

THE UNIVERSITY OF ZAMBIA
SCHOOL OF LAW

L410 – DIRECTED RESEARCH – MARK SHEET

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.....

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..... 20/25

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..... 20/25

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..... 16/25

4. CONTENT

..... 18/25

TOTAL

..... 74/100

LETTER GRADE

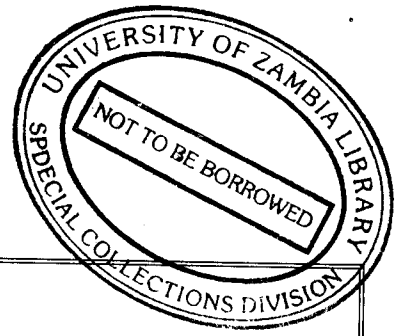
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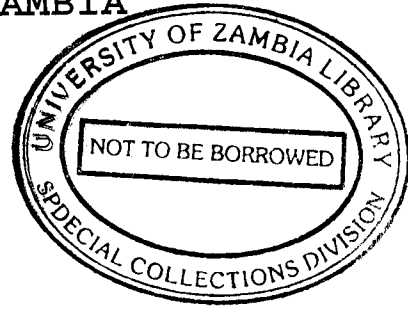
NKOMBO.M.KALIMA

OBLIGATORY ESSAY

**THE IMPACT OF ILLEGAL IMMIGRANTS ON ZAMBIAS' SOCIO-
ECONOMIC EXPANSION VIS-À-VIS GENERAL LIVING CONDITIONS**

THE UNIVERSITY OF ZAMBIA

FACULTY OF LAW



I recommend that this Directed Research prepared under my supervision
by

NKOMBO MULAKO KALIMA

Entitled

**THE IMPACT OF ILLEGAL IMMIGRANTS ON ZAMBIA'S
SOCIOECONOMIC EXPANSION VIS-À-VIS GENERAL LIVING
CONDITIONS**

Be accepted for examination. I am satisfied that it fulfils the requirement
pertaining to the format as laid down in the regulations governing
Directed Research.

A handwritten signature in black ink, appearing to be 'K. Chanda'.

.....
Honourable Justice Kabaso. C. Chanda

26th February 2007
.....
Date

DECLARATION

I Nkombo Mulako Malita Kalima, do hereby solemnly declare that I am the author of the work herein designated, **"The Impact of Illegal Immigrants on Zambia's Socio-economic Expansion vis-à-vis General living Conditions"**. The work of this research has been wholly based on my own research findings and I have not reproduced any past work done in the same or related filed.

I consequently assume any accountability owing to the contents, inaccuracy, oversight or misinterpretation herein.

.....
Signed thisday of2006

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ACKNOWLEDGEMENT

The work of many months of this research is heart-feltly dedicated to my father, Mr Meebelo Kalima, esq, my inspiration, my hero, for your enduring and wholehearted spiritual, emotional and financial support, my late mother, Mrs Julia Mutibo Chaaba Kalima, for her desire to see me complete my Law Degree programme, my brothers, Dr Hakupota Ndiku Kalima and Kalima Joe Kalima, my sisters Cindy.M.Kalima and Munalula Kalima Newa, who saw me sit at the Lap-top, months on end, Dr Mukatimui. N. kalima Munalula, Mwangala Kalima (late), Muyapekwa Kalima Mezui, for your unyielding love and support. I love you all and I am so proud of you. My wonderful son Ndiku Chansa Musonda and my beautiful little angel, my daughter Mutibo Musonda, you are my world. And an immeasurable thank you to my supervisor, Honourable Justice Kabaso Chanda for his fortitude.

NKOMBO MULAKO MALITA KALIMA

DEDICATION

Almighty Father God in Heaven, all Glory all Honour all Power be unto You for Your favour, Your Mercy and Your endless Love. I just want to Thank You Lord for everything.

Daddy, Mr Meebelo kalima.esq.and my late mother, Mrs Julia Mutibo Chaaba Kalima, You are such a strong pillar of hope, motivation, encouragement, overwhelming fortitude, immeasurable Love, I could not have gotten this far without you. In spite of everything we have gone through as a family, our angel, mom's passing away, I was so afraid I'd never succeed in anything but looking at you Dad, and what you have achieved, you made me feel I could do anything. That love and the strength that I have in you and Mom, living in my heart and mind has been and will always be an abiding blessing because from you I have learnt that True love always believes and it gives without boundaries, willing to sacrifice unconditionally, and Dad that is what you and Mom will always be to me...my Love forever. May the favour of God Almighty fall afresh on you dad, each day.

Your baby, Mulako.

CHAPTER ONE: GENERAL OVERVIEW

1.1 INTRODUCTION

Zambia is a landlocked sub-Saharan country sharing borders with Malawi, Mozambique, Zimbabwe, Botswana, Namibia, Angola, the Democratic Republic of Congo and Tanzania. Its population has increased over the last five years, from 9.9 million to 12.5 million¹ from 2000 to 2005, with Lusaka hosting the highest percentage of this population. The socio-economic conditions of the country have continued to decline with the average GDP falling from 2.6 percent in the 1970s' to below -5 percent in the last five years.

With a population of 12.5 and a GDP pf below -5 percent², the problem of immigrants in Zambia, particularly, illegal immigrants, is a dilemma that requires immense and immediate attention if the government aspires a dynamic and developing socio-economically stable Zambia.

¹ The Living Conditions Monitoring Survey, Central Statistical Office, 2004.

