

THE LEGAL PROTECTION OF REFUGEES IN ZAMBIA
IN THE LIGHT OF INTERNATIONAL LAW

by

Mathias Sahinkuye

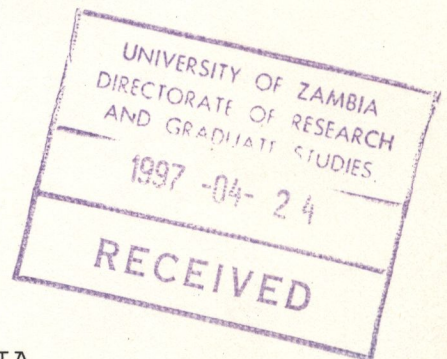
THESIS

LL.M

SAH

1997

A thesis submitted to the University of Zambia
in fulfillment of the requirements
for the degree of Master of Laws



THE UNIVERSITY OF ZAMBIA
P.O. Box 32379
LUSAKA
APRIL 1997

DECLARATION

0578925

This thesis of MATHIAS SAHINKUYE is approved as fulfilling the requirements for the award of the degree of Master of Laws by the University of ...

I. MATHIAS. SAHINKUYE.. do solemnly declare that this thesis represents my own work which has not previously been submitted for a degree at this or another University.

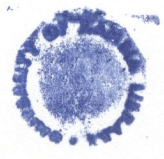
Signed Date

Signed MSM Date

Date .23..04..97.....

Signed Date

Signed Date



ABSTRACT

The thesis focusses on the protection of refugees' human rights in Zambia in the light of international law. The importance of this subject is highlighted by the fact that Zambia does not have enough legislation to deal with the refugee influx and the national practices of legislation and practice do not give enough protection to refugees' rights provided for in international instruments. This legislation has been used often improperly, and together with the practice, it infringes fundamental individual rights and, therefore, undermines the Rule of Law.

This thesis of MATHIAS SAHINKUYE is approved as fulfilling the requirements for the award of the degree of Master of Laws by the University of Zambia.

Signed *Achanda* Date *23-04-97*

The study examines the extent to which Zambia is ready to admit asylum-seekers and to grant them asylum, and the reality that people face who seek or enjoy asylum in Zambia considering the international law on the one hand, and the Zambian juridical, economical and political situations on the other hand. It demonstrates that Zambia, considered as a part of the international community and having signed the international instruments relating to refugees, has the legal obligation to protect refugees.

Signed Date

Signed Date

The thesis is divided into five chapters. Chapter one gives a general survey of Zambia and shows the different refugee movements which have occurred into Zambia. Chapter two examines the different stages necessary for the protection of refugees in

ABSTRACT

The thesis focusses on the protection of refugees' human rights in Zambia in the light of international law. The importance of this subject is underlined by the fact that Zambia does not have enough and adequate means to deal with the refugee influx and the national pieces of legislation and practice do not give enough protection to refugees' rights provided for in international instruments. This legislation has been used often improperly, and together with the practice, it infringes fundamental individual rights and, therefore, undermines the Rule of Law.

The study examines the extent to which Zambia is ready to admit asylum-seekers and to grant them asylum, and the reality that people face who seek or enjoy asylum in Zambia considering the international law on the one hand, and the Zambian juridical, economical and political situations on the other hand. It demonstrates that Zambia, considered as a part of the international community and having signed the international instruments relating to refugees, has the legal obligation to protect refugees.

The thesis is divided into five chapters. Chapter one gives a general survey of Zambia and shows the different refugee movements which have occurred into Zambia. Chapter two examines the different stages necessary for the protection of refugees in

Zambia. It brings out the meaning of 'refugee' in international law as well as in Zambian law. It explains why refugees have sought refuge and have been granted asylum in Zambia regardless of the legality or illegality of their leaving home and entry into Zambia. Furthermore, it analyses the Zambian procedure of granting asylum. Chapter three discusses the refugee problem in view of international law and the national legislation and practice of Zambia. Chapter five is a conclusion.

ACKNOWLEDGEMENTS

This work was only completed through the co-operation of many people. However, special thanks are due to the following:

Doctor Alfred Winstone Chanda under whose supervision this work was undertaken, for his guidance and constant encouragement. Professor Carlston Anyangwe for his valuable comments and suggestions on parts of the manuscript. Mr. Emmanuel Munyambuga and Mr. François Temahagali for their assistance in typing and printing the manuscript competently.

I also owe thanks to Bishop John Osmers and Mr. Emmanuel Hakizimana for their financial assistance for the production of the work.

TABLE OF CONTENTS

	Page
Abstract	iv
Acknowledgements	vi
Introduction	1
1. Purpose, Specification of the Problem and Delimitations	1
2. Methodology	3
Chapter One. Zambia: A Haven for Refugees	
Introduction	7
I. General Survey of the Country	8
1.1. Geography	8
1.2. Population	10
1.3. History and Politics	12
1.4. Economy	14
II. Refugee Movements into Zambia	16
2.1. South Africans and Namibians	16
2.2. Angolans	19
2.3. Zimbabweans	20
2.4. Somalians	22
2.5. Zairians	24
2.6. Burundians	27
2.7. Rwandans	28
III. Conclusion	32

Chapter Two. Towards the Protection of Refugees in Zambia

Introduction	33
I. Meaning of 'refugee'	34
1.1. International Law	35
1.1.1. Definition Under Customary International Law	35
1.1.2. Conventional International Law	37
a. The 1951 Convention Relating to the Status of Refugees	37
b. The 1967 Protocol Relating to the Status of Refugees	40
c. The 1969 Organization of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa	41
1.2. Zambian Law - The 1970 Refugee (Control) Act and the 1971 Statutory Order No. 240	46
II. In Search of Asylum in Zambia	48
III. The Zambian Procedure of Granting Asylum	54
3.1. International Law	54
3.2. National Legislation and Practice	66
IV. Conclusion	70

Chapter Three. The Refugee Problem in Zambia

Introduction	73
I. The Refugee Population	73
II. The Parties Involved	76
III. The Refugee Settlements	90
IV. The Urban Refugees	95
V. Conclusion	97

Chapter Four. The Protection of Refugees' Rights

Introduction	99
I. International Law	100
II. National Legislation and Practice	108
III. Conclusion	120

Chapter Five. General Conclusion

I. Summary	125
II. Recommendations	132

Bibliography	133
---------------------	-----

INTRODUCTION

Refugees have existed since time immemorial and the problems related to their situation have been increasing day after day. After the Second World War millions of refugees from Eastern Europe sought asylum in Western countries. Since the 1960s, the new states in Africa have had to deal with refugee problems of enormous proportions. In the last decade, new refugee problems have emerged in Latin America and in Asia.

Zambia is one of the countries of Southern Africa which has received big numbers of people fleeing their countries because of violence, brutality, killings and murders in different countries of Africa. People flee their countries because they are involved in the conflict, sometimes because they are caught in the crossfire between rival forces, or are otherwise affected by the conflict. What is the future of people who flee to Zambia? To what extent is Zambia ready to admit asylum seekers and to grant them asylum? What reality do people face who seek or enjoy asylum in Zambia?

1. Purpose, Specification of the Problem and Delimitations

This thesis examines the extent to which international treaties concerning refugees are implemented nationally in

Zambia, with its specific economic and political reality. The treaties which will specifically be considered are: the 1951 Convention Relating to the Status of Refugees (hereinafter referred to as 'the 1951 Convention'); the 1967 Protocol Relating to the Status of Refugees (hereinafter referred to as 'the 1967 Protocol'); the 1969 Organization of Africa Unity Convention Governing the Specific Aspects of Refugees in Africa (hereinafter referred to as 'the OAU Convention'); and finally the 1981 African Charter on Human and Peoples' Rights (hereinafter referred to as 'the African Charter').

The object of this thesis is, firstly, to give a general description of the refugee situation in Zambia in 1996; secondly, to give a more detailed account of certain legal problems in international refugee law related to national legislation and practice in Zambia, considering the general situation in the country. Concerning the first part, there will be an emphasis on practical aspects of the work with refugees executed by certain organizations in collaboration with the Government of Zambia. The legal problems of interest in the second part are the determination of refugee status and many refugee's rights, especially freedom movement, right to liberty, the right to work and the opportunity to acquire Zambian citizenship. As regards the determination of refugee status, the main problem to be studied is the procedure involved. Regarding the other legal problems, the study concentrates on the group of refugees who enjoy asylum in the country.

The scope of the present thesis is then restricted to the legal aspects of the many problems caused by the presence of refugees in Zambia.¹ That is to say, only legal problems are discussed and only such arguments are resorted to as would carry weight in a court of law or in other places where legal matters are discussed and resolved. However, direct reference to the humanitarian, social, political, economic and other non legal aspects of the problems caused by the presence of refugees will only be made when this is apt to give a better understanding of rules of law. Furthermore, this thesis is restricted to those rules of public international law which relate to refugees and which spell out the international rights and obligations of Zambia, or which regulate the activities of the international organizations and other bodies of an international nature. These rules are placed side by side with the Zambian rules with a view to bringing out a theory which can improve the domestic implementation of the said international instruments.

2. Methodology

This thesis has made use of international legal instruments concerning refugees and Zambian legislation. It has also made use of literature, periodicals, newspapers, and information either acquired through interviews or by printed matter from organizations involved in refugee work in Zambia. A great part of the information became available through a field study in

¹ It will be noted that the existence of refugees in Zambia has given rise to vast problems with many aspects: humanitarian, social, economic, legal, political and, other.

Zambia.

The intention during the field study was to obtain the official view of the refugee situation. Accordingly, interviews were concentrated on organizations closely cooperating with the Government of Zambia. The following were interviewed: the United Nations High Commissioner for Refugees (*UNHCR*), the Zambian Commission for Refugees, the Young Men's Christian Association (*YMCA*)-Refugee Project, the Catholic Church and the Anglican Church.

During a visit to refugee settlements, twenty-one refugees were interviewed either individually or in a group, according to their preferences. They represented some of the different nationalities of the settlements and when they were interviewed in groups, they were of the same nationality. Interviews were also made with urban refugees.

The problem of basing the thesis on a field study is the questionable reliability and validity of the unprinted collected information. Has the interviewed person given an objective description of the situation or does he/she have any reason to give a false or subjective view?

One example of this is when a person selects certain types of information and leaves out other data which also have been of importance to the answer. The person who was interviewed could also have been misinformed or not informed at all, but pretended to be fully acquainted with the matter. One last question is how

many people have passed on the information before it reached the interviewer.

This problem was reduced during the field study by interviewing different parties involved in refugee work, different people employed in the same organization, refugees, and organizations that did not belong to the group that is working together with the Government of Zambia. Most of the organizations interviewed are directly involved centrally in refugee work and should presumably be better informed on questions related to refugees than persons outside those organizations. In particular, as international and non-governmental organizations respectively, one would expect that *UNHCR* and *YMCA-Refugee Project* should be well informed on the official refugee policy. Therefore, in the present thesis, the problems of reliability and validity have been considered and as far as possible reduced.

This thesis is divided into four chapters and a general conclusion. Chapter one gives a general survey of Zambia and shows the different refugee movements which have occurred into Zambia. Chapter two examines the different stages necessary for the protection of refugees in Zambia. It brings out the meaning of 'refugee' in international law as well as in Zambian law. It explains why refugees have sought refuge and have been granted asylum in Zambia no matter how legal or illegal their leaving home and entry into Zambia was. It analyses the Zambian procedure of granting asylum.

Chapter three looks at the refugee problem in Zambia. In chapter four, the protection of refugees' rights is considered in light of international law and the national legislation and practice of Zambia.

Chapter five is a conclusion. It argues that some refugees' human rights are abused. It proposes measures that can be taken to alleviate this problem.

Although all the issues are discussed in relation to Zambia, they are of general interest in all refugee situations.

CHAPTER ONE

ZAMBIA: A HAVEN FOR REFUGEES

INTRODUCTION

This chapter is intended to present Zambia in different aspects related especially to its geography, history, population, politics and economy. It also shows some of the different refugee movements which have occurred into Zambia at different periods.

This process is important because a big number of refugees who enjoy asylum in Zambia have come to Zambia deliberately because Zambia presents many similarities to their respective countries of origin.² It is true that some geographic aspects of Zambia are similar to a large part of its neighboring countries where 65 percent of the refugees come from. These aspects are also found in Eastern Rwanda and in a small part of Northern Burundi. Twelve percent of the refugee community in Zambia come from those two countries. Moreover, the Zambian natural resources and the diversity in the composition of the population have favored the refugee flight to this country.³

² Interview with refugees: Kalonji Ngoy, Jose Pinto Fausto, B.Lukungu, N. Bangira, Lusaka, July 2, 1996.

³ Interview with Eric Tukombe, Commission for Refugees Officer, Ministry of Home Affairs, Lusaka, July 26, 1996.

I. GENERAL SURVEY OF THE COUNTRY

1.1. Geography

With its area of 290,586 square miles, Zambia shares borders with eight countries. Three of its four main rivers are international frontiers. The *Zambezi* separates Zambia from Namibia and Zimbabwe, the *Luangwa* marks the boundary between Zambia and Mozambique and the northward flowing *Luapula* is on the border of Zaire. In the extreme South-West the sluggish *Chobe* river runs along the Zambia Angola border. Yet another part of the boundary between Zaire and Zambia is formed by the Zaire-Zambezi watershed. To the East and North-east, a huge watershed separates eastward flowing drainage to Malawi and Tanzania from west-moving streams in Zambia. Basically, these rivers form the headwaters of the *Chambeshi* and *Luangwa* rivers, while on the other side of the deriving-line swift rivers empty into Lake Malawi and Lake *Rukwa* (in Tanzania).⁴ There is no river separating Zambia from Botswana which is situated in the South of Zambia.

Due to this geographical situation and in addition to the fact that it has been the only country in Southern Africa without trouble causing refugee movements, Zambia has received a big number of refugees from its neighboring countries except Tanzania and Botswana.

⁴ A. Fagan, A Short History of Southern Africa, (London: Oxford University Press, 1973), p. 12.

