury Administration on the other, a vast voluntary repatriation programme took place. Most of the Zimbabwean refugees were voluntarily repatriated³.

In recent years, asylum seekers have had to flee their countries to Zambia due to various reasons as indicated below.

a) ANGOLA

According to Rwelamira asylum seekers from Angola started coming to Zambia in the 1960s when they were fighting for their independence from the Portuguese who were their colonial masters⁴. After attaining their independence in 1975, asylum seekers continued flowing into Zambia because of civil wars between government troops and UNITA rebels

b) BURUNDI/RWANDA

Asylum seekers from these countries have had to flee their countries due to ethnic conflicts. In both countries the Tutsi who originated from Somalia and are in the minority, consider themselves to be superior to the majority indigenous Hutus. The Tutsis are economically and socially stronger and this has enabled them to dominate the other tribe. In fact, in both countries, the Presidents who are also in charge of the defence forces, come from the Tutsi tribe⁵. Problems are likely to go on in these countries because while Presidents control the army, government administration is in the hands of the Hutus. This situation is likely to result in frustration of each tribe's efforts.

c) LIBERIA

Civil war in Liberia began in December, 1989. This war was mainly caused by Charles Taylor and as a result people have had to flee the country, some of them came to seek asylum in Zambia⁶.

d) MALAWI

About one third of Malawi's first cabinet ministers at independence fled the country into Zambia as asylum seekers because of disagreements within the cabinet. In addition, some members of the Watch-Tower Sect ran away from the country to seek asylum in Zambia and elsewhere because of differences with the government on account of their religious beliefs⁷. After the introduction of plural politics, and the consequent change of government, most refugees went back home but a substantial number has remained in Zambia because they acquired property and they are more or less settled.

e) SOMALIA

Civil wars in Somalia have resulted into many people fleeing into Zambia. These wars have been caused by ethnic problems and war Lords like General Farah Ayeeded, who have been fighting for political power⁸.

f) UGANDA

There has been political instability in Uganda since the military coup by Idi Amin in 1974. The coup resulted in many people fleeing the country into Zambia for political asylum. In 1985, former President of Uganda, Milton Obote, came to Zambia with about 200 of his followers to seek asylum. These people are still in the country⁹.

g) ZAIRE

Zambia has always had asylum seekers from Zaire due to political turmoil in that country. Between January, 1994 and June, 1995, there were political and ethnic clashes between the Kasai tribe and the Katanga tribe. As a result the Kasai people were expelled from Tshaba Province and they fled to Kasai Province and Zambia¹⁰.

It must be noted that it is not every asylum seeker who flees to Zambia who comes to be recognized as a refugee. Some of these are only in Zambia temporarily while they prepare to move on to other countries of asylum. Others would like to remain in the country but for one reason or another they are not given refugee status and so have to move on. This has given rise to various categories of refugees in Zambia as will be indicated.

1.2 Categories of Refugees in Zambia

There are mainly three categories of refugees in Zambia.¹¹

The first group consists of those who are recognised as refugees and they enjoy asylum. The second category consists of those who are recognised but who have not been granted asylum and, therefore, move on to another country. The third category consists of those refugees who are voluntarily in transit. Refugees who have been recognised and are enjoying asylum in Zambia mostly live in refugee settlement camps. Others from this category are those who possess competitive professions and are able to earn a living on their own. They have either managed to get a job or are running a business on their own. Apart from refugees, there are also ordinary aliens residing in Zambia. For example, there are people who have fled from their countries of origin, but instead of applying for asylum they have been staying in the country illegally as aliens.

Another category of aliens are those migrants who have left their home countries mainly in search of economic opportunities. These mainly come from West Africa and Zaire and may properly be referred to as "Economic Migrants."

Asylum seekers who come to be recognized as refugees have to meet certain conditions before they are accorded refugee status. The process of establishing whether or not an asylum seeker meets the conditions to qualify him for refugee status is what is called "Determination of Refugees." Under International Law, there is a criteria to be used in determining whether or not one should be accorded refugee status.

Zambia, like other members of the international society of states, has come up with a procedure for determining who a refugee is. This is explained in detail in the next Chapter.

ENDNOTES

1. The UNHCR, General Information Paper, 1986
2. Ibid.
3. Ibid.
4. Rwelamira Medard, Refugees in a Chess Game, Research Report No. 88, SIAS, Uppsala, 1990, p23
5. Times of Zambia - 4/2/94
6. Ibid.
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8. Ibid.
9. Ibid.
10. Sunday Times, 11/6/95
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CHAPTER TWO

2.0 THE REFUGEE DETERMINATION PROCEDURE

The International Treaties on Refugees have an established criteria which defines refugees. Although, individual countries have come up with their own criterion, they have, however, alluded to the same¹².

2.1 Determination of Refugees under International Treaties

Zambia is a party to the 1951 Refugee Convention and 1967 Protocol relating to the status of refugees. According to Article 1A (2) of the 1951 Refugee Convention as modified by Article 1 of the 1967 Protocol, the term "refugee" shall apply to any person who:

... owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and he is unable or, owing to such fear is unwilling to avail himself of the protection of that country, or who, not having a nationality and being outside the country of his former habitual residence..., is unable or, owing to such fear, is unwilling to return to it.¹³

Going by the above definition, an asylum seeker qualifies for refugee status when well-founded fear of being persecuted is established. It should be noted that the word "fear" is subjective as it refers to the feelings of the individual refugee, while the word "well-founded" is

objective. For this reason, all the circumstances of the case have to be considered in order to ascertain whether there are sufficient factors to justify the fear of persecution.