² Economic Report, 2004

The country's social, political and economic status is not exactly stable and being a developing nation, much attention needs to be focused on improving its people's standards of living if its socio-economic goals are not only to be achieved but, protected.

1.2 LITERATURE REVIEW

From the post-independent era to date, Zambia's socio-economic regime has undergone four distinct phases of change. First there was the period from 1964 to 1972, characterized by free market policies when the government pursued liberal economic and political policies, placing focus on provision of infrastructure and services. High and rising copper export earnings boosted the economy. This period was followed by that of state control from 1973 to about 1985. By the mid 70's, Zambia was largely a public sector led economy. The government dramatically increased its foreign borrowing to compensate for the steep decline in the international purchasing power of copper.

From this period to 1990, then came the introduction of unsustained stabilization and structural adjustment policies. Then came the stabilization and structural adjustment period

when government actively pursued policies that facilitated private sector growth. The economy was highly liberalized with significant privatization and other institutional reforms undertaken.

With a population of over 12 million, 45 percent of it is aged below 15 and most of this percentage is concentrated in the capital, Lusaka. Despite one of governments' major policies of liberalizing the economy and opening up the Zambian market to local and foreign investment, continued aid flows, passing the famous Highly Indebted Poor Countries, (HIPC) point, Zambias' socio-economic status continues to adversely decline, affecting key social sectors i.e. education and health.

A look at statistics from the Immigration department shows that between the years 2001 to 2005, 7,276, 293 million foreigners entered Zambia.

[Just within a period of five years, out of the total number of foreigners who entered the country, the Immigration department for various offences, including drug offences detained 27940].

As aforementioned, the Zambian government has since 1991, actively pursued

Policies that facilitate private sector growth, including price, trade, exchange and interest rate policies; financial sector liberalisation; and more responsible fiscal and monetary policies. Agricultural output and input markets were liberalised, and significant privatisation and other institutional reforms taken.

However, economic indicators from CSO show that despite all these reforms and substantial aid flows from several cooperating partners, Zambias' economic performance has continued to decline. There are quite a number of factors that point towards Zambias' declining economy, one of them is illegal immigrants whose presence has evidently affected the performance of the economy. For this particular study, we will focus our attention on immigrants and how their presence in the country continues to affect its socio-economic balance.

An analysis of the Immigration statistics from 2001 to 2005 reveals very interesting data with variations in figures that create worthy of note grounds for this research. The table

below shows statistics of Immigrants who were detained, prosecuted and consequently, deported between the years 2001 and 2005.³

Fig 1

ILLEGAL IMMIGRANTS-2001-2005			
YEAR	DETAINED	PROSECUTED	DEPORTED
2001	4796	291	77
2002	4389	551	161
2003	3401	744	161
2004	12586	1586	399
2005	2768	310	96
TOTAL	27940	3482	894

With statistics such as the ones above, a contention may be raised as to what the fuss may be concerning illegal or prohibited immigrants. Close to 30,000 illegal immigrants in the country, will cost the country in more ways than one through their presence, illegal trading, drug trafficking e.t.c and consequently, will cost the government more money to

³ Ministry of Home Affairs, Department of Immigration Libaray

apprehend, to detain at the immigrations limited holding facilities, to bring to court for trial and to deport. The question therefore is, why should the government expend limited funds to battle with a crisis that it can substantially deal with in the first place?

The position of the Law on this question of immigrants states that the Immigration and Deportation Act is, ..."**an Act to regulate the entry into and remaining within Zambia of immigrants and visitors; to provide for the removal from Zambia of criminals and other specified persons; and to make provision for matters incidental to the foregoing**".

Clearly, this is an Act intended, not only to regulate the presence of immigrants and visitors within Zambia, but needless to say, a means to brighten the countrys' economic future for every Zambian. This task has been chiefly assigned to the Immigration department under the Minister of Home Affairs. He/she may,

- ...by order confer all or any of the powers and impose all or any of the duties of an immigration

officer under the Act upon any public officer or class of public officer⁴.

- The Chief Immigration Officer (CIO) or any immigration officer shall issue an entry permit to any person in respect of whom the Minister directs that such permit be issued⁵.
- The CIO shall, if so directed by the Minister, issue an employment permit...
- Save in accordance with an entry permit, no person shall engage in any prescribed trade, business or other occupation.

As regards Prohibited Immigrants...

- Any person whose presence in Zambia is declared in writing by the Minister to be inimical to the public interest shall be a prohibited immigrant.
- Notwithstanding the above, the Minister may exempt any person from all or any of the classes set out in the Second Schedule and, unless and until such exemption is in like manner revoked, such person shall be deemed not to belong to such classes.

⁴ Immigration and Deportation Act, [No. 25 of 1997], Part II, Article 4(2)

⁵ Ibid, Part IV, Articles 14(2) and 17(2)

One may ask, what does it matter if we have a certain number of illegal immigrants coming into the country each year? The reason for this study is to critically deliberate over the challenges that this scenario places over Zambia's socio-economic status.

Economic indicators show that Zambia's economy continues to decline despite initiatives by the Government to liberalize the economy, privatize government financial enterprises, and open up the market to local and private investment, with the aid of its cooperating partners, reaching the Highly Indebted Poor Countries (HIPC) completion point and privatisation.

The many challenges that the immigration department faces continue to consequently affect the country's socio-economic position to set our discussion going, firstly, we will look at what these challenges are that the Immigration Department under the Ministry of Home Affairs is confronted with and secondly, what pressure do these challenges place on the Zambian government in its poverty reduction strategies?