Furthermore, the Zambian climate favors a certain number of refugees coming. There are four major climatic zones. A tropical savannah climate where the mean temperature for the coldest month is 18 °C or greater, and the rainfall during the driest month is less than 60 millimeters, is found in the *Kawambwa* district of the *Luapula* Province. There is a similar climate in the Northern parts of the Northern Province, in the entire *Luangwa* and *Luano* valleys and the extreme Western parts of Western Province. In these areas, rain is confined to the wet season, which lasts from November to March or April.⁵ This season reminds refugees from Rwanda and Burundi of the same season experienced in their countries from March to June.

Much of Zambia is a warm temperature climate zone, with a well defined dry season. The mean temperature for the coldest month is between 18 °C and -3°C. The towns which fall into this climatic zone are *Lusaka*, *Kalomo*, *Choma*, *Mazabuka*, the Copperbelt towns, *Lundazi*, *Mpika* and *Kasama*.⁶ Refugees coming from central African countries do not enjoy this season.⁷

The Middle and Upper *Zambezi* valley have warmer climates and lower rainfall than the rest of the country. The area between

⁵ See T. Bwalya, Zambian Social Studies, (Lusaka: MacMillan, 1992), pp. 18-21.

⁶ Ibid.

⁷ Interview with refugees: S.Munyampeta, D.Mbituyimana, E.Hakizimana, R.Mukandanga and E.Musengarurema, Lusaka, July 10, 1996.

Kariba and *Feira* has the hot semi-arid climatic type, hotter and drier than the Upper part of the *Zambezi* valley. *Livingstone* lies in the middle of the warm semi-arid zone of the Upper *Zambezi*.⁸ Some Somalian refugees have settled there.

1.2. Population

Zambia's population is estimated at nine million people. This population is heterogenous for it is made up of people from different countries. A few Zambians are indigenous. A good number have come from abroad and have become Zambians by naturalization or through their parents.⁹ Moreover, apart from Africans, the Zambian population is also made up of Europeans, Asians and Coloreds. Because of the heterogenous character of the Zambian population, a good many persons flee to Zambia hopeful that they will be granted asylum because "other foreigners sojourn there without any problem".¹⁰

The most striking feature of the country's population is the concentration along the spinal line of rail. Over 40 percent of Zambians like to settle there since the large urban areas are along the line of rail.¹¹ The copper and cobalt mines, and the

⁸ T. Bwalya, supra note 5, at 20.

⁹ A. Fagan, supra note 4, at 12.

¹⁰ Interview with refugees: R. Mustafa, N. Bangira, and P. Sebugele, Lusaka, July 14, 1996.

¹¹ A. Fagan, supra note 9.

lead and zinc mines have attracted a good network of communications and these have attracted a number of industries. All these, in turn, have attracted a large migrant population in search of jobs and some of those people are refugees coming especially from Zaire and Angola.¹²

The population of urban areas has also increased rapidly because of the rural-urban drift. Able-bodied males come from the rural areas in search of employment. This has led to housing problems and a shortage of other facilities, such as water and proper sanitation. "Shanty townships" have sprung up with many unemployed persons being supported by relatives who may have just enough for their own families.¹³ Due to the housing problem and in addition to their financial problems, refugees who are not settled in camps are concentrated in big numbers in small houses located mainly in townships where they live on their own except that the YMCA-Refugee Project provides some supplementary allowance for a period not exceeding six months.¹⁴

Apart from those living in settlements, there is a good number of refugees, especially Angolans and Zairians, self-settled in rural areas of Zambia where sparse populations are found in some parts, and denser populations in other parts.¹⁵

¹² T. Bwalya, *supra* note 8, at 16.

¹³ *Ibid.*

¹⁴ See urban refugees, under Chapter IV, 4.

¹⁵ R. Cohen et al., Human Rights and Governance in Africa, (Gainesville: University Press of Florida,

1.3. History and Politics

Zambia was born on October 24, 1964 as an independent state. From 1890 to 1964 "Northern Rhodesia", as Zambia then was known, was under British colonial rule. From 1964 to 1972, Zambia saw the establishment of the First Republic.¹⁶ It is during that period that Zambia received refugees *en masse* especially from South Africa, Angola, Namibia, Rhodesia, Mozambique and Malawi. Because of this influx four refugee settlements were opened in *Nyimba* (Eastern Province), in *Mayukwayukwa* (Western Province), in *Lwatembo* (Northwestern Province) and in *Meheba* (Northwestern Province).¹⁷ According to a Commission for Refugees officer "Zambia has been hosting refugees without hindrance nor distinction".¹⁸ This was also declared by the President of the Republic who said: " It is our moral and international obligation to host refugees and our African hospitality will never be lauded by anyone here (...)"¹⁹

1991), p. 152.

¹⁶ A. Fagan, *supra* note 11, at 24.

¹⁷ These settlements were established by the Refugee (Control) (Establishment of Refugee Settlements) Order, 1971.

¹⁸ Interview with E. Tukombe, *supra* note 3.

¹⁹ Statement of the President of the Republic of Zambia, Independence Day, October 24, 1974.

The Second Republic was born in 1972 with the establishment of one-party rule and the refugee policy remained the same. This rule ended in December 1990, and multi-party elections were held in October 1991. The Movement for Multi-party Democracy and its leader, Mr. *Chiluba*, defeated the United National Independence Party and its leader, Dr. *Kaunda*.²⁰

The Bill of Rights guaranteeing civil and political rights found in the One-party Constitution of 1973 was reproduced almost verbatim in the 1991 Constitution. The 1991 Constitution has been amended but without any change concerning the Bill of Rights. The following rights and freedoms are guaranteed under part 3 of the 1991 Constitution as amended: life; personal liberty; protection from slavery and forced labor; protection from inhuman treatment; right to property; protection of the law; privacy of home and other property; freedom of expression; freedom of conscience; freedom of association and assembly; freedom of movement; protection from discrimination on various grounds; and protection of young persons from exploitation.²¹ Zambia is a party to the International Covenant on Civil and Political Rights (1966), the first Optional Covenant to the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights (1966) and the African Charter on

²⁰ For details, see A. W. Chanda, Zambia: A Case Study in Human Rights in Commonwealth Africa (J.S.D Thesis, Yale University, 1992).

²¹ 1991 Constitution, Articles 11-28.

Human and Peoples' Rights (1981).²² In the field of refugee law, Zambia is a party to the 1951 Convention, the 1967 Protocol and the 1969 OAU Convention.²³

1.4. Economy

Zambia is well endowed with natural resources, some of which are not fully utilized. The following natural resources have in a way attracted foreigners among whom a certain number are refugees:

- mineral resources of great variety;
- water in the form of rivers and lakes which produce fish and hydroelectric power;
- soils which are the basis of subsistence
- wildlife which has newly discovered value for protection of threatened species and tourism; and
- forests.

Copper is the leading export, accounting for 90 percent of Zambia's total exports. Zambia also produces cobalt, lead, zinc and various gemstones.²⁴ These mineral resources have attracted Zairian and Angolan refugees who have in a way developed illicit

²² Amnesty International, International Bill of Rights, 1988, pp. 49-51.

²³ G. S. Goodwin-Gill, The Refugee in International Law, (Oxford: Clarendon Press, 1983), p. 203.

²⁴ T. Bwalya, *supra* note 12, at 27.

trading. "They exploit and sell abroad illegally".²⁵

Agriculture accounts for 38 percent of the workers, as compared with 8 percent in industry, including mining. Maize is the chief crop. Other crops include cassava, coffee, millet, sugar cane and tobacco.²⁶

Subsistence farming is found in all rural areas whereas commercial farming is found in the following areas:

- along the line of rail, chiefly in Southern, *Lusaka*, and Central Provinces from *Kalomo* to *Kapiri Mposhi*. To a lesser extent this area includes certain pockets of the Copperbelt Province where market-gardening is the most important farming activity;
- in Central Province, commercial farming is concentrated around *Kabwe* and the area from *Kapiri Mposhi* to *Serenje*, the same region where *Tazara* line has been built;
- Eastern Province from *Petauke* through *Chipata* to *Lundazi*;
- Pockets of large agricultural estates like the *Mwinilunga* Pineapple Estates in Northwestern Province; *Mununshi* Banana scheme and *Kawambwa* Tea Estates in *Luapula* Province and the

²⁵ Interview with J. Bwalya, Mine police officer, Lusaka, September 20, 1996.

²⁶ L. Keith, World Fact Book, (London: George Philip Ltd., 1995), p. 345.

Ngoli Coffee Plantation near *Kasama* in Northern Province and *Nakambala* Sugar Estates near *Mazabuka*.²⁷

Some of the farms belong to refugees settled in the 1970s.²⁸

II. REFUGEE MOVEMENTS INTO ZAMBIA

Both before and after independence in 1964, Zambia has served as a host country for refugees from neighboring countries and from other countries. Its function has differed depending on the wishes of refugees and their backgrounds. Zambia has served as a transit country, as temporary host territory and even as a settlement country.

2.1. South Africans and Namibians

According to *Omer-Cooper* an economic revolution started in South Africa with the discovery of diamonds in the latter part of the 19th century. The possession of land as well as the need for labor became important. During the first half of the 20th century the opportunities for Africans to take part in the competition for land and to choose where to settle became legally restricted. Through the 1913 Natives Land Act they were denied the right to acquire land in what was called "white areas". In 1936 the principles in this Act were extended by reserving 87

²⁷ T. Bwalya, *supra* note 24, at 21.

²⁸ Interview with farmers: M.Banda and P.Lukonga, Lusaka, June 15, 1996.

percent of the area of the country for white inhabitants. Before this, in the 1920s, it had been declared that Africans only were permitted to live in urban areas in so far and as long as their services were required.²⁹

From 1948 the process of segregation sharpened through a legislative program. The laws enacted dealt with such matters as restricting choice of social life, place of living, education and jobs. When the apartheid system was introduced, it was openly based on the assumption that the white race was inherently superior to others and the mixing of different races was the ultimate evil to be avoided at all costs.³⁰

In 1959, however, the approach to apartheid was changed to a principle of separate nationality rather than race as a basis for discrimination. The aim was to impose alien nationality on Africans by depriving them of South African citizenship. This was to be carried out by forcing people to reside in certain areas which would then become independent. Thirteen percent of the area of South Africa was, therefore, divided into ten different regions which were to be allowed to develop to the point of complete political independence. During the first ten years, over 1.5 million people were forcibly removed from their homes to these areas. Another way of forcing people to live in these areas was to redraw borders so that townships became part of those

²⁹ J. D. Omer-Cooper, Recent History in Africa South of the Sahara, (London: Europa Publications Ltd., 1987), p. 900.

³⁰ Ibid.

areas instead of part of white South Africa.³¹

The apartheid system gave birth to protests in the form of demonstrations and strikes. The protests could, for instance, take the form of breaking segregation laws with the arrest of participants as a result. Protests could also be met with more brutality, as was the case in *Katatura* in Namibia in 1959 and in *Sharpeville* in South Africa in 1960 when several people were shot dead by the police. This event resulted in several demonstrations throughout South Africa.³² The Government not only tried to stop demonstrations and strikes, but also tried to stop political opposition by banning the African National Congress (ANC) and the Pan African Congress (PAC) in 1960. Three years later, the meetings held by the Namibian opposition party South West African People's Organization (SWAPO) were banned.³³ This situation caused people to flee those countries and Zambia received a few hundred refugees therefrom. The latter established guerrilla groups and Zambia served mostly as a guerrilla training base and as a transit route for South Africans on their way to bases in Tanzania.³⁴

In the mid-1970s there was a sudden new influx of refugees

³¹ Ibid.

³² Interview with South Africans: N. Zulu and T. Ngwenya. Lusaka, June 13, 1996.

³³ Ibid.

³⁴ J. D. Omer-Cooper, *supra* note 31, at 901.

to Zambia. Over two hundred young people from South Africa fled from riots throughout the country. Everything started in June 1976, in the township of *Soweto* outside *Johannesburg* when the school children protested against the imposition of *Afrikaans*, the *Boer* language, as the official teaching language. Some of them went for guerrilla training whereas others were more interested in staying in Zambia to complete their education, and this led to accusations from South Africa that Zambia was harboring *ANC* terror squads.³⁵

Although most South African and Namibian refugees have been repatriated, a few have chosen to remain in Zambia.³⁶

2.2. Angolans

About 30,000 Angolans fled into Zambia in the late 1960s. During a two year period (1967-1969) refugees from a rural background crossed the border in the Southwestern region. Their flight was caused by the liberation struggle in their home country. The majority (75 percent) of the refugees were *Ovimbundu*. In 1967, the Portuguese had started an anti-guerrilla campaign in the area where the *Ovimbundu* lived. The people were forced to move to special settlements and the tribal leaders were

³⁵ Interview with B. Maimba, Commission for Refugees officer, Ministry of Home Affairs, July 28, 1996.

³⁶ *Ibid.*

punished if they were suspected of collaborating with the guerrillas. The *Ovimbundu* were also subjected to reprisals from the guerrillas if they obeyed the Portuguese. Caught in this crossfire they were forced to flee. A relief scheme was decided upon in 1968.³⁷

This relief scheme was financed both by the Government of Zambia and international organizations, such as the *UNHCR*. Other organizations involved were the World Food Program (*WFP*) which provided food, and the World Council of Churches (*WCC*) which was in charge of developing an area of 700 square kilometers in *Solwezi* in the Northwestern Province. In this area, named *Meheba*, the refugees built villages.³⁸

Later on these refugees were joined by other Angolans fleeing from fighting between *Jonas Savimbi's* guerrillas and the Government soldiers.³⁹

2.3. Zimbabweans

A new and enormous influx started soon after the influx from South Africa had decreased. The intensification of the liberation struggle in Southern Rhodesia (Zimbabwe) forced thousands of

³⁷ D. Potten, *The Resettlement Scheme in Southern Africa*, (London: Zed Books, 1976), p. 10.

³⁸ Ibid.