The word persecution in this context should be understood in terms of the denial of basic human rights. Grahl-Madsen observed that to constitute persecution, the acts must be committed by the government or by authorities subordinate to the government or by other groups in the country whose acts must be tolerated by the government voluntarily through lack of control, in such a way that the victims are offered no protection¹³. Godwin-Gill was of a similar view and added that it is not only the manner of persecution that should be considered but also the reasons for persecution. For example, whether one is being persecuted because of one's race, religion, nationality, membership of a particular social group or political opinion¹⁴.

It must be noted that since the 1951 Refugee Convention was adopted, the definition of a refugee as laid down in Article 1(A)2 has been extended. Firstly, in 1967 through the Protocol Relating to Status of Refugees, which deleted the limitations of time and place. Secondly, in a regional convention, through the 1969 Organization for African Unity (OAU) Convention Governing the Specific Aspects of Refugee Problems in Africa. In this convention the refugee concept not only includes the definition of the 1951 Refugee Convention, but also extends the term

"refugee" to persons fleeing for other reasons than persecution. Article 1 paragraph 2 reads:

The term 'refugee' shall also apply to every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality¹⁵.

This development of the refugee concept was caused by the refugee situation in Africa during the 1960s. Large groups of people fled from liberation struggles or explosive internal social and political situations in already independent countries. This made the determination of refugee status on an individual basis impractical and their flight could also be for other reasons than persecution. In this regard, the refugee concept as defined by the 1951 Refugee Convention did not fit the situation in Africa well.

It was for this reason that the OAU countries recognised the 1951 Refugee Convention as the basic universal instrument relating to refugees, while the OAU Convention was agreed to be an effective complement in Africa¹⁶. The definition can, therefore, be used in group determination of refugee status.

It should be borne in mind that neither of the two refugee conventions which deal with the status of refugees mentions the establishment of a

procedure to determine refugee status or the means of determination either on an individual or group basis. However, in October, 1977 the Executive Committee of the High Commissioner Programme¹⁷ recommended to the state parties of the 1951 Refugee Convention and the 1967 Protocol that certain basic requirements should be fulfilled in the determination procedure. The committee further requested that the office of the High Commissioner should issue a handbook concerning the procedures and the criteria for determining refugee status. This handbook was published in 1979 for the exclusive guidance of governments.

Since the final goal of an asylum seeker is to obtain refugee status in the country where asylum is sought, it is necessary at this point to give a brief analysis of "the right of asylum" before we look at the determination of refugee status under the Zambian Law and Practice. The traditional meaning of the right of asylum in International Law does not refer to the right of the individual but to the right of the state in relation to other states. The right of asylum, therefore, is the right of the state to grant asylum to whosoever it wishes, without being accused of an unfriendly act¹⁸.

According to Rwelamira, this principle rests on another principle, namely, that a state has territorial sovereignty and, therefore, acts independently in its own territory¹⁹.

Article 1 of the General Assembly's Declaration of territorial asylum of 1967 stresses the doctrine of sovereignty when it states that asylum granted by a state in the exercise of its sovereignty shall be respected by all other states. It is also stated that it shall rest on the state to evaluate

the grounds for granting asylum. So there is no international legal obligation for a state to grant asylum and as such a refugee can not claim a legal right to be granted asylum. However, if such a right could be found in municipal law, an asylum seeker can claim a legal right to be granted asylum on the basis of municipal legislation.

In the preamble of the 1969 OAU Refugee Convention, the OAU Member States have agreed that the granting of asylum shall be a peaceful and humanitarian act and should not be regarded as an unfriendly act by any member state²⁰.

Another aspect of the right of asylum is the right of the individual with reference to the persecuting state. The individual's right consists of the right "to seek and enjoy" asylum in a foreign country. Article 14(1) of the Universal Declaration of Human Rights states that:

Every one has the right to seek and enjoy, in other countries, asylum from persecution²¹.

Further, Article 12 paragraph 3 of the African Charter of Human and Peoples Rights states that:

Every individual shall have the right, when persecuted, to seek and obtain asylum in other countries in accordance with the laws of those countries and international conventions²².

It is worth noting that the words "... in accordance with the laws of those countries..." in the above quotation actually confirms the traditional interpretation of the right of asylum. That is, it is the state which has the exclusive right to decide whether or not to grant asylum as each state makes its own laws.

It must be noted, further, that even if a state has ratified an international treaty, the obligations of the treaty do not automatically become a part of the state party's national legislation. In other words, the extent to which an individual state implements the content of the treaty is up to each state party.

So far we have given a brief outline of the criteria which define refugees under International Treaties on Refugees. We shall now attempt to give a brief analysis of the determination of refugee status under Zambian legislation and practice

2.2 Determination of Refugee Status under Zambian Legislation and Practice

Prospective refugees enter Zambia in different ways. One way is by declaring their intention to seek asylum directly to the immigration authorities at a frontier post. Another way is by entering Zambia as ordinary visitors. They can also enter the country via a point where no immigration authorities are stationed. An asylum seeker who enters Zambia in one of the two latter ways is expected to report to the relevant authorities as soon as possible to claim asylum.

Section 2 of the Refugees (Control) Act, 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 reason of race, religion, nationality, membership of a particular social group on political opinion are declared to be refugees for the purpose of the Act.²³

The above definition is identical to the definition in Article 1A(2) of the Refugee Convention as modified by the 1967 Protocol, which eliminates limitations in time and space. Section 3 (1) of the Refugee (Control) Act provides 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...

The case of Radebe vs the People²⁴, illustrates the determination of refugee status in Zambia. In this case the question before the court was "Who is a refugee?" It was stated that the term "refugee" is defined in Section 2 of the Refugee (Control) Act as a person belonging to a class of persons to whom a declaration under Section 3 applies. This decision shows that before any person can be said to be a refugee in Zambia, such a declaration must be made in respect of him by the Minister.