1.3 SIGNIFICANCE OF THE STUDY

As mentioned above, the presence of illegal immigrants has a domino effect on Zambia's socio-economic levels. The figures may appear insignificant but their effect is like that of a termite. Just recently, thirty Zimbabwean nationals were rounded up and arrested by the Immigration department for illegally trading in the country. At present, there are several Congolese nationals that have flooded Zambia, making it their second home, all in the name of business or very widespreadly, churches, but without valid permits. Fifteen (15) Tanzanian nationals without any legal permits were arrested in Lusaka for illegally trading and at that, in roots and herbs that they claimed healed HIV/AIDS.

Refugee camps are overcrowded, consequently leading to hundreds of them uncontrollably flooding the streets of Lusaka, Copperbelt, and Zambia as a whole. The status or credibility of such "refugees" is what is not known. That is, some of them may be criminals escaping conviction or ex-

combatants, escaped murderers' or so-called investors, who are allowed to come into the country and set up low-grade investments that not only supply the country with cheap quality products and services, but affect the country's socio-economic status and employment, education and health levels. Such a state of affairs not only threatens the Socio-economic status of the country but clearly, the security of the country.

At first sight, one will probably look at this from the point of, just another group of immigrants that will be prosecuted and likely sent back to their home country. But the crisis goes beyond just rounding up illegal or prohibited immigrants and deporting them. The pertinent issues arising out of this crisis are several-fold. A look at the Immigration and Deportation Act clearly points out that it is an Act intended to provide for the removal from Zambia of criminals and other specified persons.

The significance of the study is therefore, to analyse critically;

combatants, escaped murderers' or so-called investors, who are allowed to come into the country and set up low-grade investments that not only supply the country with cheap quality products and services, but affect the countrys' socio-economic status and employment, education and health levels. Such a state of affairs not only threatens the Socio-economic status of the country but clearly, the security of the country.

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The significance of the study is therefore, to analyse critically;

- The extent to which these immigrants affect the social, economic, cultural and political status of the country.
- What the immigration department is doing to control the influx of immigrants into the country especially in light of them breaching the countrys' laws.
- To review the governments' policy regime in dealing with this crisis especially in light of the fact that the question of "vendors" has been legalised through the Vendors desk.
- How the law is dealing with matters of National Security in terms of immigrants or refugees who may be convicted criminals or 'ex-combatants or militia ' and where this fact is unknown to the government.
- The extent to which the current Law addresses this issue of prohibited immigrants.

1.4 OBJECTIVE

Following a critical address of the above issues, the objective of this study is to evaluate the challenges that the Zambian government and the Immigration department face and possible suggestions of how the country's' can be safeguarded while grappling with the crisis of illegal immigrants.

The Law as it stands, may require to be adjusted in view of its policies concerning the operations and jurisdiction of the Immigration and Deportation department. Presently, the *Immigration and Deportation Act* grants the Minister too many powers in terms of who may be issued with permits or visas or investment licences. The minister makes the ultimate decision regarding the above, virtually frustrating the work of the immigration department for the reason stated above.

This will be a major step in drawing closer to improving the lives of its' citizens by putting the nations' interests first.

The study should be able to provide a humble but significant foresight into devising measures that will better control the number of illegal and prohibited immigrants entering, remaining within and carrying out various types of businesses in Zambia without valid permits, visas and trading licences or engaging in paying businesses (e.g. traders, car dealers, shop owners, consultants, e.t.c) without qualifications, starting up churches to generate personal profits through peoples' tithes

and offerings e.t.c, and consequently negatively impacting the growth of the countrys' social sector.

The role the Zambian Government is playing in working with the Immigration Department in dealing with this dilemma in terms of funding the departments operations is also a challenge facing the department. We will delve into details of this area of discussion shortly.

In light of the above, a matter of interest that rises out of poor funding, as the case is, is the inevitability for corruption to creep in where some government officers have found themselves sitting on the fence regarding pledges they have made to uphold the law and accepting bribes from foreigners in order for them to gain entrance into Zambia and for the officers to feed their families.

Nevertheless, this is another wide dimension that we do not have enough time to discuss in our paper.

For most Government departments, poor working conditions have been standard for years now. The state of affairs is a

'vicious cycle' whose solution lies in addressing the small setbacks first, then, moving onto the more pertinent crises that would not even be much of a dilemma if the smaller issues were addressed.

Finally, the socio-economic security or safety of the country should be of great concern. Not every immigrant or refugee who enters the country will be 'unthreatening' towards the country's security. Some of these people may be white-collar criminals, ex-combatants or ex-convicts, murderers', prostitutes [carrying transmittable diseases our Health system may not be in a position to battle]. "Any person whose presence in Zambia is declared in writing by the Minister to be inimical to the public interest shall be a prohibited immigrant in relation to Zambia".

Presently, there are thousands of illegal immigrants living and doing business in the country. An investigation into the country's population would reveal that nearly half of the immigrants do not even hold any valid permits but the fact that they are in the country engaging in one form of business or another is a matter of great concern.

Currently, Zambia's population stands at roughly 12.5 million. Statistics show that on top of this total, 7,276, 293 million foreigners entered Zambia between the years 2001 to 2005. Of this total, 27, 940 Immigrants were detained between the year 2001 and 2005. And of this total, 2,406 admitted their guilt and 894 were consequently deported, meaning the rest of them somehow found themselves established in the country, either legally or not, depending on the courts decision.

On top of managing the 12.5 million population, this is what ultimately poses socio-economic, cultural, legal, educational, health challenges on our government.