³⁹ Interview with E. Tukombe, supra note 18.

people to flee to other countries, including Zambia. Throughout a three-year period, from February 1977 to December 1979, when an agreement was reached between the warring parties, the refugee statistics showed a dramatic rise in the total refugee population from a few hundred to over 40,000 refugees, who were staying in the country at the end of 1979.⁴⁰ However, during the same period even more, mainly Zimbabwean refugees had come to Zambia. Those who were not interested in undergoing guerrilla training were settled in *Meheba*.⁴¹

While harboring all these refugees during this period of intense unrest in Southern Rhodesia, Zambia became involuntarily involved on its own side of the border. Southern Rhodesia security forces were violating the Zambian borders in raids and kidnappings.⁴² These attacks resulted in the destruction of food stocks, relief supplies and infrastructure. Scarcity inside the country increased the difficulties in providing assistance to these refugees. However, relief items were distributed and the necessary health and other immediate necessities were met to the extent possible.⁴³

Following the Lancaster House Conference in London and the

⁴⁰ R. J. Southall, Resettling Refugees in Africa, (Uppsala: The Scandinavian Institute of African Studies, 1980), pp.49-50.

⁴¹ Interview with E. Moyo, Commission for Refugees officer, Ministry of Home Affairs, August 27, 1996.

⁴² R. J. Southall, *supra* note 40, at 161.

⁴³ Interview with E. Moyo, *supra* note 41.

agreement reached there regarding the future of Southern Rhodesia/Zimbabwe, UNHCR undertook a program for the voluntary repatriation of Zimbabwean refugees, mainly from the neighboring countries. Under phase I of the program, over 4,000 Zimbabwean refugees were repatriated in the first two months of 1980. After the independence of Zimbabwe, the repatriation operation was resumed in early May and by late June, a further 5,249 refugees had been repatriated. During this phase, half the repatriates, comprising mainly mothers with infants, young children, the sick and the disabled were transported by air, and the rest by bus. Plans were executed for the repatriation of 7,000 school boys and supporting staff by train. The same was done for the repatriation of 4,000 school girls and supporting staff. The repatriation operation was implemented by the Lutheran World Federation, Department of World Service (LWF/WS), which had also provided some funds.⁴⁴ Most of the 30,000 Zimbabwean refugees were voluntarily repatriated, but more than 5,000 have preferred to remain in Zambia.⁴⁵

2.4. Somalians

The downfall of President *Siad Barre* in January 1991 resulted in a power struggle and clan clashes in many parts of Somalia. In November, the most intense fighting since January broke out in the capital, *Mogadishiu*, between two factions -one

⁴⁴ UNGA Report 1980, p. 109.

⁴⁵ Interview with E. Tukombe, supra note 39.

supporting Interim President *Ali Mahdi Mohammed* and the other supporting the Chairman of the United Somali Congress, *General Mohammed Farah Aideed*. Subsequently, fighting persisted in *Mogadishu* and spread throughout Somalia, with heavily armed elements controlling various parts of the country. Some declared allegiance to one or the other of the two factions, while others did not. Numerous marauding groups of bandits added to the problem.⁴⁶

The hostilities resulted in widespread death and destruction, forcing hundreds of thousands of civilians to flee their homes and causing a dire need for emergency humanitarian assistance. Almost 4.5 million people in Somalia -over half of the estimated population- were threatened by severe malnutrition and malnutrition-related diseases, with the most affected living in the country-side. It was estimated that perhaps 300,000 people died since November 1991, and at least 1.5 million lives were at immediate risk. Almost one million Somalis sought refuge in neighboring countries and elsewhere.⁴⁷

The political chaos, deteriorating security situation, widespread banditry and looting, and extent of physical destruction compounded the problem and severely constrained the delivery of humanitarian supplies. Furthermore, the conflict

⁴⁶ UN, The United Nations and the Situation in Somalia, (Department of Public Information, April 1995), p. 1.

⁴⁷ Ibid.

threatened stability in the Horn of Africa region, and its continuation occasioned threats to international peace and security in the area.⁴⁸

By November 1993, of some 1.7 million people displaced as a result of the turmoil and the famine in Somalia, more than one million crossed into Kenya and Ethiopia. About 600 hundred are now in Zambia.⁴⁹

2.5. Zairians

Internal conflict in Zaire has also meant that it has been a recurrent producer of significant numbers of refugees. The *Katanga* secession (1960-63) created serious, though mainly internal, population dislocations; the 1977-78 attacks on the same province -by then called "*Shaba*"- was also a major refugee-producing incident.⁵⁰

The defeat of the "*Simba*" revolt in northern Zaire in 1965 led to 7,000 *Simba* entering Sudan in 1965; a second wave in 1968 brought their total to about 9,000. By 1981, 5,700 Zairian refugees were counted in Zambia despite large scale repatriations from countries where Zairian refugees were hosted.⁵¹

⁴⁸ Ibid.

⁴⁹ Ibid., at 15.

⁵⁰ UN/CONF. 106/1,4.

⁵¹ UNGA A/AC 96/606,117, Para 285; 155, para 387; UN A/CONF. 106/1,99.

Other movements occurred in the late 1990s, following the *Lubumbashi* campus troubles. Five students were suspected to have been sent by President *Mobutu* intelligence services on spying missions. The situation became worse when a student's dead body was found in a bush by the local population and this led to the rise of tensions within the campus.⁵²

During the same period one of the five suspected students was caught red handed handling radiocommunication equipment. It should be pointed out that apart from security officers and other authorized persons, no one else was allowed to possess such an instrument.⁵³

Terrorized, the victim mentioned the names of his four colleagues who were later beaten to death. One day after the incident, the campus was surrounded by soldiers who charged into the students with bayonets. This was the beginning of the encounters. The exercise resumed three days later causing the flight of many students.⁵⁴

Another main factor traces its roots to 1993, when the *Katanga* region was ruled by *Kasai* people. The latter were accused of holding all important positions in the *Katanga* big companies.

⁵² Interview with refugees: B.Lukunga, P.Sebugele, S.Kasongo and S.Tembo, Lusaka, October 20, 1996; with R. Kristmoen, Protection Officer, UNHCR, May 10, 1996.

⁵³ Interview with refugees: supra note 52.

⁵⁴ Ibid.

Furthermore, they were the most comfortably off of the *Katanga* towns.⁵⁵

In the mean-time, the multi-party democracy set up in Zaire came with some political and regional problems. Since 1990, *Katanga* has been the scene of regional problems between *Katanga* and *Kasai* people. Opportunist politicians took advantage of that situation and manipulated the population.⁵⁶

In June 1993, *Likasi* town was attacked by some militia men. A number of *Kasaians* were slain and survivors fled to various countries, including Zambia. In August 1993, the same operation was carried out on *Kolwezi*. Again some *Kasaians* were killed, while others fled to neighboring countries.⁵⁷

The last situation likely to bring about a flood of refugees from Zaire is the chaos caused by the war between the Banyamulenge, the Tutsis of Rwandan origin and the Zairian armed forces which started in September 1996.⁵⁸

⁵⁵ Ibid.

⁵⁶ Ibid.

⁵⁷ Ibid.

⁵⁸ Interview with B.Mporokoso, UNHCR, October 14, 1996. At the time this thesis is being written, some 3,600 Zairians are already seeking asylum in Zambia.

2.6. Burundians

In 1988 alarming news reports from Burundi stated that 5,000 *Hutus* had been massacred and 30,000 fled to Rwanda. The United Nations Sub-Commission on the Prevention of Discrimination and Protection of Minorities, which was in session at that time, adopted a resolution on the situation in Burundi and appealed 'for cooperation and assistance to address the serious problems resulting from mass exodus'. It is important to note that similar massacres had taken place in 1972 and a good number of *Hutus* had fled to neighboring countries and elsewhere. At the beginning of 1989, 'the United States government stated publicly that it was not considering cutting off or reassessing its economic aid to Burundi. The Belgian government also confirmed that it would continue aid to Burundi, but emphasized that this aid was necessary to prepare Burundi for the return of Hutu refugees who fled the country during the massacre.'⁵⁹

According to Amnesty International, at least 1,000 *Hutus* were killed by the military, following a *Hutu* attack against the *Tutsi* tribe.⁶⁰ According to the government, which responded to the Amnesty report, the number of victims was 500, and some military officers were brought to court because of abuses. In response, 560 suspects were arrested, thus exceeding the number

⁵⁹ K. Tomasevski, Development Aid and Human Rights Revisited, (London: Printer Publishers Ltd, 1993), p.111.

⁶⁰ Amnesty International, Doc AFR 16/WU 01/91, 18 Dec. 1991.

of casualties.⁶¹

Commentators attribute the problems to the ethnic composition of the governmental and military structure, mostly *Tutsi*, while the majority of the population is *Hutu*.⁶² Following the 'disturbances' of 1988 the government appointed a commission to study causes of ethnic strife, composed of equal numbers of *Tutsi* and *Hutu*, which produced a lengthy report. Following this report, Burundi adopted the Charter of National Unity in 1990 which emphasizes respect for human rights and non-discrimination.

However, this charter has not been put into practice because the ethnic strife is still going on following the assassination of the democratically elected President *Melchior Ndadaye* and his successor, *Cyprien Ntaryamira*, and the overthrow by *coup d'état* of their successor, *Sylvestre Ntibantunganya*. This situation has occasioned movements of war displaced persons in Burundi and a good number of Burundians have fled their country. Zambia hosts about 300 Burundian refugees most of whom are students and professionals.⁶³

2.7. Rwandans

The Rwandan crisis that has occasioned mass exodus of

⁶¹ K. Tomasevski, *supra* note 59, at 112.

⁶² *Ibid.*

⁶³ Interview with refugees: D.Mbituyimana, E.Havyarimana, R.Bangira, and F.Nzojibwami, Lusaka, September 3, 1996.

Rwandans can be compared to the situation in Burundi because of its ethnic coloration.

Fighting between the Armed Forces of the Government of Rwanda and the Rwandan Patriotic Front (*RPF*) first broke out in October 1990 across the border between Rwanda and its northern neighbor, Uganda. Despite a number of cease-fire agreements thereafter, hostilities resumed in the northern part of the country in early February 1993. These interrupted comprehensive negotiations between the Government of Rwanda and *RPF*, which were supported by the Organization of African Unity (*OAU*) and facilitated by the United Republic of Tanzania.⁶⁴

In support of resumption of the negotiations, Rwanda and Uganda, in separate letters to the President of the Security Council on February 22, 1993, called for the deployment of United Nations military observers along the 150-kilometre common border in order to prevent the military use of the area, especially the transportation of military supplies. *RPF* control of the border had been extensive.⁶⁵

Following consultations of the Security Council on 24 February concerning these letters, United Nations Secretary-General *Boutros Boutros-Ghali* decided to send a goodwill mission

⁶⁴ UN, The United Nations and the Situation in Rwanda, (Department of Public Information Reference Paper, April 1995), p. 1.

⁶⁵ Ibid.

to Rwanda and Uganda. He instructed the mission to examine all major aspects of the peace process including the possibility of deploying military observers along the border. The goodwill mission carried out this mandate from 4 to 18 March 1993.⁶⁶

Meanwhile, efforts by the OAU and Tanzania led to a meeting between the Government of Rwanda and *RPF* from 5 to 7 March at *Dar-es-Salaam*. In their closing *communiqué*, the Government of Rwanda and *RPF* pledged their commitment to a negotiated settlement and agreed to reinstate the cease-fire on 9 March and to the resumption of peace talks in *Arusha*, Tanzania. They also committed themselves to providing adequate security and protection to displaced persons.⁶⁷

On March 12, 1993, the Security Council, by its resolution 812 (1993), called on the Government of Rwanda and *RPF* to respect the renewed cease-fire, to resume negotiations, to allow the delivery of humanitarian supplies and the return of displaced persons, and to fulfil the obligations and commitments the parties had made in the past. The Secretary-General dispatched a technical mission to the border area between Rwanda and Uganda which visited Uganda from 2 to 5 April and Rwanda on 6 April. It reported that it would be possible to deploy United Nations military observers to monitor the border between Rwanda and Uganda and verify that no military assistance -lethal weapons,

⁶⁶ Ibid.; Kinyamateka, Jan. 1995, p. 2.

⁶⁷ Ibid.

ammunition and other material of possible military use- was being provided across it. It was decided that deployment of the observers would be on the Uganda side of the border only. The United Nations Observer Mission Uganda-Rwanda (*UNOMUR*) was established on June 22, 1993.⁶⁸

Meanwhile, the *Arusha* talks on a comprehensive peace agreement between the Government of Rwanda and *RPF* had reconvened on March 16, 1993. They covered military issues, refugees and displaced persons, and outstanding political matters, including the amendment of the constitution, as well as the duration of the transitional period. They were successfully concluded on August 4, 1993 with the signing of a comprehensive peace agreement, which called for a democratically elected government and provided for the establishment of a broad-based transitional Government until the elections, in addition to repatriation of refugees and integration of the armed forces of the two sides. The two parties called for a neutral international force to help implement the agreement.⁶⁹

Admittedly, all those processes could not stop hostilities and killings went on in the area controlled by *RPF* soldiers. This situation occasioned refugee movements to neighboring countries and elsewhere, including Zambia.⁷⁰

⁶⁸ UN, *supra* note 64, at 2.

⁶⁹ *Ibid.*

⁷⁰ Kinyamateka, *supra* note 66, at 3.

A terrible civil war broke out on April 6, 1994 following President *Habyarimana's* death in an air crash. This led to country-wide ethnic strife. Within two weeks, the deaths were considered to number tens of thousands. With the seizure of power by the *RPF*, this caused a mass exodus of about 3 million *Hutus* especially to neighboring countries.⁷¹ Zambia now hosts about 700 Rwandan refugees.⁷²

III. CONCLUSION

The creation of refugees expresses the violation and abuse of human rights in the society and country of origin. People become refugees to escape this violation. Most of the refugees in Zambia have fled to this country because they thought their rights and freedoms will no longer be violated or at least some of them were going to be respected.

Moreover, the Zambian environment aspects has favored the refugees' influx due to the fact that most of these environment factors are similar to those of most of refugees' countries of origin.

The following chapter will examine the different stages which are necessary for the protection of refugees in Zambia.

⁷¹ Ibid.

⁷² Interview with B.Maimba, *supra* note 35.