When the relevant Zambian authorities have carried out the determination procedures three different decisions are possible:

- i) The person is recognised as a refugee and granted asylum.
- ii) The person is recognised as a refugee but refused asylum.
- iii) The person is neither recognised as a refugee nor granted asylum.

The effect of the first decision is that the refugee will, under Section 6(2) of the Zambian Act, be issued with an identity card in such form and containing such particulars as may be prescribed and shall keep such identity in his possession at all times while in Zambia. If, however, the person is recognised as a refugee but refused asylum, he will be granted temporary asylum for a certain period of time after which he must move on to another country of asylum with the help of UNHCR. During this time the refugee may be kept in detention, he could stay in a settlement or he could even have freedom of movement but be required to report regularly to the immigration authorities. If, on the other hand, the person is neither recognised as refugee nor granted asylum then that person is in the country illegally and accordingly will be declared a prohibited immigrant and will be kept in detention.

An analysis of the procedure to determine refugee status would be incomplete without reference to the principle of non-refoulement which is laid down in Article 33 of the 1951 Refugee Convention and Article II paragraph 3 of the 1969 OAU Refugee Convention. The implication of the two articles is that a contracting state may not send a refugee to a country in which he could be persecuted. However, the contracting states are not explicitly obliged by these articles to grant asylum. The

other implication of the articles could be that a contracting state has to grant or continue to grant asylum when there is no other state willing to admit the refugee. But what happens when a contracting state can not, owing to one reason or another continue granting asylum? Article II of the 1969 OAU Refugee Convention provides that if such a situation arose, the other member states would be called upon to lighten the burden of the first country of refugee through "appropriate measures" in accordance with the principle of burden-sharing.

In respect of non-refoulement and expulsion the law in Zambia is succinct. Section 10(1) of the Zambia Act empowers the Minister of Home Affairs to deport any refugee:

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.

This shows that it is within the discretionary power of the Minister to determine whether or not a refugee should be deported. By section 10(6) of the said Act, only those refugees who have been present in Zambia for not less than three months are accorded an opportunity to make representations against any deportation orders. The refugees who have been in Zambia for less than three months are not accorded this right. This practice implies that the Zambian provision in this regard is a

complete derogation from the provision of Article 32 (2) of the 1951 Convention which states that:

The expulsion of such a refugee shall be only in pursuance of a decision reached in accordance with the due process of law...

In Re Chirwa²⁵ (Edward Yaphwantha), the applicant entered Zambia in 1964 as a refugee from Malawi and had been awarded refugee status since 30th June, 1971. On 15th October, 1972 the Minister of Home Affairs invoked the provisions of Section 22(2) of the Immigration and Deportation Act and declared the presence of the applicant in Zambia to be inimical to public interest and served him with a notice to leave Zambia. The applicant's representations under section 24(1) of the Act having failed he was ordered to be detained under the provisions of Section 26 (3) of the Act. On a further representation, he was released but again detained after sometime under Section 26 (3) of the Act. He sought an order of certiorari against the Minister's declaration of 15th October, 1972 and /or a declaration that the same was ultra vires. It was held that it was ultra vires the powers of the Minister to invoke his powers under the Immigration and Deportation Act and declare as a prohibited immigrant a refugee under the provisions of the Refugee (Control) Act 1970. In so holding the court observed that if the Minister were to exercise such discretion in the case of a refugee then we have a situation where a person could at once be both a refugee and prohibited immigrant subject to deportation both under Section 26 of the Immigration and Deportation Act and Section 10 of the Refugees

(Control) Act, 1970. The court noted that the later Act was so enacted to provide a special status and safeguards for refugees. In this regard, Cullinan, J., observed that:

That Section provides certain safeguards which are not apparent in the apparently unfettered discretion conferred upon the Minister under Section 22(2) and Section 24(2) of the Immigration and Deportation Act ... it seems to me that the intention of the legislature in enacting the Refugee (Control) Act would be defeated if such safeguards could be discarded by resorting to an alternative machinery and the immigration and Deportation Act. No doubt the Minister might well decide the presence in Zambia of a particular refugee to be inimical to the public interest. In my judgement, however, the legislature made provision for such an eventuality in terms of Section 10 of the Refugees (Control) Act, which terms the Minister may at any time invoke.

The above quotation illustrates that refugees in Zambia are immune from deportation under the Immigration and Deportation Act but they can be deported under the Refugee (Control) Act.

In the Radebe²⁶ case the court held, inter alia, that refugees, once accepted as such, should be excluded from the provision of the second schedule of the Immigration and Deportation Act. Thus, if the minister wishes to invoke the provision of Section 10 of the Refugee (Control) Act he may always do so.

It is also worth noting that under Section 10(6) of the same Act a refugee who has been in Zambia for three months or more may appeal to the Minister against deportation if such refugee may be tried, or detained or restricted or punished without trial for an offence of a political character after arrival in the territory from which he came or if he is likely to be the subject of physical attack in such territory.

It has been noted in this chapter that there are various reasons that force people to flee home countries and seek refuge in other countries. It has also been observed that it is not every asylum seeker who is in fact accorded refugee status. In order to ensure that justice is observed in according such status, International Treaties on Refugees have come up with criteria which define who a refugee is as outlined above. It has further been noted that although member states to the 1951 Refugee Convention and the 1967 Protocol relating to the status of refugees have alluded to such criteria, some countries have, nevertheless, made some reservations regarding the same. For instance, while under Article 1A(2) of the 1951 Convention, an asylum seeker qualifies for refugee status when well founded fear of being persecuted is established, under section 3(1) of the Zambian Act, an asylum seeker will only qualify as a refugee if the Minister has by statutory order made a declaration to that effect. The case of Radebe v The People²⁷ confirms this point.