The function of the Legislature in a free society under the Rule of Law is.... ***"To create and maintain the conditions that will uphold the dignity of man as an individual. This dignity requires not only certain recognition of his civil and political rights but also the establishment of social, economic,***

educational and cultural conditions which are essential to the full development of his personality⁶.

We do not see the legislature achieving this end of the Rule of Law in Zambia because of the current state of affairs.

In view of the above, we shall review data to scrutinize how extensive this setback has been.

⁶ Garner.J.F, Administrative Law, 5th Edition, London, Butterworth, [1979]

CHAPTER TWO:

2.1 INTERPRETATION OF FINDINGS

SAMPLE DESIGN AND COVERAGE

This study was a nationwide survey whose coverage was on sample basis. It covered both rural and urban areas in all nine provinces, (but mostly Lusaka, Southern and Copperbelt provinces) of Zambia. Data was obtained both from primary and secondary sources through participant observation and interviews. both structured and open-ended. Public records provided a valuable source of data for those provinces and areas where it was not technically workable. For Lusaka, Southern and Copperbelt provinces, interviewees with immigrants were carried out based on knowledge of their 'immigrants status' from the community. The sample frame used for this study was developed from the 2000 census of population and housing. Zambia is administratively demarcated into 9 provinces, which are further divided into 72 districts. Districts are further divided into 155 constituencies, which are also divided into wards. For the purposes of this study, wards constituted the ultimate Primary Sampling Units (PSU's) in the provinces. In order to have a balanced stratum, the sample size was divided in half, 50%

constituted the Zambian population and the other 50% constituted foreign immigrants. In these wards, both households and individuals were interviewed. It must be mentioned at this point that data collection was not uncomplicated as more often than not, the sample frame mistook the study for an undercover investigation by the immigration department. The following is a list of questions that the sample frame was asked:

- Sex of respondent
- Age of respondent
- Level of education
- Head of household
- Nationality of respondent
- Where respondent lives
- How respondent entered Zambia
- Year respondent entered Zambia
- Point from which respondent entered into Zambia
- Total number of members of household
- Type of permits held by members of household
- Reasons for remaining within Zambia
- Occupation
- Investment engaged in
- Does respondent hold a trading licence

- Monthly income
- Assets held

Interviews were carried out in three different geographical localities of both rural and urban areas in the three provinces.

The first sample was interviewed from the COMESA market in Lusaka. The second sample was taken from selected shops of Central Business Districts (CBD's) in Lusaka, Livingstone and Copperbelt. The next sample was from street corridors of wards of both rural and urban areas in the three provinces. The last sample was selected households of the three provinces.

Data from local (Zambian) interviewees' was based on their education and employment or economic activity status.

Data collected from foreign nationals was based on education, employment or economic activity, reasons for remaining in Zambia and what type of entry and trading permit, if any, held.

Specific details of figures will not be quite significant for this report, however, it will be prudent to note that most immigrants who enter Zambia are male immigrants, coming into the country to seek or start a business, to seek employment, to resettle.

Most of them enter Zambia through Northern province, Kanyala border or through Nakonde in North western.

The highest number of immigrants is nationals from the Democratic Republic of Congo where there has been political and civil unrest for decades, followed by Asian nationals of Chinese origin who come into the country mostly seeking investment opportunities.

The highest number of respondents engaged in wholesale or retail trade, manufacturing and service provision.

Education levels have improved with the introduction of correspondence and evening school programmes. However, this is watered down by the high unemployment levels that leave a large percentage of the labour force economically inactive.

From the Zambian respondents interviewed, 36 percent of the 12 and above age group were economically inactive. Of the remaining 54 percent, most of them were looking for work elsewhere or means to start their own business due to low salary levels and a high cost of living.

By 2005, the average income for a Zambian household was K500, 000. Majority of Zambian households or individuals, who constitute about 65 percent, had incomes below K450, 000⁷. When electricity, rental, transport, education bills are paid, how much would this

⁷ Living Conditions monitoring Survey Report, 2004. Central Statistical Office, Lusaka Zambia.

leave the average Zambian with to sustain a home? This is why it has been mentioned in this report that, the question of illegal immigrants may appear to be insignificant at first sight but its effect is like domino, touching on every major area of the Zambian socio-economic condition.

2.2 CHALLENGES

From the data analysis of the research findings, it was found that the government of Zambia is faced with a number of pertinent challenges that affect the socio-economic system in more ways than one;

- The first challenge, probably faced by any government department in Zambia, is **funds**. The Immigration department is constrained by the inadequacy of financial competence to control the coming in of foreign immigrants and refugees through various entry points in the country.

For instance, statistics from the Information Centre at the Immigration department reveal that, in 2002, over 1 million foreigners entered Zambia and of these, 4,389 immigrants were detained. This was a year after the current Administration came into power. [The Movement for Multiparty Democracy

administration, MMD]. The following year, 2003, the figure fell to about 600 thousand entrants and of these, 3,401 were detained. One of the reasons for this difference is naturally the insufficiency of funds to monitor the entry of foreigners into the country. **[refer to table above].**

An analysis of this odd scenario will be brought out in the next chapter.

- The second challenge the Immigration department faces is existence of illegal **traders** and **vendors**. Since the government created a "Vendors Desk", vending has more or less been sanctioned, to such an extent whereby every street corner in Zambia today, is covered by a street vendor. The distance from the University of Zambia Bus Stop right up to the Workers' canteen is filled with Zimbabwean traders selling all sorts of merchandise.