CHAPTER TWO

TOWARDS THE PROTECTION OF REFUGEES IN ZAMBIA

INTRODUCTION

This chapter will bring out the meaning of the term "refugee" in international law. It is important to examine how the international community through the United Nations Organization on the one hand, and the Organization of African Unity, on the other hand, has considered a "refugee" as a human being entitled to rights and freedoms.

This process is important because it will serve as a starting point to show that Zambia, considered as a part of the international community, also has the legal standing to protect refugees' human rights.

It will also explain why refugees have sought refuge and have been granted asylum in Zambia regardless of the legality or illegality of their leaving home and entry into Zambia. It is necessary to examine this point and to show that if the legal requirements are met, refugees' human rights must be protected.

Lastly, it will analyze the Zambian procedure of granting asylum. This is an important point which will explain how the Zambian government carries out investigations before deciding whether the asylum-seeker should be recognized as a genuine

refugee.

I. MEANING OF REFUGEE

A natural starting point in studying the refugee law is to examine the meaning of the term "refugee". This term has been defined in various ways, each reflecting the orientation and intentions of its author. Some of the definitions are very broad, encompassing a wide variety of people who are forced to move. Even economically motivated migrants are sometimes included. However, these "are not refugees in the political sense, but that is their very real condition in terms of the cutting of old ties and the building of new ones".⁷³ Almost always, however, even broad definitions require that refugees be persons displaced by a forceful agent, such as war, natural disaster, famine, or government, while people who migrate for economic reasons (desire for a better life or better job) are not considered to qualify for refugee status.⁷⁴ It is important, however, to confine this thesis to the meaning of "refugee" according to both international law and Zambian law.

⁷³ C. Brooks and Y. El-Ayouty, Refugees South of the Sahara: An African Dilemma, (Wesport: Conn. Negro Universities Press, 1979), p. 15.

⁷⁴ R. Cohen et al., *supra* note 15, at 145.

1.1. International Law

1.1.1. Definition Under Customary International Law

The concept of a refugee is known to customary international law although its precise definition is still unclear. In customary international law a "refugee" is any person who can be determined or presumed to be without, or unable to avail himself of the protection of the government of his state of origin against harmful events beyond their choosing or control.⁷⁵

Persons who flee situations of civil disorder, domestic conflict, or human rights violations should benefit from a presumption of humanitarian need, and may not be returned back unless the state of refuge can rebut the presumed risk of danger.⁷⁶

It is essential that the persons in question should have crossed an international frontier and that the reasons for flights should be traceable to conflicts, or radical political, social, or economic changes in their own country.⁷⁷

⁷⁵ G. S. Goodwin-Gill, The Refugee in International Law, (Oxford: Clarendon Press, 1985), p. 17.

⁷⁶ "Whenever temporary refuge is sought, the existence of danger caused by civil disorder, domestic conflicts, or human rights violations generates a valid presumption of humanitarian need. This has important consequences for the process of determining the entitlement to protection of individuals or specific groups. In particular, the presumption should shift the burden of proof from the claimant to the state". See G. S. Goodwin-Gill, Non-Refoulement and the New Asylum Seekers, (Oxford: Clarendon Press, 1983), note 122, p. 905.

⁷⁷ G. S. Goodwin-Gill, *supra* note 75, at 18.

The customary norm rooted in international usage is a right to be considered for temporary admission, whether by formal procedure or administrative discretion, on the basis of a need for protection. That is, customary international law precludes the making of decisions to reject or expel persons who come from nations in which there are serious disturbances of public order without explicit attention being paid to their humanitarian needs. This duty may be met through the granting of formal status or by seeking the assistance of other states or the international community to share the burden of actual or impending refugee flows. The obligation is simply to do something which provides a meaningful response to the humanitarian needs of the victims of serious disruptions of public order.⁷⁸

However, refugee law is now principally governed by conventional law and customary international law has been codified into the United Nations and Organizations of African Unity Conventions, where it has been elaborated upon.

⁷⁸ J. C. Hathaway, The Law of Refugee Status, (Vancouver: Butterworths, 1991), p. 25.

1.1.2. Conventional International Law

a. The 1951 Convention

Today the preliminary standard of refugee status is that derived from the 1951 Convention Relating to the Status of Refugees. The States which acceded to or ratified that Convention agreed, as stipulated in Article 1A (2), that the term 'refugee' shall apply to any person who,

"as a result of events occurring before January 1951, and 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 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 as a result of such events, is unable or, owing to such fear, is unwilling to return to it".

Article 1A (2) adds that,

"in the case of a person who has more than one nationality, the term 'the country of his nationality' shall mean each of the countries of which he is a national, and a person shall not be deemed to be lacking the protection of the country of his nationality if, without any valid reason based on well-founded fear, he has not availed himself of the protection of one of the countries of which he is a national".

This Convention was drafted between 1948 and 1951 by a combination of United Nations organs, ad hoc committees, and a

conference of plenipotentiaries. As stated by *Hathaway*,⁷⁹ this definition is characterized by its strategic conceptualization and its Eurocentric focus. The strategic dimension comes from successful efforts of Western states to give priority in protection matters to persons whose flight was motivated by pro-western political values. As anxious as the Soviets had been to exclude political emigrants from the scope of the Convention for fear of exposing their weak flank, so the more numerous and more powerful Western states were preoccupied to maximize the international visibility of that migration. In the result, it was agreed to restrict the scope of protection in much the same way as had been done in the post-World War II refugee instruments: only persons who feared "persecution" because of their civil and political status would fall within the international protection mandate.⁸⁰

The majority of the states that drafted the Convention, in addition to their desire for the refugee definition to serve strategic political objectives, sought to create a rights regime conducive to the redistribution of the post-war refugee burden from European shoulders. The Europeans complained that they had been forced to cope with the bulk of the human displacement caused by the Second World War, and that the time had come for all members of the United Nations to contribute to the resettlement of both the remaining war refugees and the influx

⁷⁹ J. C. Hathaway, *supra* note 78, at 6.

⁸⁰ *Id.*, at 7.

of refugees from the Soviet bloc. Refugees would be more inclined to move beyond Europe if there were guarantees that their traditional expectations in terms of rights and benefits would be respected abroad. The Convention, then, was designed to create secure conditions such as would facilitate the sharing of the European refugee burden.⁸¹

Notwithstanding the vigorous objections of several delegates from developing countries faced with responsibility for their own refugee populations, the Eurocentric goal of the Western states was achieved by limiting the scope of mandatory international protection under the Convention to refugees whose flight was prompted by a pre-1951 event within Europe. While states might opt to extend protection to refugees from other parts of the world, the definition adopted was intended to distribute the European refugee burden without any binding obligation to reciprocate by way of the establishment of rights for, or the provision of assistance to non-European refugees. It was not until more than fifteen years later that the 'Protocol Relating to the Status of Refugees' expanded the scope of the Convention definition.⁸²

⁸¹ C. Melander and P. Nobel, African Refugees and the Law, (Uppsala: The Scandinavian Institute of African Studies, 1978), p. 28; see also Hathaway, *supra* note 80, at 9.

⁸² B. Blackburn and R. Taylor, Human Rights for the 1990s, (London: Monsell, 1991), p. 125.

b. The 1967 Protocol

The 1951 Convention was clearly a response to upheavals caused by World War II, particularly in Europe. It was universalized both in time and space by the 1967⁸³ Protocol but its definition of a refugee was retained.

The striking fact is that the 1967 Protocol achieved the formal, but not the substantive, universalization of the Convention definition of refugee status.

"For the purpose of the present Protocol, the term 'refugee' shall ... mean any person within the definition of article 1 of the Convention as if the words '... as a result of such events', in article 1A (2) were omitted. The present Protocol shall be applied by the State Parties hereto without any geographic limitation, save that existing declarations made by States already Parties to the Convention in accordance with article 1 (B) (1) (a) of the Convention, shall, unless extended under article 1 (B) (2) thereof, apply also under the present Protocol".⁸⁴

It is evident that the *sine qua non* condition that the claim relate to a pre-1951 event in Europe- was prospectively eliminated by the Protocol. However, "there was no review conducted of the substantive content of the definition".⁸⁵

⁸³ Protocol Relating to the Status of Refugees. 606 UNTS 267, New York, 31 January 1967.

⁸⁴ 1967 Protocol, Art. I (2) (3).

⁸⁵ R. Plender, International Migration Law, (Dordrecht: Martinus Nijhoff Publishers, 1988), p. 325.

It must be noted that even after the elimination of temporal and geographic limitations, only persons whose migration is prompted by a fear of persecution on the ground of civil or political status come within the scope of the Convention-based protection system. This means that most Third World refugees remain de facto excluded, as their flight is more often prompted by natural disaster, war, or broadly based political and economic turmoil than by "persecution", at least as that term is understood in the Western context. While these phenomena undoubtedly may give rise to genuine fear and hence to the need to seek safe haven away from one's home, refugees whose flight is not motivated by persecution rooted in civil or political status are excluded from the rights regime established by the Convention.⁸⁶ That is, the 1967 Protocol definition has been modified to take account of African realities on African initiatives and particularly on those of the OAU, whose record, at least at the level of debate and ensuing resolutions and guidelines is, with few reservations, quite exemplary.⁸⁷

c. The 1969 OAU Convention

The 1951 Convention and the 1967 Protocol remain the principal international instruments benefiting refugees, and the definition which they offer has been expressly adopted in a

⁸⁶ J. C. Hathaway, *supra* note 80, at 10.

⁸⁷ For details, see Y. El-Ayouty and W. Zartman, The OAU After Twenty Years, (New York: Praeger Publishers, 1984), p. 210.

variety of regional arrangements aimed at further improving the situation of recognized refugees. One of those arrangements is the OAU Convention.

The Organization of African Unity Convention Governing the Specific Aspects of Refugee Problem in Africa was adopted by the OAU Assembly in 1969 and entered into force in November 1973. In contradiction to the definition contained in earlier treaties particularly the 1951 Convention, the OAU Convention has a more general and wider focus. Article 1 accepts the definition offered by the 1951 Convention, and then adds another large category of persons:

"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 nationality".⁸⁸

This provision has incorporated the United Nations characteristics of a refugee within a broader definition that went beyond the individual and psychological (subjective) criteria used by the United Nations. It broke new ground extending protection to all persons compelled to flee across national borders by reason of any man-made disaster, whether or

⁸⁸ 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, Art. 1 (2).

not they can be said to fear persecution.⁸⁹ In other words, the OAU Convention has extended the term 'refugee' to persons forced to leave their countries of nationality or habitual residence as a result of, or under the pressure of an illegal act or ~~a~~ as result of partial or full-scale invasion.

It is the first time that the refugee protection system directly addresses the causes of refugee exodus, by focusing on the objective conditions in the country of origin. This trend was later to be reinforced by the United Nations General Assembly, when it stated in resolution 36/48 of December 1981:

Policies and practices of oppressive and racist regimes, as well as aggression, colonialism, apartheid, alien administration, foreign intervention and occupation are amongst the root causes of new and massive flow of refugees.

It must be said that the phrase 'events seriously disturbing public order' is designed to cover a variety of man-made conditions which do not allow people to reside safely in their countries of origin, and this becomes the legal basis for admitting large numbers of refugees on the strength of a group determination of their status. In the African context, the expanded definition was more than timely, providing the necessary flexibility to include even victims of ecological changes, such as famine and drought, which remain among the most challenging

⁸⁹ This part of the definition would virtually cover all man-made disasters and would embrace that class of persons sometimes called "displaced persons". See J. C. Hathaway, *supra* note 86, at 16.

situations on the continent. The significance of Article 1 (2) lies in its attempt to link the refugee definition with actual causes of the refugee problems. The concept of refugee under the OAU Convention is wider, in as much as it introduces objective criteria for the determination of eligibility to refugee status, namely, objective conditions prevailing in the country of nationality or habitual residence. It does not speak of the subjective fear of the individual, but of the facts: "unbearable and dangerous conditions which set entire populations on the move".⁹⁰

Furthermore, the declaration in the UNHCR Statute that the High Commissioner's activities are to be non political and humanitarian, has made it difficult to accommodate freedom fighters, whose objectives are obviously political. One interpretation of the OAU Convention, which draws on the historical background, is made by Rwelamira who sees Article 1 (2) as "wide enough to encompass members of the liberation movements".⁹¹ Such movements were discussed at length at the Conference on the Legal, Economic and Social Aspects of the African Refugee Problems held in Addis Ababa in 1967 where a general consensus seems to have emerged that the question of

⁹⁰ See M. R. Rwemalira, 'Two decades of the 1969 OAU Convention Governing the Specific Aspects of the Refugee Problem in Africa', International Journal of Refugee Law, Vol. 1, No 4, (Oxford: University Press, 1989), p. 557.

⁹¹ Ibid.

freedom fighters was intricately linked to that of subversion. While support of those intent on overthrowing the government of an independent African state could not be condoned in any way, it was accepted unreservedly that, in the spirit of African solidarity, every African country had the duty to assist freedom fighters fighting for the liberation of the African continent from colonial or racial domination. Such persons had no duty to abstain from activities aimed at overthrowing the internal structures in colonial or minority dominated regimes. African solidarity and the principles expressed in the OAU Charter, clearly state that, in seeking freedom for the African continent, it is legitimate, indeed imperative, to give assistance to liberation movements. Against the background, Article 1 (2) was added to the general refugee definition contained in the 1951 Convention.⁹²

In all cases, it must be acknowledged that refugees are persons fleeing from gross violations of human rights. Cohen indicates that they "are a clear indication of human rights abuse. The mere existence of refugees is an indictment of the conditions of life and lack of protection of human rights. The violator may or may not be the government of the country of origin, but in any event, it has failed to protect basic human rights; otherwise people would not flee".⁹³

⁹² See also L. G. Erikson et al., An Analysis of the Conference on the African Refugee Problem (Arusha, May 1979), (Uppsala: Scandinavian Institute of African Studies, 1981), p. 9.

⁹³ R. Cohen, supra note 15, at 149.