Having attempted to analyze the procedure relating to the determination of refugees, the next Chapter will focus on the rights and freedoms that refugees are able to enjoy both under International and Zambian Laws.

ENDNOTES

12. Grahl-Madsen A, The Status of Refugees in International Law, Vol 1, Universitetsforlaget, 1966, p181
13. Godwin-Gill G S, The Refugees in International Law, Oxford, 1983, p26-31
14. Ibid.
15. Ibid.
16. Ibid.
17. The UNHCR, General Information Paper, 1986
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19. Rwelamira M R The OAU Convention on Refugees: Some Pending Issues in the Comparative and International Law Journal of Southern Africa, 16, 1983 p174-175
20. Grahl-Madsen A, The Status of Refugees in International Law, Vol.1, Universitetsforlaget, 1966 p181
21. Ibid.
22. Ibid.
23. CAP 112 of the Laws of Zambia
24. (1972) Z.R. 298

25. Ibid.

26. Opcit

27. Ibid.

CHAPTER THREE

RIGHTS OF REFUGEES

3.1 SOME OF THE RIGHTS RELATING TO THE STATUS OF REFUGEES

In this chapter an attempt shall be made to analyze the status of refugees in relation to fundamental human rights and freedoms. We shall first establish whether once an asylum seeker has been granted refugee status he comes under the jurisdiction of the host country or continues to be under the jurisdiction of the country of origin. We shall also look at the extent to which refugees enjoy specific rights and freedoms such as the freedom of movement, the right to work and naturalisation. We shall do this by looking at both International Law and Zambian legislation. In so doing we shall assess the extent to which Zambia, as a state party to the African charter is bound by the International Treaties on refugees.

Under Article 2 of the 1951 Refugee Convention, once an asylum seeker has been granted asylum he immediately comes under the jurisdiction of the asylum country²⁸. This means that such a person like any other citizen, has to conform to the laws and regulations of the country. The article further states that refugees shall conform to measures taken for the maintenance of public order.

Apart from stating the legal obligations of refugees, the 1951 refugee convention also provides for their legal status in comparison with other aliens or nationals.

This study has only focused on three of these rights namely:

- i) the freedom of movement;
- ii) the right to work; and
- iii) naturalisation.

At the Arusha Conference in 1979, recommendations were made on each of the above issues. As regards the freedom of movement and the right to work, the object of the recommendations was to facilitate implementation while naturalisation was looked at as a solution when voluntary repatriation was no longer envisaged²⁹. For the sake of convenience we shall analyze these rights separately, one after the other.

3.2 Freedom of Movement Under International Law

Article 26 of the 1951 Refugee Convention provides that:

Each Contracting State shall accord to refugees lawfully in its territory the right to choose their place of residence and to move within its territory, subject to any regulations applicable to aliens generally in the same circumstances³⁰.

It must be noted that freedom of movement as laid down in the above provision does not include the right to leave and re-enter the country of refuge. To travel outside the country of asylum, a refugee needs a travel document which functions in lieu of a national passport. The travel document should be issued by the contracting state in accordance with

Article 28 of the 1951 Refugee Convention which prescribes the form of the document and makes provisions, amongst others, for recognition and renewal of the document, and the opportunity of the refugee to return to the state of issue.

It is always advisable that the refugee ensures that a return clause is included in the travel document to the effect that the holder is authorised to return to the state of issue³¹.

There are a number of International Instruments that deal with Freedom of Movement within the territory of a state. Among these are:

- i) the Universal Declaration of Human Rights of 1948;
- ii) the International Covenant and Civil and Political Rights of 1966; and
- iii) the African Charter on Human and peoples' Rights.

Article 12 of the African Charter on Human and People's Rights provides that:

Every individual shall have the right to freedom of Movement and residence within the borders of a state provided he abides by the law³².

It should be noted that the expression "...every individual..." in the above quotation implies that the contracting states agree to the right of every person within their territory without discrimination between

citizens, refugees or other aliens. One condition, however, affects all of them. And this is that the said right only applies if one " ... abides by the law..." of the state. Further, Article 27³³ of the African Charter provides that the right and freedom of each individual shall be exercised with due regard to the rights of others to collective security, to morality and to common interest . This means that if a person is found guilty of a criminal act, for example, he has not abided by the law of the country and his freedom of movement could then be limited.

As noted earlier, the right to move freely and to choose a place of residence has also been regulated in other International Instruments concerning human rights such as the Universal Declaration of Human Rights of 1948 and the International Covenant on Civil and Political Rights of 1966.

Having given a brief outline of freedom of movement relating to refugees under International Law, an attempt will now be made to look at the same under Zambian legislation and analyze the extent to which Zambia applies International Law relating to freedom of movement of refugees.

3.3 Freedom of Movement under Zambian Legislation

As a state party to the African Charter, Zambia is under International law bound to accord to every individual within its territory the right to freedom of movement and residence. Article 22 (1) of the constitution³⁴ provides that:

Subject to the other provision of this
Article and except in accordance with any

other written law, no citizen shall be deprived of his freedom of movement and for the purposes of this Article freedom of movement means:

- a) the right to move freely throughout Zambia;
- b) the right to reside in any part of Zambia; and
- c) the right to leave Zambia and to return to Zambia.