The question is whether these traders are Legally in the country or if they are, whether they have trading licences which most of them evidently do not possess. What this has given rise to, is some foreigners staying in the country illegally, trading without licences in the streets on the pretext that the

COMESA market may have run out of spaces for them to trade from.

- **Investment.** On a more international level, there a number of foreign investors who have come to invest in the country but after stringent investigations, it is discovered that some of them did not possess valid permits or trade an divestment licences. So, after government funds are expended into entering into these 'investment agreements', it is later discovered that that 'investor' was actually an illegal or prohibited immigrant under the second schedule of section 22 of the Immigration and Deportation Act. [The Chinese investor who had entered into an agreement with the government lot run Maamba Collieries]
- The third challenge the Immigration department faces is the insufficiency of **Border controls**. In Northern province, in Kanyala District to be precise, the Kanyala border control was closed a couple of years back which has resulted in hundreds and thousands of Illegal immigrants, particularly from the Democratic Republic of Congo, [DRC], coming into Zambia without any restrictions because there are no officials from

the Immigration department that have been stationed there by the Government to be in charge of entry of foreigners or immigrants into the country.

- The next challenge that could affect not only the department but also, the Nation as a whole, is the **Policy making** process of the Government. This may be viewed as quite frustrating because for instance, an appeal put in by the Immigration department to revise the current Law, has been pending, lacking any response from the Government since the year 2003. This brings us to the next challenge in light of the Ministers' powers vis-à-vis the Immigration and Deportation Act.
- In terms of **issuance, variation and revocation of permits**, currently, the Immigration department still pretty much "owes" its allegiance to the Minister of Home Affairs in terms of who may or may not be issued with a permit to stay in the country or to "invest" or "trade". "The Chief Immigration Officer, (CIO), shall issue an entry an entry permit to any

person in respect of whom the Minister directs that such permit be issued”⁸. [See Part IV of the Act].

Look at Section 17(2) for instance of the Immigration and Deportation (Amendment) Bill, 1997, which for Legal purposes is read as one with the Immigration and Deportation Act. The Minister has, on the whole, powers to decide who may or may not be issued with a permit, regardless of what the Immigration department may recommend, all in the name of “investment” or “trade” or whatever the reason may be. [Sections 14 (2) and 17].

The Minister has too many powers in terms of regulating the entry into and remaining within Zambia of immigrants and visitors.

- The final challenge that everyone ought to be extremely concerned about is “**National Security**”. Apart from the government being anxious about ex-convicts or ex-combatants posing a threat on the nations’ security.

⁸ Section 14 (2), Part IV, Immigration and Deportation Act.

As mentioned above, the function of the Legislature in a free society under the Rule of Law is to ***create and maintain the conditions that will uphold the dignity of man as an individual. This dignity requires not only certain recognition of his civil and political rights but also the establishment of social, economic, educational and cultural conditions which are essential to the full development of his personality***⁹.

[Recently, over thirty Zambian nationals were brutally murdered and their sexual organs cut out for what seemed liked 'business purposes' in several compounds in Lusaka. The victims were picked from compounds in Lusaka where at first sight, one would assume this was just another act of violence in compounds but Police investigations revealed some very interesting facts. Of the two apprehended suspects who were behind these brutal killings, the first was an Indian national and the second, a Congolese national who said they had been sent by a group of Congolese in the Democratic Republic of Congo, (DRC) who were using peoples' body parts and

⁹ Garner.J.F, Administrative Law, 5th Edition, London, Butterworth, [1979]

sexual organs to 'supposedly' enhance several kinds of businesses].

Previously, we looked at the challenges that the Immigration and Deportation department have had to deal with over the years, particularly, from the year 2001 to date.

In this chapter, we will discuss in detail these challenges and what the Zambian government has done about the situation in the last five years.

We will also look at why Immigration officials are not motivated to do their work more efficiently. (Hence the instances of temptations to accept bribes or do their work with a negative attitude, for instance).

So how have these challenges affected Zambia's' socio-economic expansion?

2.3 FUNDS, VENDORS AND BORDER CONTROLS

At first sight, all this may seem like an unnecessary focal point on extraneous affairs, but then close scrutiny at all this will reveal that the Zambian Government has a massive task on its shoulders which we hope this paper will shed some light into setting a network of getting to the bottom of this dilemma.

2.4 INSUFFICIENT FUNDING

Like any other government department, the department of Immigration and Deportation faces several financial constraints in terms of effectively carrying out its duties.

This financial limitation coupled with the governments' legalising of vending through the "vendors desk", consequently leads to inefficiency in controlling the presence of vendors along shop corridors, at bus stops, along every road in Lusaka. What this then means is that it becomes tricky to differentiate between foreigners/immigrants or refugees whose immigrant status may have expired, and local nationals to such an extent

that illegal immigrants manage to get away with trading illegally in the country.

The Immigration department does not have enough vehicles to efficiently carry out its operations in the country. As a result, it takes some time before illegal and/or prohibited immigrants are rounded up and detained, which gives them ample time to acclimatise themselves into the Zambian socio-economic setting, consequently making it difficult for immigration officers to work efficiently.

The next impediment the department faces is the inadequacy of immigration stations in the country. In Lusaka for instance, all immigration cases are referred to the main office where cases will not be dealt with, with the required efficiency owing to the numerous number of cases presented there.

2.5 ILLEGAL TRADERS AND INVESTORS

The creation of the COMESA market in Zambia (and the whole of Southern Africa) was a beneficial and insightful

accomplishment towards improving International Trade and Integration. However, the trading market in Lusaka is not capable of containing the growing number of immigrants and foreigners that are pouring into the country uncontrollably and selling at COMESA.