1.2. **Zambian Law**

The Zambian refugee law can be found in the 1970 Refugee (Control) Act and in the 1971 Statutory Order No. 240. The 1970 Refugee (Control) Act provides in Section 3 (1) that "...the Minister may declare, by statutory order, any class of persons who are, or prior to their entry into Zambia were, ordinarily resident outside Zambia to be refugees for the purposes of this Act". This provision must be read in conjunction with Statutory Order No 240 of 1971 which provides in Section 3 (2) that,

Persons who are, or prior to their entry into Zambia were, ordinarily residents outside Zambia and who have sought asylum in Zambia owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social or political opinion are to be declared to be refugees for the purposes of the Refugee (Control) Act, 1970.

This Zambian definition of "refugee" is not sufficient considering the present evolution of the situations likely to cause the lack of protection of a country to its nationals. The Refugee (Control) Act was, however, enacted in 1970, 19 years after the 1951 Convention, 3 years after the 1967 Protocol and one year after the *OAU* Convention. And Zambia had ratified all those instruments. The fact that Zambia has adopted a very brief definition seems then somehow surprising.

In fact the analysis of this definition shows that it is the

summary of the 1951 Convention definition. Zambia can grant refugee status to 'persons who are or prior to their entry into Zambia, ordinarily residents outside Zambia'. 'Outside Zambia may be in asylum seeker's country of origin or in another country. It must be said, however, that this definition was built on individual and psychological (subjective) criteria exactly in the same way as was the United Nations definition. The development which has taken place within the Organization of African Unity to extend the refugee protection to people who are not allowed to reside safely in their country of nationality or habitual residence because of the objective (unbearable and dangerous) conditions prevailing there have had no influence on the Zambian legislation towards the different categories of refugees. This seems surprising especially as the OAU countries among which Zambia is, recognized the 1951 Convention as the basic, universal instrument relating to refugees, while the OAU Convention was agreed to be an effective complement in Africa and African countries had agreed to take it into consideration while enacting refugee laws.⁹⁴

Considering those facts mentioned above, one can say that the definition of a refugee in Zambia is incomplete, especially if different situations in which people can find themselves unable to return to their country of nationality or habitual residence and therefore seek asylum in Zambia, are considered.⁹⁵

⁹⁴ See M. R. Rweramira, *supra* note 90, at 557-561.

⁹⁵ For those different situations, see the OAU Definition under this chapter.

II. IN SEARCH OF ASYLUM IN ZAMBIA

Article 14 of the Universal Declaration of Human Rights guarantees 'the right to seek and enjoy in other countries asylum from persecution'. Similar provision is found in the African Charter on Human and Peoples' Rights which provides in Article 12(3) that "every individual shall have the right when persecuted, to seek and obtain asylum in other countries...".

Refugee issues are related to the right to leave in several respects. In order to 'seek' asylum in Zambia, a refugee must be able to present himself/herself before either the nearest Zambian immigration office or the Commissioner for refugees (Ministry of Home Affairs) or the Zambian police or UNHCR office.⁹⁶ By definition, this requirement presupposes that one must be able to leave his/her own country. However, in many cases, departure is achieved illegally and the problem is to know what will happen to the asylum-seeker without proper exit documentation.

Where leaving a country without appropriate documentation is considered a serious crime, the attempt to exercise one's right to leave may in and of itself create such a likelihood of

⁹⁶ "The requirement for an asylum-seeker to present himself before one of those authorities is not written in any provision of law but it is very important to do so". Interview with E. Tukombe, supra note 45.

persecution that the person becomes entitled to refugee status.⁹⁷

It, nevertheless, must be noted that the mere fact that an individual either departs his country or stays in Zambia without authorization does not always entitle him to refugee status. However, as indicated by Hathaway,⁹⁸ if two conditions are met, a genuine refugee claim may be established.

First, the country of origin must punish unauthorized exit or stay abroad in a harsh or oppressive manner. The prospect of reasonable penalties for breach of a fairly administered passport law, for example, is not a harm of sufficient gravity to warrant protection as a refugee. On the other hand, where the sanctions for illicit travel abroad are so severe that they effectively negate the fundamental human right to leave and return to one's country, there is a basis for a claim to refugee status.

Second, the illegal departure or stay in Zambia must either be explicitly politically motivated,⁹⁹ or the state of origin must view the unauthorized departure or stay abroad as an implied political statement of disloyalty or defiance. Whether by law or administrative practice, it must be clear that the home country disapproves of illicit emigration, and views those who breach its

⁹⁷ H. Hannum, The Right to Leave and Return in International Law and Practice, (Dordrecht: Martinus Nijhoff Publishers, 1987), p. 50.

⁹⁸ J. C. Hathaway, *supra* note 80, at 40.

⁹⁹ Government of Zambia Statutory Order No 240 of 1971, Section 3 (2).

rules on exit or travel abroad as non-conforming dissidents. This perspective is exemplified by those societies in which it is considered a crime to seek to withdraw from the national community by emigration, and which brand all those who leave as traitors.¹⁰⁰ Refugee status should be recognized where there is a prospect of serious harm upon return as a result of the imputation to the claimant of an unacceptable political opinion.¹⁰¹

In so far as a refugee claimant can meet this two-part test, he falls within the scope of the Convention definition. He reasonably fears persecution because of his home government's established practice of harshly oppressive punishment. The reason he is at risk is, moreover, directly related to the political opinion that his government attributes to his unauthorized departure or stay, or to its view that his disloyal behavior has set him fundamentally apart from the national community.

In view of the normative aspects of non refoulement¹⁰² in international law, asylum-seekers entering Zambia illegally

¹⁰⁰ For example in Rwanda where "every citizen is supposed to remain in the country for its reconstruction and for non-cooperation with enemies operating from outside Rwanda". Speech of the Rwandan Vice President at the meeting of security officers in 1995, Radio Rwanda, News, February 13, 1995, 6 o'clock.

¹⁰¹ See F. E. Krenz, 'The Refugee as a Subject of International Law', The International and Comparative Law Quarterly, Vol. 15, 1966, p. 104.

¹⁰² For a detailed study of the principle of non refoulement, See A. Grahl-Madsen, The Status of Refugees in International Law, (Leiden: A.W. Sijthoff, 1972), pp. 93-130.

should not be classified as prohibited immigrants and treated as such as stipulated in the Immigration and Deportation Act for other aliens. The fact of the matter is that refugees who flee frequently have no time for immigration formalities, and allowance for this is contained in Article 31 of the 1951 Convention, which of all articles, comes closest to dealing with the question of admission of refugees. Admission is not formally required. Instead, it is provided that penalties on account of illegal entry or presence shall not be imposed on refugees 'coming directly from a territory where their life or freedom was threatened... provided they present themselves without delay... and show good cause for their illegal entry or presence'. Refugees are not required to have come directly from their country of origin, but other countries or territories passed through should also have constituted actual or potential threats to their life or freedom. What remains unclear is whether the refugee is entitled to invoke Article 31 when continued flight has been dictated more by the refusal of other countries to grant asylum. Whether this is a 'good cause' for illegal entry rests very much with the Zambian authorities.¹⁰³ In this process, it should be considered that the universal scope of post-Protocol refugee law effectively allows most refugees to choose for themselves the country in which they will claim refugee status.¹⁰⁴

Article 14 (1) of the Universal Declaration of Human Rights

¹⁰³ See G. S. Goodwin-Gill, *supra* note 77, at 84.

¹⁰⁴ See 'Asylum' in Journal of the International Commission of Jurists, Vol. 8, No. 2, Dec. 1967, pp. 28-30. See also Hathaway, *supra* note 98, at 46.

was enhanced, subject to minor qualification, by Conclusion 15 of the Executive Committee of the *UNHCR*:

The intention of the asylum-seeker as regards the ~~the~~ country in which he wishes to request asylum should as far as possible be taken into account. Regard should be had to the concept that asylum should not be refused solely on the ground that it could be sought from another state. Where, however, it appears that a person, before requesting asylum, already has a connection or close links with another state, he may, if it appears fair and reasonable, be called upon first to request asylum from that State.¹⁰⁵

There is no legitimacy in this basic standard of a 'direct flight' requirement, under which only persons coming directly to an asylum state from their country of origin would be eligible for protection. This standard rather establishes the right of a State to defer its duty to protect where a claimant has a pre-existing connection or close links with another State. In such a case, if it is both 'fair and reasonable', the country in which the asylum claim is made may suspend its procedures pending a decision by authorities in the State with which the claimant is affiliated.¹⁰⁶

However, this principle is increasingly questioned in the sense that at the international level, a conclusion of the Executive Committee foreshadows the exclusion of 'irregular' asylum-seekers, that is, refugees whose protection needs can be met in some other state. While not as yet fully defined, this

¹⁰⁵ Conclusion 15 (XXX) of the Executive Committee of the High Commissioner' Programme, at para. (h) (iii)-(iv), U.N. Doc. HCR/IP/2/Eng./REV. 1986 (1979).

¹⁰⁶ J. C. Hathaway, *supra* note 104, at 47.

notion could ultimately legitimate the refusal of claims from, for example, persons who have family connections or long-term authorization in a safe intermediary country.¹⁰⁷

On the other hand, at the 1951 Conference, a number of representatives considered that the undertaking not to impose penalties did not exclude the possibility of resort to expulsion.¹⁰⁸ Article 31 does not require that refugees be permitted to remain, and paragraph 2 emphasizes this point indirectly, by providing:

The Contracting States shall not apply to the movements of such refugees restrictions other than those which are necessary and ... [they] shall only be applied until their status in the country is regularized or they obtain admission into another country. The Contracting States shall allow such refugees a reasonable period and all the necessary facilities to obtain admission in another country.

It can be said that given that the principle of *non-refoulement* remains applicable, the freedom of Zambia finally to refuse regularization of status can well be circumscribed in practice. As a matter of law, however, it would seem that Zambia may continue to keep the unresettled refugee under a regime of restricted movement, either in prison or a refugee camp.¹⁰⁹

Besides, apart from refugees from Angola, Zaire, Zimbabwe,

¹⁰⁷ Conclusion 36 (XXXVI) of the Executive Committee of the High Commissioner's Programme, at para. (j), U.N. Doc. HCR/IP/2/Eng./REV. 1986 (1985).

¹⁰⁸ U.N. Doc. A/CONF. 2/SR. 13, 12-14.

¹⁰⁹ G. S. Goodwin-Gill, *supra* note 103, at 84.

Namibia, Malawi and Mozambique who have come directly to Zambia, most of the refugees, professionals and businessmen, have chosen to come to Zambia for different reasons: Zambian hospitality; opportunities for study; job opportunities; business; peace and security, etc.¹¹⁰ Some of those who had told the truth that they had transited in other countries seeking asylum were turned away.¹¹¹ It seems, therefore, that Zambia is moving toward a system designed to limit the right of refugees to choose their place of asylum.

III. THE ZAMBIAN PROCEDURE OF GRANTING ASYLUM

In order to establish the causes of the asylum-seeker's flight, governments usually carry out some kind of investigation when considering applications for asylum. The findings then provide a basis for two separate decisions, namely, whether the asylum-seeker should be recognized as a refugee and whether the refugee should be granted asylum. For these two decisions, it is of importance how the concept of refugee is defined in the country where asylum is sought, and what kind of determination procedure is used to ascertain the reasons for flight.

3.1. **International Law**

It has been mentioned under chapter two that Zambia is a

¹¹⁰ Interview with refugees: P. Manama, M. Said, S. Sezibera, M. Karekezi, E. Hasan, and S. Mustafa, Lusaka, July 5, 1996.

¹¹¹ Interview with E. Tukombe, supra note 45.

party to the 1951 Convention and the 1967 Protocol. Zambia is, therefore, legally bound to a universal refugee concept without any limitations in time or place regarding events that cause people to flee. The kind of person the term 'refugee' shall apply to has been described by Article 1A(2) of the 1951 Convention as modified by Article I of the 1967 Protocol. The definition in the Convention is similar to that of the UNHCR's Statute and the asylum-seeker qualifies for refugee status on an individual basis, because of the qualification "well-founded fear of being persecuted".¹¹²

The word "fear" is considered to have a subjective character as it refers to the feelings of the individual refugee, while the word "well-founded" is of an objective character. In this case 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.¹¹³

Since the concept "persecution" was not defined in the 1951 Convention, interpretation of the concept has been under discussion. According to one source, it was clear from the very beginning that persecution should be understood in terms of the denial of basic human rights.¹¹⁴ How basic human rights should be

¹¹² The UNHCR's Statute will be discussed under chapter three, II.

¹¹³ G. S. Goodwin-Gill, *supra* note 109, at 25.

¹¹⁴ P. Nobel, Refugee Determination in the Third World, a paper commissioned by United Nations Research Institute for Social Development, (UNRISD), 1985, p.

defined in their turn could in itself be a matter for discussion, but there seems to be a general agreement that measures directed against a person's life, limb or physical liberty constitute persecution. These measures could be torture, cruel, inhuman or degrading treatment or punishment, and certain issues of arbitrary arrest or detention.¹¹⁵ 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 protection.¹¹⁶

It is not only the manner of persecution but also the reasons for persecution (the person's race, religion, nationality, membership of a particular social group or political opinion) that should be discussed in relation to the denial of human rights.¹¹⁷ When the reason for persecution, for instance, is "political opinion", it is a denial of the right to freedom of opinion and expression laid down in Article 19 of the Universal Declaration of Human Rights and the 1966 International Covenant on Civil and Political Rights. Another example is when the reason for persecution is "race". It is then a denial of the content in Article 1 of the Universal Declaration of Human Rights, stating

11.

¹¹⁵ A. Grahl-Madsen, The Status of Refugees in International Law, Vol. I, (Universitet förlaget, 1966), p. 195.

¹¹⁶ Ibid.

¹¹⁷ G. S. Goodwin-Gill, *supra* note 113, at 26-31.

that all human beings are born free and equal in dignity and rights. Since 1966 there exists an International Convention on the Elimination of All Forms of Racial Discrimination within which the States Parties condemn apartheid (Article 3).¹¹⁸

As already said, after the adoption of the 1951 Convention the definition of a refugee as laid down in Article 1 (A) 2 has been extended. Firstly, in 1967, through the Protocol which deleted the limitations of time and place, and secondly, in a regional convention, through the 1969 OAU Convention. In this convention the refugee concept not only includes the definition of the 1951 Convention, but also extends the term refugee to persons fleeing for other reasons than persecution.