Going by the expression "... no citizen..." in the above quotation, it is clear that the right provided for therein is only accorded to the Zambian citizens and is not applicable to refugees residing in Zambia. The case of Radebe V. The People³⁵ illustrates the Zambian practice on this matter. In this case the appellant was convicted of failing to obey a lawful order of a refugee officer contrary to section 15 (1) of the Refugee (Control) Act³⁶, 1970 which provides for punishment of any refugee who disobeys a lawful order made to him by a refugee officer. The order had required him to report to the refugee officer on the appointed date. In this appeal, the appellant sought to show that the Act is ultra vires the Zambian Constitution in that he had been deprived of his freedom of movement and residence in Zambia. The High Court held that this provision which guarantees freedom of movement cannot be relied upon by non citizens of Zambia because paragraph (3) of the same article stipulates that:

Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this Article to the extent that it is shown that the law in question makes provision for the imposition of restrictions on the freedom of movement of any person who

is not a citizen of Zambia.

In this regard Scott, J. (as he then was), observed that if the appellant was not a citizen of Zambia then he could not rely on the protection of that particular Article of the constitution and it could not be said that the Act in question was contrary to the constitution. This case shows that freedom of movement of refugees in Zambia can be restricted at any time.

The reason for the reservation against Article 26 of the 1951 Refugee Convention is to safeguard the security of refugees and the country itself³⁷. Further, the practice may be looked upon as an exemplification of Article 27 (2) in the African Charter, which declares that the right and freedom of an individual shall be exercised with due regard to collective security.

Having looked at the freedom of movement pertaining to refugees under both International Law and Zambian legislation, we shall now move on to the right to work regarding refugees both under International Law and Zambian legislation.

3.4 The right to work regarding refugees under International Law

Article 17 of the 1951 Convention deals with Wage-earning employment. Articles 18 and 19 of the same deal with self-employment and liberal professions respectively³⁸. In both cases, the contracting states have agreed not to discriminate between refugees and other aliens but the refugees are not guaranteed a right to have work.

Under Article 17 (2), the contracting states have agreed to exempt refugees from restrictions imposed on aliens or the employment of aliens, for instance, when a refugee has been a resident of the contracting state for at least three years. In this regard a refugee has more favourable treatment compared to other aliens. Further, by Article 17 (1), the contracting states have reached a general agreement to treat refugees as favourably as other aliens as regards the right to engage in wage earning employment. The right to work is also provided for in other International Human Rights Instruments. Article 15 of the African Charter on Human and Peoples' Rights, for example, provides that:

Every individual shall have the right to work under equitable and satisfactory conditions and shall receive equal pay for equal work³⁹.

In addition Article 23 of the 1948 Universal Declaration and Article 6-8 of the 1966 International Covenant on Economic, Social and Cultural Rights deal with the right to work. In the Covenant, the state parties do not only declare but also recognise each person's right to work. According to Trubeck, the meaning of the term, the right to work is extensive. It not only involves the right of anyone who needs and seeks employment to find it, but also several other rights, such as the right to free choice of work, to a living wage, to decent working conditions and to the freedom from discrimination at work⁴⁰.

Having identified the legal provisions regarding the right to work under International Law we shall now try and analyze the same under the Zambian legislation.

3.5 Right to work regarding refugees under Zambian legislation and practice

In Zambia, generally, it is difficult for a non-citizen to get a work permit, as the policy is to give priority to citizens on the labour market. A non citizen will only be granted a work permit if he has the special qualifications needed for a job and Zambian applicants do not have these qualifications. Besides the work permit, a non-citizen who, wishes to be self employed also requires a licence for the business or trade he wishes to establish. It should be noted that licences are required for both citizens and non-citizens but by regulations the Minister of Commerce and Industry has excluded non-citizens from the possibility of acquiring licences for certain businesses or trades. However, those refugees living in settlements and are engaged in various established projects are exempted from the work permit requirement.

Under the Immigration and Deportation Act, Zambia does not consider herself bound to grant to a refugee who fulfils any one of the conditions set out in sub-paragraphs (a) to (b) of Article 17 (2) of the 1951 convention namely, the automatic exemption from the obligation to obtain a work permit. Further, Zambia does not wish to grant to refugees more favourable rights as regards wage earning employment than she normally grants to other aliens. This implies that before a refugee can work in Zambia he must, like any other alien, obtain a work permit.

In addition Section 18(1) of the Immigration and Deportation Act provides that:

When an application being made in
the prescribed manner, the Chief

Immigration Officer shall issue an employment permit to any person outside Zambia who he satisfied is not a prohibited immigrant...

Further section 19 (1) of the same Act provides that:

Save under permit in accordance with the provisions of this Act authorising such employment, no person shall engage in paid employment under an employer resident in Zambia.

Going by the above provisions, it is clear that Zambia has derogated from Article 17 (2) of the 1951 Convention. In this regard, the government will only grant a work permit to a non-Zambian who meets special qualifications needed for a particular job and Zambian applicants do not have such qualifications. It must be noted, however, that while it is the aim of the Zambian Government to preserve jobs for Zambians in the wage earning sector, it is also in the interest of the government to ensure that refugees are engaged in self employment so that they are able to sustain themselves. That way pressure on the Zambian economy is alleviated.

Having looked at the right to work of a refugee under the Zambian law, we shall now attempt to look at the right to naturalization of refugee both under International law and Zambian legislation and practice.

3.6 Naturalization of refugees under International Law

It is an indisputable fact that one of the most important things that a refugee looks forward to is to cease being a refugee and become an ordinary citizen of a country. One way of achieving this dream is for a refugee to return to his home country. If, however, this is not possible due to one reason or the other, one may then acquire citizenship which would give him the same legal rights as citizens of the country. Under Article 34 of the 1951 Refugee Convention, the contracting states undertake to facilitate the naturalization of refugees as far as is possible through measures which expedite the process. However, the contracting states do not declare the explicit right of a refugee to be naturalized, but instead declare their willingness to facilitate the process of naturalization. According to Akehurst, this could be a consequence of a general rule in International Law that leaves each state to define who is a national⁴¹.