What this means for the Immigration department is that it falls short of controlling vendors on the streets because, apart from the government legalising vending, most of these immigrants manage to get away with vending on the streets, renting stalls e.t.c without valid entry permits and trading licences on the justification that there is no more trading space at the COMESA market.

Further investigation may reveal how some of these immigrants or foreigners may have been found in possession of counterfeit entry permits or Visas.

The Immigration department does not have adequate facilities in terms of equipment and transport to investigate each and every case of illegal entry or immigrants and more so, border controls. When it is not an impediment of vehicles it becomes fuel or like most government departments, "motivation".

2.6 HOLDING FACILITIES

The next financial constraint is facilities where to hold detained or suspected illegal immigrants or foreigners who are either awaiting trial or deportation because the holding facilities at the Immigration department are barely adequate enough to accommodate these foreign nationals. Prisons are full even if it meant these immigrants being sent to prison to serve a sentence because Zambian prisons are full. It may be interesting to note that by the end of the year 2006, the population of inmates at Chimbokaila and Kamwala prisons stood at 2,037 with one case of Leprosy, which was an immigrant.

What this may result in, is more and more foreign nationals and immigrants coming into the country owing to insufficient border controls.

Take for instance, Kanyala border in Northern province. This border point has been closed for some years now due to lack of funds from the government, resulting in foreigners entering Zambia through that point without

permits, because there is no immigration control to regulate their entry.

A study shows that, following a history of political and civil violence, most Congolese immigrants have entered Zambia through northern province, particularly, the closed Kanyala border.

3.0 CHAPTER THREE

3.1 PRESENT STRUCTURE OF THE LAW

At this point, it will be beneficial to examine relevant sections of the Immigration and Deportation Act that the Government may consider reviewing.

The Immigration and Deportation Act is an Act to;

- Regulate the entry into and the remaining within Zambia of immigrants and visitors;
- To provide for the removal from Zambia of criminals and other specified person;
- To make provision for matters incidental to the foregoing.

Statistics from the Immigration department information centre reveal that, between the year 2001 and 2005, a total of 7, 276, 293 entered Zambia and out of this total, 5.7 million exited the country. In 2004 alone, a total of 3.2 million immigrants entered Zambia and in that year, a survey by the CSO revealed that the countrys' population was 10.9 million. The point we are trying to get at is that, on top of Zambias' growing population; the number of immigrants and refugees is on the increase. This development prompted the Immigration and Deportation

department to appeal to the Ministry for a review of the policy making process in 2003, but to date, there has been no indication of improvement.

Although these records show that not more than 200, 000 thousand permits and visas are issued in a year, the question still remains, how do all those illegal immigrants find their way into the country and during their stay in Zambia, how do they affect the socio-economic structure of the country?

The Immigration and Deportation Act is an Act to "regulate the entry into and the remaining within Zambia of immigrants and visitors and to provide for the removal from Zambia of criminals and other specified persons". A compilation of all the challenges faced by the department is what compounds the whole subject of affecting Zambia's socio-economic status because if the Immigration department fails to carry out its' duties efficiently, the result will be a domino effect. Uncontrolled entry of immigrants will mean an increase in immigrants falling in one or more of the classes set out in the second

schedule, this will then mean an increase in illegal traders both on the streets and in rented structures, then there will be an increase in the likelihood of presence of criminals and prostitutes, in this era of HIV and AIDS. The huge task that the Immigration department faces is obviously funds to control the entry of immigrants into the country. There are not enough border controls to do this.

As mentioned above, Kanyala border has in the past been one of the major contact points between Zambia and the DRC. Its closure a few years ago has seen the uncontrolled entry of immigrants through that entry point adding to the number of illegal immigrants in the country. The following sections of the Immigration Act give powers to the Minister to decide who will stay in the country;

Part II APPOINTMENTS AND POWERS;

- Article 4 (2)

Part III EXAMINATION OF PERSONS ENTERING AND LEAVING ZAMBIA AND OTHERS

- Article 9 (2)

Part IV ISSUE, VARIATION AND REVOCATION OF PERMITS

- Article 14 (2)

- Article 17 (2)

- Article 18 (2)

Part V PROHIBITED IMMIGRANTS AND DEPORTATION

- Article 22 (1)

- Article 22 (2)

- Article 22 (5)

- Article 23 (1)

- Article 24 (1)

- Article 24 (2)

- Article 31

- Article 35 (2)

The Law clearly states that the CIO or any competent immigration officer can only issue an entry permit to any person in respect of whom the Minister directs that such permit be issued. [Articles 14, 17 & 18 (2)]. The contention raised at this point is that, the Minister does not have first-hand-contact with these immigrants such as the CIO and immigration officers possess owing to the nature of the operations therefore, they are the ones that should instead recommend to the Minister who should or should not be issued with an entry permit into Zambia.

At this point, the question of fundamental human rights sets in. Zambia, being a member of the Organisation of African Unity, (OAU) this means it subscribes to basic International human rights laid out in the African Charter.

Article 6

Every individual shall have the right to liberty and to the security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained.

Article 7

1. Every individual shall have the right to have his cause heard. This comprises: (a) the right to an appeal to competent national organs against acts of violating his fundamental rights as recognized and guaranteed by conventions, laws, regulations and customs in force; (b) the right to be presumed innocent until proved guilty by a competent court or tribunal; (c) the right to defence, including the right to be defended by counsel of his choice; (d) the right to be tried within a reasonable time by an impartial court or tribunal. 2. No one may be condemned for an act or omission which did not constitute a legally punishable offence at the time it was committed. No penalty may be inflicted for an offence for which no provision was made at the time it was committed. Punishment is personal and can be imposed only on the offender¹⁰.