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.¹¹⁹ The refugee concept as defined by the 1951 Convention did not fit the situation in the African continent very well, either before or after the 1967 Protocol. However, the 1969 OAU Convention was not regarded as a

¹¹⁸ International Legal Instruments on Refugees in Africa, 1979, pp. 144, 174 and 260.

¹¹⁹ S. Hamrell, Refugee Problems in Africa, (Uppsala: Scandinavian Institute of African Studies, 1967), pp. 9, 14-15, 45-46.

replacement of the 1951 Convention. Instead, the *OAU* countries recognized the 1951 Convention as the basic, universal instrument relating to refugees, while the *OAU* Convention was agreed to be an effective complement in Africa.¹²⁰

However, the extended refugee definition is not dependent on any subjective or individual qualifications, such as "fear of persecution". The definition can therefore be used in group determination of refugee status. The refugee status is dependent on one of four objective criteria: external aggression, occupation, foreign domination or events seriously disturbing public order. According to Nobel the fourth criterion covers a variety of man-made conditions which make it unsafe to live in a region, such as internal strife in a country or natural disasters aggravated by violence or neglect, causing people to flee.¹²¹

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 on a group basis. However, in October, 1977, the Executive Committee of the High Commissioner's Program recommended to the state parties of the 1951 Convention and the 1967 Protocol that certain Basic Requirements should be fulfilled

¹²⁰ The 1969 *OAU* Convention, Preamble, para. 9.

¹²¹ P. Nobel, *supra* note 114, at 21.

in the determination procedure.¹²² At the same session, the Committee requested that the Office of the High Commissioner should issue a handbook concerning the procedures and criteria for determining refugee status. This handbook was published in 1979 for the exclusive guidance of governments and it is not recommended for private persons to quote or reproduce any part of it.¹²³

A Pan-African Conference was held in Arusha, Tanzania, on "the Situation of Refugees in Africa" in May, 1979. The conference was attended by representatives from African and non-African states and several other organizations involved in refugee work. The conference drew up sixteen recommendations, of which number 2 deals with the definition of the term "refugee" and the determination of refugee status. In this recommendation, the conference recognizes the definition of the term refugee as stated in Article I, Paragraphs 1-2 of the 1969 OAU Convention, and appeals to African states to apply the Basic Requirements specified by the Executive Committee of the High Commissioner's Program in 1977. In the same recommendation the conference also recognizes the importance of UNHCR's responsibility to determine refugee status under its Statute, so as to ensure that asylum-seekers who are refused refugee status by a State receive

¹²² The committee shall advise the High Commissioner in the exercise of his functions under the Statute and approve the material assistance programmes for each year. (UNHCR, General Information Paper, 1986).

¹²³ A/AC. 96/549, 1977, P. 14, UNHCR, Regional Office in Stockholm, letter, Nov. 1987.

adequate protection until a solution is found.¹²⁴

The recommendations of the *Arusha* Conference have since been "fully endorsed" by the OAU Council of Ministers and by the United Nations General Assembly in July, and November, 1979, respectively.¹²⁵

The Basic Requirements of 1977, which are only directed towards cases of individual determination, deal with four stages in the process of being recognized as a refugee. The first stage refers to when the asylum-seeker addresses himself to the authority of the border or within the territory of a state party of the 1951 Convention. The second, when the asylum-seeker is examined, the third, when the decision is taken whether or not to recognize him as a refugee, and the fourth, the chance of appeal.

In the first case the state parties are urged to assign competent officials, such as immigration officers or border police officers, to whom the applicant can address himself. These officials should have clear instructions on how to deal with asylum-seekers. They should also be required to act in accordance with the principle of non-refoulement and to refer asylum-seekers to a higher authority. Secondly, there should be a clearly

¹²⁴ Recommendation No. 2, para. 1-3 (The Recommendations from the Arusha Conference on the African Refugee Problem, 1981, p. 10).

¹²⁵ Id., at 42.

identified authority responsible for the examination. The asylum-seeker should be advised as to the procedure to be followed. He should also be given an interpreter if needed and the opportunity of contacting a representative of *UNHCR*. Thirdly, the first instance to recognize an asylum-seeker as a refugee should be a clearly identified authority. If the asylum-seeker is recognized as a refugee, he should be informed of this fact and issued with documentation certifying refugee status. Finally, the asylum-seeker should be given reasonable time to appeal if he is denied refugee status. The Executive Committee also recommends that an asylum-seeker should be permitted to remain in the country until a decision has been reached.¹²⁶

Since these requirements are only in the form of recommendations the state parties of the 1951 Convention are not legally bound to follow them. The Arusha Conference expressed some hesitation concerning the outlined procedure in cases of large-scale movements of asylum-seekers, as such situations would necessitate special arrangements to determine who is a refugee.¹²⁷

As the final intention of an asylum-seeker is to obtain permission to remain in the country where asylum is sought, it is necessary to deal shortly with the right of asylum.

The traditional meaning of the right of asylum in

¹²⁶ A/AC. 96/549, 1977, P. 14-15.

¹²⁷ The Recommendations from the Arusha Conference on the African Refugee Problem, 1981, p. 10.

international law does not refer to the right of the individual, but to the right of the state in relation to other states. The meaning of the right of asylum is thus the right of a state to grant asylum to whosoever it wishes, without being accused of an unfriendly act.¹²⁸ According to Rweramira this principle rests on another principle, namely, that a state has territorial sovereignty and, therefore, acts independently in its own territory.¹²⁹

This interpretation of the right of asylum is found in the General Assembly's Declaration of Territorial Asylum of 1967 and in the 1969 OAU Convention. In Article 1 of the Declaration, the sovereignty doctrine is stressed when it is stated 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.¹³⁰ In the Preamble of the 1969 OAU Convention, the OAU member states say that they are aware that refugees can cause friction among them. They have therefore agreed that the granting of asylum is a "peaceful and humanitarian act" and should not be regarded as an unfriendly act by any member state.¹³¹

¹²⁸ A. Grahl-Madsen, The Status of Refugees in International Law, Vol. II, (Leiden: A.W. Sijthoff, 1972), p. 6.

¹²⁹ Rweramira M., 'Some Reflections on the OAU Convention on Refugees: Some pending issues', The Comparative and International Law Journal of Southern Africa, 16, 1983, pp. 155-178.

¹³⁰ Goodwin-Gill, *supra* note 117, at 105.

¹³¹ The 1969 OAU Convention, Art. II and the Preamble.

So far the right of asylum has been treated as the right of a state to grant asylum. Another aspect of the right of asylum is the right of the individual. The right is then twofold: Firstly, with reference to the state where asylum is sought, and secondly with reference to the persecuting state. In the first case it is a question of the right "to be granted" asylum, but as already mentioned, there is no international legal obligation for a state to grant asylum, so a refugee cannot claim a legal right to be granted asylum. (On the other hand if such a right could be found in national law, an asylum-seeker can claim a legal right to be granted asylum on the basis of national legislation).¹³² In the second case, with reference to the persecuting state, the individual's right consists of the right "to seek and enjoy" asylum in a foreign country.¹³² This right is found in the Universal Declaration of Human Rights which provides, in Article 14 (1) that,

Everyone has the right to seek and enjoy in other countries asylum from persecution.

Before the adoption of the Declaration, there were discussions whether to word this article as the right "to be granted" asylum, but the suggestion was not accepted.¹³³

The meaning of the right "to enjoy" asylum, in the sense that it is a right for the individual in relation to the persecuting state, is not explained in the Declaration. It may be interpreted as a right not to be attacked by the persecuting

¹³² Grahl-Madsen, supra note 128, at 6-7;101.

¹³³ Goodwin-Gill, supra note 130, at 104.

state when enjoying asylum. It may also be interpreted as a right not to be discriminated against on the basis of his former refugee status after having been voluntarily repatriated.

The question of asylum is also dealt with by the African Charter of Human and Peoples' Rights in Article 12 paragraph 3. The state parties have agreed 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 conventions.

It appears that the wording differs from that of Article 14 (1) in the Universal Declaration of Human Rights. Firstly, the word "obtain" is used instead of "enjoy" and secondly, there is an additional phrase that starts "in accordance with ...". The word "obtain" is more similar to the expression "be granted" than to the word "enjoy", as the literal meaning of the latter word describes a condition where the person is already in the country of asylum, while "to obtain" means "to get". On the other hand, the wording of the rest of the article: "in accordance with the laws of those countries ..." seems to confirm the traditional interpretation of the right of asylum. It is the state which has the exclusive right to decide whether or not to grant asylum as each state makes its own laws.

However, the OAU countries have strengthened the institution of asylum in their refugee convention by the agreement to use their "best endeavors" to receive refugees and to secure the

settlement of those refugees who are unable or unwilling to be repatriated".¹³⁴

The principle of *non-refoulement* is an issue closely related to the right of asylum. It is laid down in Article 33 of the 1951 Convention. The Article in the 1969 OAU Convention that corresponds to Article 33, is Article II paragraph 3. The content of the 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. On the other hand, the effect 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.¹³⁵

Both the 1967 Declaration on Territorial Asylum and the 1969 OAU Convention deal with the situation that arises when a state finds it difficult to continue granting asylum, but is bound by the principle of *non-refoulement*. If this situation arises, the other member states are called upon to lighten the burden of the first country of refuge through "appropriate measures" according to the principle of burden-sharing.¹³⁶

¹³⁴ Id., at 107; The 1969 OAU Convention, Art. 11, para. 1.

¹³⁵ Grahl-Madsen, *supra* note 132, at 108.

¹³⁶ Gen. Ass. Res. 2312 (XXII), art. 2, para. 2; the 1969 OAU Convention, art. II.

3.2. **Zambian Legislation and Practice**

The study of the two refugee conventions focused on in this thesis shows that neither of them refers to how the agreed definitions of refugees and their rights should come into effect in the territories of the contracting state. However, the state parties of the 1951 Convention have agreed to communicate to the Secretary-General of the United Nations such laws and regulations which they may adopt to ensure the application of the convention.¹³⁷ When requested this type of information should also be given to the Office of the High Commissioner for Refugees together with information concerning the conditions for refugees.¹³⁸ In the *OAU* Convention the state parties have agreed to provide the Secretariat of the *OAU* with information concerning relevant laws, regulations and decrees which may come into force in the future.¹³⁹

The obligations of an international treaty do not automatically become a part of a state party's national legislation even if that state has ratified the treaty. This depends on whether or not a country follows a monist or dualist system. Therefore, it is up to each state party to an international treaty to determine if, when and how the content of the treaty will be implemented nationally. However, there is

¹³⁷ 1951 Convention, Art. 36.

¹³⁸ Id. art. 35.

¹³⁹ The 1969 *OAU* Convention, art. VII.

a political and moral obligation for a state party to ensure that its national laws are in conformity with its international obligations.¹⁴⁰ This could be done by declaring in a constitutional provision that international treaties should be directly applicable in the territory of the contracting state. Another method is to transform the content of the treaty in question into national law or to enact an act declaring that the treaty in question should be directly applicable nationally.¹⁴¹

As the state parties to the two refugee conventions have not agreed upon any particular procedure to determine refugee status, there are no specific obligations related to the procedure to be implemented in Zambia. On the other hand, as already mentioned, there are international recommendations on the procedure to be followed. It is of importance to the asylum-seeker, the refugee administration and the state, that the authorities are aware of who the beneficiaries of refugee law are. As the authorities usually act directly under national regulations and administrative rules, it is necessary to have a national definition of who qualifies as a refugee and how refugee status should be determined.¹⁴²

¹⁴⁰ Goodwin-Gill, *supra* note 134, at 141, note 67.

¹⁴¹ P. Nobel, "Refugees, Law and Development in Africa," in Michigan Yearbook of International Legal Studies, 1982, p. 267.

¹⁴² P. Nobel, National Law and Model Legislation on the Rights and Protection of Refugees in Africa, (Uppsala: Scandinavian Institute of African Studies, 1978), p. 61.

It has already been stated that the refugee definition is found in the Statutory Order no. 240 of 1971.¹⁴³ That Order, together with the Refugee (Control) Act of September 1970, form the Zambian legal bases for the determination of refugee status. Applications are referred to the Committee for the Determination of Refugee Status composed of the Refugee Commissioner, Ministry of Home Affairs (chair), and two other representatives (Principal and Secretary) of the Ministry of Home Affairs, a representative each of the President's Office (Special Branch), Immigration Headquarters, the Regional Immigration Department, Lusaka, the Police Department, the Passport and Citizenship Office and a representative of UNHCR. After an initial determination of refugee status through interviews and a recommendation thereon, the Committee refers the application to the Minister of Home Affairs for final decision. There is no administrative appeal against negative decisions, but a rejected applicant may request the Minister for reconsideration or submit the case to the High Court of Zambia. The UNHCR representative in Zambia attends the meetings of the Committee as an observer, and is entitled to question the applicant and to record dissenting opinions.¹⁴⁴

However, in practice, an applicant applies to the UNHCR Branch Office in Lusaka, which, after having interviewed the applicant, examines the request and sends its recommendations to the Commissioner for Refugees, Ministry of Home Affairs, which

¹⁴³ See chapter two, I, 1.2.

¹⁴⁴ Goodwin-Gill, *supra* note 140, at 203.

takes the final decision. It is important to note that more than 99% of the cases are treated by the Commissioner for Refugees himself without referring them to the Minister and there are actually four possibilities to determine the refugee status:¹⁴⁵

1. The Commissioner for refugees may appreciate and grant refugee status *prima facie* to "people with a common problem".¹⁴⁶
2. To people with highest status, i.e. former dignitaries, refugee status can be granted without any other formality.
3. Refugee status can be granted to some educated people who can be employed in Zambian institutions.
4. Refugee status can be granted through interviews as seen above.

In any case, the Commissioner for Refugees must have enough information from different sources about the situation in refugees' countries of origin or nationality. Moreover, to collect information for the report, the Committee has the power to summon the applicant and any other person who can give additional information.¹⁴⁷

¹⁴⁵ Interview with E. Tukombe, supra note 111.