3.7 Naturalisation of Refugees Under Zambian Legislation and Practice

Zambia has made a reservation against Article 34 of the 1951 Refugee Convention. However, the reservation does not mean that refugees are denied the possibility of applying for citizenship.⁴² The Refugee (Control) Act is silent on the naturalisation of refugees.

The stand of the Zambian Government on this matter is that refugees have to remain as such because they are considered to be in transit⁴³. It should be noted, however, that the draft Act which is going to repeal the existing refugee law has addressed the matter adequately and once it has been effected, the country shall be bound to facilitate the assimilation and

naturalization of refugees.

In conclusion, it has been observed that under International Treaties on refugees, once an asylum seeker has been granted asylum he immediately comes under the jurisdiction of the asylum country. This means that such a person comes to possess the legal rights and to be bound by the same obligation as any other citizen of that particular country. Like other state parties to the African Charter, Zambia is under International Law bound to accord to every person within her territory such rights as provided for under the International treaties. In practice, however, Zambia has fallen short of meeting her international obligations. This is evidenced by the fact that, under article 22 (1) of the Constitution of Zambia, for example, freedom of movement is only accorded to Zambian citizens and is not applicable to refugees residing in Zambia. The case of Radebe V The People⁴⁴ confirms Zambia's stand on this point.

Further, under section 19 (1) of the immigration and Deportation Act, Zambia has made a reservation against Article 17 of the 1951 Convention regarding the refugees' right to wage-earning employment. Similarly, while Article 34 of the 1951 Convention provides for the naturalization of refugees as far as is possible, contracting states do not declare the explicit right of a refugee to be naturalized. In particular, Zambia as already noted, has made a reservation against Article 34 which requires her to facilitate the naturalization of refugees. This shows that while International Treaties provide the guidelines to be followed by state parties regarding the legal rights of refugees, there is no mechanism under International Law to ensure that state parties, in fact, abide by such treaties. In this regard, it is time International law put in place stiffer

penalties against member states who unnecessarily derogate from provisions under International Treaties.

ENDNOTES

28. The Convention Relating to the Status of Refugees, 189 UNTS 137, (ILIRA, 1979, pp24-64)
29. Rec. 6 The Recommendations on the African Refugee Problem, Scandinavian Institute of African Studies 1981, Uppsala
30. ILIRA, 1979, p258, 170
31. Paragraphs 6, 7 and 13 of Article 28 of 1951 Refugee Convention
32. ILIRA, 1979, p258, 170
33. The African Charter on Human and Peoples' Rights, OAU Ministerial Meeting in Banjul, 1981, Gambia
34. Article 22(1) of the Constitution, CAP 1 of the Laws of Zambia.
35. Opcit.
36. The Refugee (Control) Act of 1970
37. Interview with Commissioner for Refugees, in the Ministry of Home Affairs on 24.5.1995
38. ILIRA, 1979, pp38-40
39. The African Charter on Human and Peoples' Rights, OAU Ministerial Meeting, 1981, Banjul, Gambia
40. Trubeck David, Economic , Social and Cultural Rights in the World, pp205-271, In Human rights in International Law; Legal and Policy Issues, Theodor Meron (ed), Oxford, 1985
41. Akehurst Michael, A Modern Introduction to International Law, 1984, 5th ed., London, p27
42. Interview with Commissioner for Refugees, Ministry of Home Affairs, Lusaka, 24.5.1995

43. Times of Zambia, 23.3.1987

44. Opcit.

CHAPTER FOUR

PROBLEMS OF REFUGEES

4.1 Problems faced by asylum seekers and refugees

This study would be incomplete if some of the traumatic experiences that an asylum seeker can be exposed to are not revealed to the reader. It should be noted, at the outset that problems that asylum seeker and refugees encounter are common to anyone of that status in any part of the world, be it in Africa or Europe.

In this Chapter we shall attempt to give an account of some of the common problems that refugees face. We shall also attempt to explain why such problems continue to prevail in spite of the various International instruments which have been put in place to safeguard the interests of refugees.

It has already been noted that asylum seekers will have fled their countries due to various reasons. Some of these reasons could be torture, violence, harassment and the like. Some of these people will have had to witness violence to their relatives as one refugee narrates:

Everything happened very fast. In a flash the entire town was aflame.... It was horrible. They poisoned our wells. Then the army pursued us one by one. We had to flee with our children during the night, stepping over dead bodies. We ran for twenty days. We had nothing to eat, nothing to drink. The children did not even

have the strength to cry. Many of them died on the way⁴⁵.

An experience such as the one narrated above is both perplexing and disheartening. Memories of such an event are likely to be permanently embedded in the narrator's thought and such a person is unlikely to cope with everyday events⁴⁶.

Another problem faced by both asylum seekers and refugees arises from their being separated from their families as one refugee woman narrates:

I could not condone the activities of my government and fled with my husband and children. During our escape we became separated. I thought my husband had been killed with my babies. He thought the same of me. Two policemen raped me. When I reported the rape, the two began to hunt me down. I hid while UNHCR searched for my family...⁴⁷

Obviously, experiences like the one quoted above leave very devastating memories on the mind of a refugee.

Apart from the mental and emotional disturbances that refugees may suffer, they are also likely to suffer disease. It should be noted that most uprooted groups are already poor. Somalian refugees are a good example. Further, countries like Zambia to which they flee are also facing their own economic and social problems. As a result groups which are already vulnerable to disease through poverty are exposed to acute risks that worsen their condition. In fact, it is not only the displaced people themselves but also those who receive them,

that may be affected⁴⁹.