In view of the above, how does the government reconcile section 22, the second schedule of the Immigration Act

¹⁰ Universal declaration of Human Rights, No.34 of 1997

that contains a list of classes of prohibited immigrants that is intended to guide the Immigration Department in their operations? A thought along the lines of this section of Human Rights was considered in the case of **Yusuf Ibrahim Ismail Issa v The Attorney General**. The appellant was an immigrant whom the minister of Home Affairs had made a decision to deport in 1968 on grounds that his presence in Zambia was inimical to public interest.

In another recent development, two Nigerian kingpins were apprehended by the DEC for trafficking cocaine and following their arrest, it was discovered that the duo were illegal immigrants.

Contrast this case with the recent case in Zambia where a Tanzanian national who was in Zambia illegally was apprehended by the DEC having swallowed 152 pellets of Heroin but when it was found out that he was HIV positive, he was granted a suspended sentence.

So apart from the main issue that this paper focuses on, the presence of immigrants carrying various kinds of

businesses in Zambia, which has ultimately affected the countrys' socio-economic stability, there arises a question of social, health, education and political security, and the extent to which the government has authorised the Immigration department through written Law to control their entry.

CHAPTER 4:

4.0 OVERVIEW OF RESEARCH FINDINGS

Most socio-economic studies done in the past have revealed that the employment levels to a large extent determine the economy's production and consumption levels and on a more communal level, participation in politics, religion and health challenges.

The poor performance of the Zambian economy has among the many factors, been adversely affected by the increasing number of illegal immigrants, affecting education, health, politics and to some extent, employment.

From the figure shown above, the total number of illegal immigrants prosecuted from the number detained may appear to be small compared to Zambia's population.

However, their mere presence and the gravity of offences involved is what underlines the core of our discussion.

The immigration department being a government sector, heavily depends on funding from the government and naturally, the government has been finding it difficult to meet

the departments' challenges due to limited resources available. In reality though, it is a known fact that when it comes to policy making, the government has not had these challenges on its priority list in light of illegal immigrants and just how far-reaching their presence is adversely affecting the country.

From this research, it was discovered that the main points of entry for illegal immigrants in Zambia are through Kanyala border in Northern province and Nakonde. There are very few effective border controls in the country, which results in the uncontrolled illegal entry of immigrants.

With the growing political instability in this side of the region, it has become increasingly difficult not only to control borders but also to determine whether entrants are not a threat to public safety or national security.

Social security has constantly been destabilized due to hundreds of illegal immigrants flooding the market engaging in various forms of illegal trade, drug trafficking inclusive.

Take for instance the Tanzanian national with a forged entry permit who was apprehended in Lusaka by the DEC for trafficking one hundred and fifty two (152) pellets of heroin which he had swallowed. Firstly, with delicate health policies especially now in light of the HIV pandemic and Human Rights, the current Law was altered in his favour due to the fact that he was HIV positive.

The second schedule in section 22 of the Act has a list of classes of prohibited immigrants. The law clearly states that '...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 with such a disease or of transmitting to him such a disease shall be considered a prohibited immigrant. What we have here is a multiple situation.

If illegal immigrants are trafficking drugs into the country and to compound it, are carrying deadly transmittable diseases such as HIV which is now being used as a mitigating factor, how many illegal immigrants are going to "try their luck" and come into ~Zambia illegally to either traffick drugs or threaten the health system which is already a great challenge for the government? The HIV and AIDS pandemic continues to

ravage the Zambian society with a prevalence rate at 19 percent affecting mostly the youth aged between 15 and 49.1 It is already a burden on the government to Secondly, had this Heroin found its way onto the Zambian market, what percentage of the youth, the unemployed, the vulnerable due to poverty, would have access to this drug and how would it have affected the countrys' socio-economic balance?

This leads us to our next observation, which is issuance, variation and revocation of permits,

The Immigration and Deportation Act empowers the Minister to use his discretion to issue out permits to foreigners and to vary thier status. As mentioned in the introduction, the Law gives too much power to the minister in terms of determining who should enter and/or remain within Zambia from outside the country. The position regarding this authority should be revised to allow room for the CIO and /or specific immigration officers to make recommendations and deliberate on them with the minister as opposed to waiting for the minister to make decisions on his own at all times.

The law should be revised regarding prohibition of immigrants on grounds of being infected or inflicted or being a carrier of a prescribed disease without discriminating against people with HIV. Note carefully here that, it will be extremely beneficial for the Zambian government to strictly stick to a law that will favour its socio-economic conditions that have deteriorated so much. Activists of human rights of HIV people advocate for equal treatment and no discrimination, therefore, as Abraham Lincoln saw it fit a hundred years ago, everyone is equal before the law, no one should be given special treatment when they are guilty of a crime, when it comes to conviction.

CHAPTER5: RECOMMENDATIONS

- I. Challenges.....**
- II. Present Structure of The Law.....**
- III. Conclusion.....**

5.0 Data collection in this research was not exactly problem free. The vigilance with which institutions like the Office of the President and the Drug Enforcement Commission have been carrying out tier work in the last five years, made interviews quite tricky especially in compounds in Lusaka province such as Kanyama or Chibolya because people mistook interviews for investigations by the above mentioned. However, with help from a few locals, this was overcome.