¹⁴⁶ Example: people running from ethnic strife in Burundi, Rwanda or Zaïre.

¹⁴⁷ Interview with E. Tukombe, supra note 145.

In all this process, during the individual investigation, the asylum-seeker is alone with the interviewing officer and is not allowed to have a lawyer or even UNHCR by his side. On the other hand, the asylum-seeker is given the chance to meet UNHCR afterwards and UNHCR then has the opportunity to execute its protection function if necessary.¹⁴⁸ In answer to a question on the opinion of UNHCR about the existing procedure, UNHCR considers that the procedure is satisfactory since a majority of the decisions made by the Government were in accordance with UNHCR's view of the case.¹⁴⁹

In any case, if the asylum-seeker is granted asylum he will be notified by the issuing of an identity card.

4.3. Conclusion

The Zambian procedure of granting asylum is based on the 1970 Refugee (Control) Act and on the 1971 Statutory Order. The definition found complies more or less with the Universal definition found in the 1951 Convention as modified by the 1967 Protocol. However, in practice Zambia also applies the extended refugee definition as laid down in Article II paragraph 2 of the

¹⁴⁸ Interview with M. Matonka, Immigration officer, Lusaka, June 27, 1996; Interview with refugees: K. Ngoy, F. Ntahondi, J. Musabyimana, Lusaka, August 28, 1996.

¹⁴⁹ Interview with L. Caffiero, UNHCR Protection Officer, May 9, 1996.

OAU Convention. The procedure as such is no longer based on any of the rules outlined in the Refugee (Control) Act, which puts all the process under the authority of the Minister of Home Affairs. With the information available the procedure in practice appears, however, to be done under the full authority of the Zambian Commissioner for Refugees.

The practice is that an asylum-seeker can address himself to competent officials who should have clear instructions on how to act, and they should refer the asylum-seeker either to UNHCR or to the Commissioner for Refugees (Ministry of Home Affairs) for investigation. In Zambia the competent officials consist of the Zambian Immigration, the Zambian police and the Zambian Commissioner for Refugees. The asylum-seeker can also be referred to UNHCR Branch Office in *Lusaka* or to its offices in refugee settlements.

The decision whether to recognize an asylum-seeker as a refugee and to grant asylum is taken by the Minister of Home Affairs through the Commissioner for Refugees, who is a clearly identified authority. If the asylum-seeker is granted asylum he will be notified by the issuing of an identity card. If the asylum-seeker is instead denied refugee status or asylum he can appeal to the Minister of Home Affairs, administrative authority, or to a judicial authority, the High Court of Zambia. As the Minister of Home Affairs is the same authority to which applications are made in theory, the appeal seems to be directed to the same authority as the first request, whereas if the person

makes an appeal to the court a different and independent authority reviews the case. A person who has made an appeal would probably be allowed to remain in Zambia pending the appeal, as long as another country of asylum has not been found.¹⁵⁰

The following chapter will examine the refugee problem in Zambia.

CHAPTER THREE

THE REFUGEE PROBLEM IN ZAMBIA

INTRODUCTION

This chapter is intended to examine the refugee problem in Zambia starting from categories of refugees that are found in Zambia, their number and their location.

Moreover, the role of the main parties involved in refugee work will be analyzed. The different parties in question are the Government of Zambia, the United Nations High Commissioner for Refugees (*UNHCR*) and the Lutheran World Federation, Department of World Service (*LWF/WS*). These parties co-operate in the reception of refugees and the management of different activities involved..

It is important to bring the refugee problem to light because the protection under review cannot operate in a *vacuum*.

I. THE REFUGEE POPULATION

There are two categories of refugees in Zambia. The first group consists of those who are recognized as refugees and enjoy asylum, whereas the second consists of those who have not been granted asylum and, therefore, move on to another country.

Concerning the number of refugees in each of these categories, it has only been possible to obtain figures concerning the first category. The number of refugees who are involuntarily in transit would have been possible to ascertain on the basis of figures showing the number of applications for asylum and recognition as a refugee, in comparison with the number of approved applications. However, as these figures are regarded as internal government information they could not be obtained.¹⁵¹

Of those refugees who have been recognized and are enjoying asylum in Zambia, the majority live in the two existing refugee settlements, *Meheba* and *Mayukwayukwa*.¹⁵² In August, 1966, there were 30,400 refugees in *Meheba* refugee settlement and 4,173 refugees in *Mayukwayukwa* refugee settlement, but there were also refugees, mainly Zairians, Angolans, Rwandans, Somalis and Burundians, living outside the settlements in urban centres such as *Lusaka*, *Ndola* and *Kitwe*.¹⁵³ According to a Commission for Refugees Officer, the figure always given concerning this group of refugees is 4,977, whereas the *UNHCR* declares 5,190.¹⁵⁴ The total number of refugees in Zambia in August 1996 was estimated

¹⁵¹ Interview with E. Moyo, *supra* note 43.

¹⁵² For details about these settlements, see III under this chapter.

¹⁵³ *Ibid.*

¹⁵⁴ Interview with B. Maimba, *supra* note 72.

at 115,000.¹⁵⁵ This number does not include those spontaneously settled in Western and North-Western provinces of which the number has not been possible to obtain.

Of the total refugee population in 1995/1996, about 85% came from a rural background.¹⁵⁶ The majority were from Angola and Zaire whereas those from an urban background were mostly from Somalia, Rwanda and Burundi.¹⁵⁷

About 30% of the refugee population live in the refugee settlements. Amongst these refugees, the majority come from neighboring countries. The Angolans and Zaireans are in a great majority, representing as much as 89% of the population in *Meheba*, and 94% of the population in *Mayukwayukwa*. The remaining refugees are Ugandans, Rwandans, Namibians, Burundians, Somalis and Zimbabweans. Irrespective of nationality, there is a preponderance of adult females, 50% of the total *Meheba* population, while men account for 40% and children under sixteen account for 10%.¹⁵⁸

By the time this thesis is being written, there is an influx of refugees coming from Burundi, Zaire and Rwanda because of the ethnic violence prevailing in those countries. There are also people in Zambia who have fled from their country of origin, but

¹⁵⁵ Ibid.

¹⁵⁶ Ibid.

¹⁵⁷ Ibid.

¹⁵⁸ Ibid.

instead of applying for asylum have been staying in Zambia as aliens. Besides, many of them are accommodated by Zambian village hosts especially in Northern and North-Western provinces.¹⁵⁹

II. THE PARTIES INVOLVED

In refugee work the main parties officially involved are the Government of Zambia, the United Nations High Commissioner for Refugees and the Lutheran World Federation, Department of World Service.

On the basis of Zambia's sovereignty as a State, the Government of Zambia is solely responsible for everything relating to the implementation of national legislation, such as the investigation of asylum-seekers applications, the recognition of asylum-seekers as refugees and the decision whether or not to grant asylum. It could also be matters concerning residence permits, work permits, study permits and travel documents. The authorities most often involved are the Office of the President, the Immigration, and the Police. Laws relevant to refugees are mainly : the Refugee (Control) Act of 1970; the Immigration and Deportation Act of 1965 and the Employment of Non-citizens Act of 1965. There are also other types of regulations, such as administrative rules and government policy, which are of internal character. According to the *UNHCR* government policy can consist of decisions outlining practice in specific cases with which the

¹⁵⁹

Ibid.

laws do not deal.¹⁶⁰

According to the Vice-President, Brigadier General *Godfrey Miyanda*, the refugee policy of Zambia is derived from a national *ethos* of mutual accommodation, tolerance and forbearance. He also states that the policy is based on Zambia's commitment to uphold human rights and on the country's international obligations relating to the status of refugees.¹⁶¹

Zambia is a party to the 1951 Convention. In 1960 the Convention was extended by the United Kingdom to include Northern Rhodesia. Zambia acceded to the convention as a State in its own right in 1964. In 1969, Zambia also acceded to the 1967 Protocol, which states, as already seen, that neither the time limit (before January 1, 1951) nor the geographic limitation (events occurring in Europe) in the 1951 Convention, Article 1A (2) and Article 1B (1) (a), should be applied by the state parties.¹⁶² Zambia was also one of the 41 African states which adopted and signed the 1969 OAU Convention of which the extension of the concept refugee in Article 1:2 is in fact applied by the Government of Zambia.¹⁶³

¹⁶⁰ Interview with L. Caffiero, *supra* note 150; Interview with E. Moyo, *supra* note 151.

¹⁶¹ Statement of the Vice President of the Republic of Zambia during the launching of Zambia-Rwanda Friendship Association, May 14, 1995.

¹⁶² 1967 Protocol, Art. I, para. 2-3.

¹⁶³ The 1969 OAU Convention (International and Legal Instruments on Refugees in Africa, 1979, p. 131);

As already seen, the legal concept of the term refugee in Zambia is 'political refugee', and the definition is found in the Statutory Order No 240 of 1971.¹⁶⁴ Concerning the commitment to uphold human rights, Zambia has ratified the two international covenants of 1966, dealing with civil and political rights, and economic, social and cultural rights, respectively. Moreover, Zambia has ratified the African Charter on Human and Peoples' Rights, which entered into force on October 21, 1986. Both the African Charter and the two conventions relating to the status of refugees mentioned above, refer to the Universal Declaration of Human Rights of 1948, where fundamental rights and freedoms are stated.¹⁶⁵

On a national level, Zambia has in its Constitution a special chapter dealing with the "Protection of the Fundamental Rights and Freedoms of the Individual". Some of the rights mentioned are the right to life, liberty, security of person and the freedom of movement and expression.¹⁶⁶ Some of these rights will be discussed in chapter four in relation to refugees.

Interview with L. Caffiero, supra note 160.

¹⁶⁴ See chapter two, I, 1.2.

¹⁶⁵ Preamble to the 1951 Convention and Preamble to the 1969 OAU Convention.

¹⁶⁶ Constitution of Zambia, part III.

It is important to analyse the attitude of Zambian citizens and the Zambian government respectively towards the refugee influx into Zambia.

It has been realised that Zambian local residents are usually hospitable to refugees and share many local resources, and as already seen, the refugee policy of Zambia is derived from a national *ethos* of mutual accommodation, tolerance and forbearance.¹⁶⁷

The meaning of a "national *ethos*" of mutual accommodation, tolerance and forbearance is more difficult to describe. It has probably grown out of the tradition in Zambian societies of admitting refugees or other non-members of the tribe who had left their own societies, perhaps because of drought or political conflicts. When a stranger arrived in the territory of another tribe, his presence was to be reported to the Chief at his residence and the stranger could ask for permission to settle in the area of the tribe. Persons who had left their communities because of political disputes usually only stayed temporarily and they were allowed to practice their own customs during that period.¹⁶⁸ Another factor behind the national *ethos* could be the Zambian tradition in which the principle is to listen to other opinions and to promote reconciliation.¹⁶⁹

¹⁶⁷ R. Cohen, *supra* note 74, at 153.

¹⁶⁸ *Ibid.*

¹⁶⁹ Interview with P. Bizeke, J. Chanda, and J. Bwalya (elderly Zambians), Makeni, July 5, 1996.

The Zambian policy of admitting asylum-seekers whose reasons are in accordance with the definition in the Statutory Order or in the OAU Convention, has caused security problems for the country. In the 1970s, the Rhodesian army reacted by violating the territory of Zambia, while during the 1980s, South Africa demonstrated its dissatisfaction with Zambian refugee policy of giving shelter to people fleeing from persecution by invading Zambian territory. During 1986 and 1987, Zambia was subjected to South African attacks which caused both deaths and material destruction.¹⁷⁰

According to South Africa, the purpose of these attacks was to defend itself against terror activities by the ANC.¹⁷¹ When South African helicopters flew over Zambian territory, two types of leaflets were scattered. One was addressed to the "SOLDIERS OF THE ZAMBIAN ARMY" and the other was addressed "TO THE PEOPLE OF ZAMBIA". The content was the same in both leaflets: that the reason for the attack was to eliminate "ANC gangsters who infiltrate into our country to murder innocent women and children".¹⁷² The soldiers were requested not to interfere and the people of Zambia were requested not to allow ANC members to live amongst them, all for their own safety. The allegation that ANC members used Zambian territory to launch attacks into South

¹⁷⁰ Interview with E. Moyo, supra note 160.

¹⁷¹ Ibid.

¹⁷² Ibid.

Africa has not been denied by the Government of Zambia.¹⁷³

Refugees are advised to refrain from becoming involved in political or other activities against other countries, or using Zambia as a base for such activities. "This type of activity could namely jeopardize their continued stay in Zambia".¹⁷⁴ This opinion that refugees shall refrain from subversive activities can also be found in Article III of the OAU Convention and in Article 23 of the African Charter. In these treaties, the contracting states undertake to ensure that refugees who enjoy asylum shall not be engaged in such activities. However, the obligation concerns only activities against a contracting state. As South Africa was not a state party to either of these two treaties, there was no legal obligation on the basis of the treaties for Zambia to prevent subversive activities against South Africa.

Rwandan refugees have also have been subjected to threats from the Rwandan Patriotic Front Government. Since 1995, the Kigali government has launched a campaign against Rwandan Hutu refugees in Zambia, alleging that the Zambian government was "hosting criminals who were involved in genocide in 1994 in Rwanda" and demanding their extradition to Rwanda for trial.¹⁷⁵

¹⁷³ Ibid.

¹⁷⁴ Ibid.

¹⁷⁵ On November 8, 1994, the U.N. Security Council, by Resolution No. 955, has established an International Criminal Tribunal for Rwanda which, according to its Statute in Article 1, has "the power to prosecute

In August 1995, the Zambian Immigration arrested 22 Rwandan refugees in Lusaka and detained them at *Kamwala* and *Kabwata* prisons. The following day, the Government of Rwanda, through its Ambassador to South Africa, congratulated the Zambian Government for that act.¹⁷⁶ These detainees challenged their arrest and detention in the Zambian High Court.¹⁷⁷ The hearings were postponed five times because of unavailability of judges. Meanwhile Rwandan envoys (Ministers, diplomats and intelligence agents) were negotiating the extradition but this failed because there is no extradition treaty between Zambia and Rwanda and that there is an international criminal tribunal for Rwanda competent for genocide which, so far, had said nothing about the detainees. After eight months the High court released them except *Jean Paul Akayesu* and *Georges Rutaganda* who were claimed by the international tribunal.¹⁷⁸ The latter have since been transferred to *Arusha* for trial.