Malnutrition remains a severe problem. The food aid provided in refugee camps by the International Agencies is frequently inadequate both in quantity and quality⁴⁹. The implication of this is that refugees are likely to suffer starvation and disease. This point is confirmed by Moren, a researcher from a private aid organisation when he says:

.... in Malawi, for example, 18000 refugees developed pellagra, a disease caused by niacin (vitamin B) deficiency which begins with skin rashes and diarrhoea and which can progress to dementia if untreated. The reason for the niacin deficiency was that the refugees' supply of groundnuts had run out and their diet relied on maize. The UN agencies were apparently unable to find any more groundnuts on the world market... The International Community was very slow to respond to this problem. This was surely the biggest outbreak of pellagra ever documented.... Basically it happened because the world did not see it as a high enough priority.... Pellagra is also affecting refugees in other parts of Southern Africa, for example, Zimbabwe... Privately at least, health officials in the UN agencies accept that the International Community must take the blame for continuing to provide refugees with a diet which is known to be sub-standard⁵⁰.

The above quotation indicates that, more often than not, refugees in refugee settlement camps are given inadequate food both in quantity and quality. This may cause their bodies to become deficient in necessary vitamins and minerals. As a result they are likely to catch diseases easily and may die. The saddest

thing about this is that such a situation could be prevented if the International Community learnt to respond to such needs efficiently. But unfortunately, as Moren puts it in the above quotation, the world does not see refugee problems as high enough priorities.

Another problem that refugees may face is boredom. Boredom is a serious problem for refugees particularly for children. There are rarely any jobs for them. This problem may be attributed to overcrowding in refugee camps⁵¹.

Life in a refugee settlement camp may not only be boring but may also be disrupted socially. With families separated and sometimes with an imbalance of males and females, refugees may face an unusually high risk of sexually transmitted diseases such as HIV, which tend to spread most rapidly in conditions of poverty where prostitution may be one of the few employment opportunities for women. Refugees are not exempt from such conditions, and indeed their opportunities for paid work may be even more restricted than others. Thus, no matter how long the level of infection may be when refugees arrive, they may be at risk of infection by having sex with the locals.

The problems faced by refugees today come from the fact that contracting parties to the International treaties on refugees are able to derogate easily from the provision of such treaties. The said treaties have put in place favourable provisions which, if strictly followed by state parties, would alleviate refugee problems a great deal. As already noted in Chapter 3, some of the rights and freedoms relating to refugees as provided for under the 1951 Refugee Convention and the African Charter have been modified by individual state parties. For example, although under Article 34 of the 1951 Refugee Convention, the contracting states undertake to facilitate the naturalization of

refugees as far as is possible through measures which expedite the process, Zambia has made a reservation against that provision and as such she does not facilitate the assimilation and naturalization of refugees. What this means is that a refugee residing in Zambia would never hope of ever changing his legal status even if he has been living in the country for a long time and has contributed to the development of the country in one way or another (some refugees possess good education and professional skills, others are economically well off). Such a situation is not helpful to both the refugee and the country in that the refugee, psychologically, would not exercise his full potential towards the development of the country because he will always consider himself to be in transit.

Finally, it must be noted that the list of problems that has been outlined above is not exhaustive but merely gives the reader an idea of the kind of problems that refugees, world wide, go through.

ENDNOTES

45. Refugees, No.67, August 1989 (Pamphlet: UNHCR) p.76
46. Ibid.
47. Ibid.
48. Interview with Commissioner for Refugees, Ministry of Home Affairs, Lusaka, 16.4.1995
49. Brown Phyllida, How Refugees Survive in New Scientist, August, 1991, Vol.131, No. 1780 p21
50. Ibid.
51. Ibid.

CONCLUSION

a) SUMMARY

In conclusion, it has been noted in this study that in Africa, political problems are the main cause of refugeeism. Political leaders do not normally accommodate contrary views and this often results in those in opposition fleeing their home countries to seek refuge elsewhere.

It has also been noted that Zambia has served as a host country for refugees since the Second World War when Polish refugees were settled in some parts of the country. Zambia has continued to play this role as regards refugees from other African countries and this can be partly attributed to her geographical central location and the political stability within the country.

It has also been established that when asylum seekers arrive in a country of asylum their legal status has to be determined before they can be accorded refugee status. In this regard International Treaties on Refugees have established criteria which define refugees to which contracting states have alluded. Section 2 of the Zambian Act provides for a definition of who qualifies as a refugee. This definition is, it was observed, identical to the definition in Article 1A(2) of the Refugee Convention as modified by the 1967 Protocol which eliminates limitations in time and space. As regards rights and freedoms relating to refugees, it was noted that under Section 2 of the 1951 Refugee Convention, once an asylum seeker has been granted asylum he immediately comes under the jurisdiction of the

asylum country. Further, the 1951 Convention also provides for legal rights of refugees in comparison with other aliens or nationals. Zambia, like other state parties, is under International law bound to accord to every person within her territory such rights and freedoms as provided for under the international treaties. It has, however, been observed that in practice, Zambia has derogated from some of her obligations. For example, under Article 22(1) of the constitution⁵⁰, freedom of movement is only accorded to Zambian citizens and is not applicable to refugees residing in Zambia. This was reflected in the case of Radebe V The People⁵¹.

The study has also focused on some of the problems that asylum seekers and refugees may face. These problems have been found to be both physical and psychological in nature and have resulted in some refugees suffering mental disturbances and infectious diseases resulting in death in some cases.

b) RECOMMENDATIONS

This study will only attempt to give solutions to problems that have been highlighted in the previous Chapters. It should be noted that the suggested solutions are by no means exhaustive.