The well being of both individuals and households in the Zambian society largely depends on their participation in gainful economic activities. The desire to attain and sustain a certain acceptable level of consumption of goods and services has led individuals to engage in various economic activities. Engagement in these

activities not only ensures a persons' livelihood but also equips an individual with means of acquiring and sustaining the basic needs of life such as food, clothing and shelter. The study showed that the Immigration department continues to be compounded by the following issues;

- **Funds.** The Immigration department is constrained by the inadequacy of financial competence to control the coming in of foreign immigrants and refugees through various entry points in the country.
- Secondly, the existence of street **vendors makes it easy for illegal immigrants to sort of blend into the Zambian society.** On the Copperbelt for instance, one would be amazed at just well foreign nationals speak the local language bemba with such fluency, when they get into street vending, it is increasingly difficult to separate from Zambians. Vending has more or less been sanctioned, to such an extent whereby every street corner in Zambia today, is covered by a street vendor.
- **Investors** should not only be allowed just because they contain the word 'investor' I their application for permits. There have been several situations where an investor has violated the regulations of the Investment Act regarding

operations in the country. Firstly, there has been a breach of the regulation to bring into the host country a combination of skills, resources and activates that will result in surplus of outputs a real income and foreign exchange. Secondly, treatment of workers in some of these factories or industries has proved to be inhumane and therefore a breach of basic Human Rights and International Labour regulations. Article 14 and 15 of the Zambian Constitution enforces the protection of workers from slavery, forced labour and inhuman treatment.

- The **Policy making** process of the Government concerning immigration is a matter of such gravity that the National Assembly needs to look into it. It is quite frustrating because for instance, an appeal put in by the Immigration department to revise the current Law, has been pending, lacking any response from the Government since the year 2003.
- The next challenge the Immigration department faces is the insufficiency of **Border controls**. In Northern province, in Kanyala District to be precise, the Kanyala border control was closed a couple of years back which has resulted in hundreds

and thousands of Illegal immigrants, particularly from the Democratic Republic of Congo, [DRC], perhaps if borders were sufficiently controlled, there would not be as many illegal immigrants coming into Zambia that the Immigration department would have to deal with on limited resources.

- In terms of **issuance, variation and revocation of permits**, currently, the Immigration department still pretty much "owes" its allegiance to the Minister of Home Affairs in terms of who may or may not be issued with a permit to stay in the country or to "invest" or "trade". "The Chief Immigration Officer, (CIO), shall issue an entry an entry permit to any person in respect of whom the Minister directs that such permit be issued"¹¹. [Part IV of the Act].

5.1 PRESENT STRUCTURE OF THE LAW

The Immigration Act empowers the Minister of Home Affairs in the highlighted sections to make decisions, make orders and declarations or prohibitions. This has greatly affected the work of The Immigration department in that most of their work is

¹¹ Section 14 (2), Part IV, Immigration and Deportation Act.

dependant on the ministers assent. The second schedule has a diversity of classes of immigrants considered prohibited which in our view, requires more than one persons discretion to make a judgement as to who should or should not be classed an illegal immigrant. There should more participation by the Chief Immigration Officer and the departments' officers as opposed to the way the situation currently is, And more importantly, the global incidence of HIV and AIDS confers a fundamental task to the Zambian government in terms of the current law in section 22, second schedule class A. law makers. The Zambian people do not envisage a situation where illegal immigrants trafficking drugs or involved in some other crime will be granted suspended sentences due to their being HIV positive.

RECOMMENDATIONS

Having said all there is to say, probably the first recommendation is that the Immigration Department should be established under a legal instrument that will extend its powers and allow it to operate within a framework of a more well informed, more experienced with immigrants. It should be a branch of the Ministry of Home Affairs but with power to make and act on its own recommendations. The minister should only be informed of the policy undertakings that the

department embarks on without necessarily having to wait for him/her to suggest those policies in parliament or approve recommendations made by the department.

Secondly, it is felt that leaving it to the minister to make a decision as to who will be awarded a permit to stay within the country is too much work for his office and the Chief Immigration Officer is better placed in his/her position owing to the fact that such people have to go through his/her office before they are even considered to stay in the country.

Thirdly, attention should be paid more to borders such as Kanyala and other entry points in Northern province where it is known that most of these immigrants fleeing from political instability in their countries come in through. Probably, funding such entry points would be more lucrative than investing millions of kwacha into building a football stadium for the world cup.

The government should also build separate holding facilities for illegal immigrants pending trial or deportation.

Finally, it is suggested that once the law has been altered in light of HIV/AIDS rights and freedoms, private citizens who have information pertaining to the presence of illegal immigrants should be mandated to work with the Immigration department in

exercising the citizens power of arrest in anticipation of contacting immigration department.

CONCLUSION

Indicators of the various socio-economic sectors of the Zambian economy still continue to depend on the government to a large extent. With the liberalization of the economy and opening up the Zambian market to foreign and local investment, there is need to enforce a legal mechanism under the Immigration Department that will rigorously perform its duties with reduced inhibitions from the state. The law should be revised to curtail some powers it confers on the minister of Home Affairs in terms of issuance, variance and revocation of permits into the country.

There should also be a law that will be stringent on illegal immigrants who breach the Zambian law, whether HIV positive or not because after all is said and done, we are all equal before the Law.

With these suggestions, it is anticipated that by the end of the current governments term, the Zambian socio-economic conditions will have undergone a revolution because all the challenges mentioned in this report are not unattainable, especially in a liberalized economy.

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