In an attempt to alleviate problems that refugees face, the first step should be to try and remove or at least lessen the factors that cause people to flee from their countries. In this study, political and ethnic problems have been identified as the main cause of flight. Political leaders particularly in developing countries, are so insecure that they normally want those in opposition either killed or imprisoned. As a result opposition leaders and their followers will seek refuge in other countries. To solve this problem people particularly in developing countries should be taught the importance of solving their political and ethnic problems through dialogue. Those in leadership should be taught to accommodate contrary views. In this regard, it is recommended that UNHCR should design a programme where seminars for politicians can be run at regional level from time to time on the root cause of refugeeism, plight of refugees and on how the same can be prevented.

Further, since the youth are the leaders of tomorrow, similar programmes can be conducted for them in schools and colleges during holidays or vacations.

In addition, films depicting the plight of refugees could be shown in schools from time to time. This, definitely, is a long term solution to refugee problems but it could go a long way in lessening such problems.

The other cause of suffering among refugees arises from the fact that most countries like Zambia to which refugees flee are already overstretched in terms of social and economic needs. This means that the inflow of refugees simply worsen the situation. In September, 1995, for example, Zairean government expelled a good number of refugees alleging that they were a burden on the economy of the country as the UNHCR had not been sending sufficient relief aid⁵².

One way of solving the social and economic problems caused by refugeeism is to encourage the integration of refugees into the local communities of the countries of asylum. It is, therefore, recommended that UNHCR should make a deliberate move to initiate programmes that can promote integration and self reliance of refugees. This can be done, for example, by training refugees in fish growing, chicken rearing, animal farming and so on. In this way, refugees can start self employment projects in various agricultural activities out of which the local people can benefit as well.

The plight of refugees can also be alleviated by involving the Church worldwide. At every stage of history, the Church has played a role in influencing society. Religion has always been a powerful tool in regulating the behaviour of any given community. In addition the Church has always been economically sound. This means that given a chance, the Church can help in meeting the needs of refugees. The Church can, for example, build and run schools and medical centres for refugees. It can also provide relief aid in terms of food and clothing.

Churches can also conduct seminars for politicians to try and teach them on the need to solve political problems through dialogue without resorting to war which is the root cause of refugeeism.

The Church can also teach the community at large on the general problems and causes of refugeeism. They can also teach them on the need to be responsive to the plight of refugees.

In this regard, it is recommended that, UNHCR should extend a formal invitation to Churches worldwide so that they can take an active role in solving the problems of refugees. They can work hand in hand with governments and agencies.

It has already been noted that after the traumatic experiences that most refugees go through some of them are likely to suffer abnormal mental disturbances. Such persons may need specialised psychiatric help to recover. For this reason it is recommended that the World Health Organisation (WHO) should train people specifically in the mental health of refugees. After all, the world is likely to live with the refugee problem at all times. In fact, the WHO can work hand in hand with the Church in this regard.

It has also been observed that there is a high risk of disease among refugees. It was noted that in most cases fatal diseases are a result of food being inadequate both in quantity and quality. This problem could be attributed partly to communication breakdown between the donor governments, International Agencies and the host governments, like Zambia. At the moment it appears as though donors are not really fully

aware of the exact situation in refugee settlement camps. In this respect, it is recommended that both the agencies and the host governments should be made more accountable so that the donor community can at least learn how well or how badly the needs of refugees are being met and how effectively their long term problems are being resolved. This could be done by supplying regular information, for example, on the health situation of refugees to the donor community. In this regard, the UNHCR could engage an independent body from Non Governmental Organisation to regularly assess refugee situations and then to accordingly inform the donor community. Other data that could be sent include regular assessments of the type and quantity of food delivered. In addition, the International community should be educated on the plight of refugees. The entire world should be taught the necessity of a quick and positive response to the needs of refugees. The UNHCR should carry out a more effective campaign in this regard. What has been done so far in this respect is simply not enough.

It has also been observed that diseases such as HIV tend to spread most rapidly in conditions of poverty and overcrowding. These are conditions under which refugees live. To alleviate this problem it is recommended that UNHCR should work with host governments to ensure that more refugee settlement camps are set up in distant places from the locals so that only an easily manageable number of refugees is settled in each refugee camp. In addition, the authorities should ensure that refugees receive as much health education as is possible so that they are educated on how some of the infections can be prevented.

Boredom is another serious problem for refugees that has been identified in this study. This problem can be alleviated by encouraging refugees to become innovative. Donors can be asked to provide money specifically for that purpose. Children can, for instance, devise ingenious toys out of whatever is available to them. As for adults, education classes or small scale industries such as making soap or sewing should be promoted. Further, members of the refugee community can be trained as primary health workers and then they can be entrusted with the responsibility for running a part of a camp or a group of families.

The final recommendation relates to the extent to which state parties are bound by the International Treaties regarding refugees. It was noted earlier that these treaties are not automatically binding on the contracting state parties⁵⁴. What this means is that even if a state has ratified an International treaty, the obligations of the treaty do not automatically become a part of the state party's national law. It is up to each state party to decide when and how the content of the treaty are to be implemented nationally. For this reason, it is recommended that International law relating to refugees should be amended so that the said treaties should automatically oblige state parties to ensure that their national laws are in conformity with their International obligations. This could be done in any of the following ways, for instance:

- i) by including a clause in the national constitution that International treaties should be directly applicable in the territory of the contracting state;
- ii) by transforming the content of the treaty in question into national law; or

- iii) by enacting an Act declaring that the treaty in question should be directly applicable nationally.

Finally, for refugees already making their own way in an uncertain future, recommendations that have been enumerated above may seem remote and academic. But for aid workers, governments and the refugees of tomorrow, the need could hardly be more urgent.

ENDNOTES

52. Times of Zambia, 30.8.1995
53. No.1 of 1991, CAP 1 of the Laws of Zambia
54. Opcit.

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