Another aspect of the refugee policy of Zambia is to

persons responsible for serious violations of international humanitarian law committed in the territory of Rwanda and Rwandan citizens responsible for such violations ...". The seat of the Tribunal is in Arusha (Tanzania). U.N., Department of Public Information, Reference Paper, April 1995, p. 68.

¹⁷⁶ Interview with E. Silwamba, Deputy Minister, State House, August 3, 1995.

¹⁷⁷ For details about this case, see chapter four.

¹⁷⁸ In Gatare v. Attorney General, Justice K.C. CHANDA held that "these two will not be release because their names appear on the list from the Impartial International Tribunal for Rwanda". 1995/HP/4595.

accommodate all refugees in refugee settlements, *Meheba* and *Mayukwayukwa*. There are two reasons for this policy. The first is that it is easier to organize the catering for the refugees if they live at the same place, and the second one is for purposes of control. Zambia has also a policy of encouraging refugees to become self-sufficient. Refugees who can support themselves may be allowed to live outside the settlement as long as they prove their ability to support themselves. Students also are allowed to stay outside the settlement.¹⁷⁹

The second party involved in the work with refugees in Zambia is the Office of the United Nations High Commissioner for Refugees (*UNHCR*), a representative of the international community. It is, in accordance with Article 22 of the United Nations Charter, a subsidiary organ to the General Assembly. The headquarters are located in Geneva. In 1996 there were some 95 Representatives accredited to over 100 countries throughout the world.¹⁸⁰

The Office of *UNHCR* works under a time-limited mandate, which has been renewed continuously since its establishment on January 1, 1951. The functions of *UNHCR* are stipulated in the Statute of *UNHCR*, which also states to whom the functions should be applied. It was adopted by the General Assembly in December,

¹⁷⁹ Interview with E. Tukombe, *supra* note 163.

¹⁸⁰ Interview with P. Dessout, *UNHCR* Programme officer, August 10, 1996.

1950, as an annex to a resolution, calling upon governments to co-operate with the *UNHCR*. The work of *UNHCR* should be both humanitarian and social, of a non-political character, and policy directives given by the General Assembly or the Economic and Social Council (*ECOSOC*) should be followed.¹⁸¹

The two main functions of *UNHCR* are the international protection of refugees and the seeking of durable solutions to their situation. The meaning of the first function is that *UNHCR* should seek to promote the adoption of international instruments relating to refugees and ensure their implementation at a national level, through legislation or administrative measures. As refugees are without protection from their country of origin, they are not ordinary aliens in the country of refuge. Instead, protection should be exercised by the international community through *UNHCR*.¹⁸² The second function, to find durable solutions to refugee problems, consists of assisting in efforts to promote voluntary repatriation or assimilation within new national communities. The latter solution is divided into local integration in the asylum country or into resettlement in another country. Voluntary repatriation is of first priority and resettlement should be effected in case neither voluntary repatriation nor resettlement is possible.¹⁸³

¹⁸¹ *UNHCR*, 1996, General Information Paper, p. 3.

¹⁸² *UNHCR*, General Information Paper, 1986, p. 5.

¹⁸³ *Id.*, p. 6.

Until one of these three durable solutions is reached, the refugees need material assistance in their daily life in the host country. *UNHCR*, therefore, finances what is called "material assistance activities", such as emergency relief, counselling services and assistance to refugees to help them become self-supporting. The aim of this assistance is to help refugees reach a durable solution as soon as possible. This type of assistance function is a result of a development of the competence of *UNHCR*. This development was endorsed by, amongst others, the General Assembly. Usually, material assistance activities are administered by non-governmental organizations or local authorities.¹⁸⁴

The competence of *UNHCR* should be extended to include those persons who are defined as refugees under the Statute. According to paragraph 6, there are three groups of refugees. The definition of the third group is of universal application since no time-limit or geographical limitations apply. The wording is similar to Article 1A (2) in the 1951 Convention as modified by Article I of the 1967 Protocol. The third group consists of:

Any person who is outside the country of his nationality, or if he has no nationality, the country of his formal habitual residence, because he has or had well-founded fear of persecution by reasons of his race, religion, nationality or political opinion and is unable or, because of such fear, is unwilling to avail himself of the protection of the government of

¹⁸⁴ Id., pp. 5, 9-12.

the country of his nationality, or, if he has no nationality, to return to the country of his former habitual residence.¹⁸⁵

However, since this Statute was adopted in 1950, the group of persons who qualify for *UNHCR'S* material assistance and protection has been extended to include persons who are also in a refugee-like situation but who do not qualify under the refugee definition of this statute. These persons have instead been brought under the mandate of *UNHCR* by resolutions of the General Assembly or *ECOSOC*. The resolutions have then dealt with specific groups of persons of a particular origin or located in a particular area.¹⁸⁶

The functions of the *UNHCR'S* Branch Office in Lusaka, Zambia, are to provide both international protection and material assistance. Apart from the Representative, the office is staffed by a Protection Officer, a Program Officer and a Social and Educational Services Officer.¹⁸⁷

The Protection Officer is responsible for the protection function. The content of the work can be divided into three parts, a theoretical, a practical and an administrative part. As part of the theoretical work the Protection Officer should seek to promote the accession to international instruments relating

¹⁸⁵ Goodwin-Gill, *supra* note 75, at 5-6.

¹⁸⁶ *UNHCR*, General Information Paper, 1986, p. 6.

¹⁸⁷ Interview with L. Caffiero, *supra* note 163.

to refugees and to ensure the implementation of those instruments through national legislation or administrative measures. This could be done through workshops, by involvement in education at the University of Zambia, by discussions with faculty members at the School of Law, by giving lectures or by assisting in updating existing laws. Practically, the work can, for instance, involve ascertaining whether asylum-seekers also fall under the Statute of *UNHCR*. The decision of *UNHCR* is independent of government decisions. *UNHCR*, therefore, conducts its own interviews and exercises its protection function even in cases where the government has denied refugee status. Another practical function is to visit refugees or asylum-seekers who are in detention, to give them legal help, such as finding out and informing them of the reasons for their imprisonment. The administrative part of the work can, for instance, consist of filling in the necessary forms for obtaining travel documents and work permits or for resettlement. The aspect of the work in Zambia which is most important differs, however, from time to time and from week to week.¹⁸⁸

One of the most important tasks for *UNHCR* in general is to uphold and defend the principle of non-refoulement. When necessary, *UNHCR* should intervene and try to find another country of asylum for the refugee. This situation can arise in Zambia when a refugee is declared a prohibited immigrant in accordance with the Zambian Immigration and Deportation Act. The basis for

the decision could be that the refugee falls under the Statute, *UNHCR* will act on his behalf. When the refugee is convicted of a criminal case, it will be difficult for *UNHCR* to find another country of asylum. During the waiting period the refugee is kept in detention.¹⁸⁹

Another important task for *UNHCR* in general as well as for the Branch Office in Zambia is to ensure that repatriation of refugees is voluntary and that the government of the country of origin accepts their return without any malice.¹⁹⁰ According to Nobel, there are three conditions necessary for voluntary repatriation. Firstly, a socio-economic one, consisting of assistance to ensure proper resettlement to avoid internal displaced persons. Secondly, a political one, that the cause of the flight has been eliminated and that basic human rights of the returning refugees must be respected. Thirdly, a legal condition consisting of a valid amnesty which is clearly worded and properly observed.¹⁹¹

The Programme Officer is responsible for the material

¹⁸⁹ Ibid.

¹⁹⁰ The government of the Rwandan Patriotic Front has been accepting the return of refugees. However, it has been reported that as soon as they arrive in Rwanda, either they are killed or they are arbitrarily arrested. Those who are left live in insecurity. Amnesty International, March 1996; Times of Zambia, May 17, 1995.

¹⁹¹ P. Nobel, 'Peoples-Rights-Refugees', Refugees and Development in Africa, (Uppsala: Scandinavian Institute of African Studies, 1985), p. 45.

assistance function of *UNHCR*. This function is exercised through two implementing parties: the non-governmental organizations Young Men Christian Association (*YMCA*)- Refugee Project and Lutheran World Federation, Department of World Service (*LWF/WS*). The function of *YMCA* is to implement certain projects concerning refugees who live outside the settlements, while *LWF/WS* acts as an implementing party only in the two refugee settlements.¹⁹²

YMCA-Refugee Project was established in 1986, on the initiative of *YMCA*, *UNHCR* and the Office of the Commissioner for Refugees (Ministry of Home Affairs). Until the establishment of *YMCA*-Refugee Project, the refugee service was handled by the Zambia Christian Council which found that there was not enough time for all the other issues related to its organization.¹⁹³

The basic function of *YMCA*-Refugee Project is to deal with the social problems of refugees living outside the settlements. It also assists those refugees who have material needs and administers educational programmes based on scholarships. However, it also provides medical assistance to refugees who are to be transferred to medical institutions from the settlement.¹⁹⁴

¹⁹² Interview with P. Dessout, *supra* note 180; Interview with Mrs. Mwange (*LWF/WS*), Sept. 2, 1996.

¹⁹³ Interview with P. Anderson (*YMCA*-Refugee Project), Lusaka, Sept. 7, 1996.

¹⁹⁴ Interview with Mrs. Bwalya and P. Kuluza (*YMCA*-Refugee Project), Lusaka, Sept. 7, 1996.

YMCA-Refugee Project is funded only by *UNHCR* but is looking for other sponsors to reinforce and extend the Project. As the existence of the Project is a combination of efforts between *UNHCR*, the Office of the Commissioner for Refugees and *YMCA*, the work is implemented according to the agreement reached between *UNHCR* and *YMCA-Refugee* project and the latter has to make regular reports to *UNHCR* as to how the funds have been used. As *UNHCR* is the only contributor, it has a great impact on the decisions.¹⁹⁵

YMCA-Refugee Project has only one office in Lusaka and the refugees can go to this office to discuss their situation individually with any of the four counsellors. The projects which *YMCA-Refugee* Project has to implement for *UNHCR* are supplementary aid, education, small income generating projects and medical assistance.¹⁹⁶

III. THE REFUGEE SETTLEMENTS

Meheba and *Mayukwayukwa*, the two existing refugee settlements in Zambia, are situated in *Solwezi*, Northwestern Province and in *Kaoma* in Western Province respectively. They were established by the Refugee (Control) (Establishment of Refugee

¹⁹⁵ Ibid.

¹⁹⁶ Ibid.

Settlements) Order, 1971. The areas are respectively approximately 700 square kilometres and 263 square kilometres. They are planned to accommodate about 50,000 and 20,000 refugees respectively. The intention was, and still is, to produce enough food to make the refugees self-supporting. In August 1996, there were about 30,400 refugees in *Meheba* and 5,000 in *Mayukwayukwa*, not only occupied in agriculture but also in other activities, such as education or income-generating projects.¹⁹⁷

As the policy is to accommodate all refugees in the settlements irrespective of their background, the settlements are heterogeneous communities consisting of people from both rural and urban backgrounds representing eight nationalities in *Meheba* and five nationalities in *Mayukwayukwa*. Skilled refugees are allowed to shift from the settlement and live in urban areas looking for jobs. Another group of refugees consists of people with rural backgrounds, who are used to an economy based on a combination of agriculture and livestock breeding.¹⁹⁸

Since 1967, the running of the settlements has been based on a tripartite agreement between the Government of Zambia, *UNHCR* and *LWF/WS*. The Government and *LWF/WS* administer and provide

¹⁹⁷ Interview with B. Maimba, supra note 155; Mrs. Mwange, supra note 192; P. Desout, supra note 192.

¹⁹⁸ Interview with L. Caffiero, supra note 188; Mrs. Mwange, supra note 197; refugees: G. Kabiligi, B. Kadima, San Jose, and R. Rajab, *Meheba*, September 5, 1996.

staff for the settlements, while the *UNHCR*'s function is to provide funding.¹⁹⁹

The Government is represented by the Settlement Commandant, who is responsible for security, the police, refugee statistics and legal matters, such as handling applications for permission to leave the settlement. The *LWF/WS*, as an implementing agency for *UNHCR* has the operational responsibility for economy, transport, food distribution, water facilities, education in the settlement, daily administration, etc.; in short, everything related to the daily life of the refugees.²⁰⁰

LWF/WS headquarters are in Lusaka and it has offices both in *Meheba* and in *Mayukwayukwa*. The organization is not only engaged in refugee work, but also in assisting local Zambian communities in development schemes whose aim is to increase economic potential and self-reliance locally. Assistance is provided in such areas as agriculture and water programmes.²⁰¹

The refugees are organized in committees based on nationality. The committees have leaders whose function is to be a link between the refugees and the administration of the settlement. According to *LWF/WS*, the leader could, either on his

¹⁹⁹ Interview with Mrs. Mwange, supra note 198.

²⁰⁰ Ibid.

²⁰¹ Ibid.

own initiative or by invitation from a committee, discuss current problems, such as food supplies, housing or how to start up development projects.²⁰²

When refugees first arrive at the settlement they are given tents, but they are expected to build their own dwellings within a short time. The World Food Programme (*WFP*) provides food supplies, and clothes are sent from abroad. As there is no surface water in the settlements, the water facilities depend on boreholes and rainfall.²⁰³ To avoid jealousy amongst Zambians settled near the settlements, the three parties involved have decided that water facilities, the health clinic and education should also be available to Zambians.²⁰⁴

The aim of the work in the settlements is to encourage and to set up activities in order to train and teach refugees to become self-sufficient, thereby reducing their dependence on external assistance. The refugees are, therefore, assisted to start and develop different types of income-generating activities and agriculture-related activities. For this purpose, *LWF/WS* has employed a Projects Officer who is responsible for planning the projects that refugees wish to start. He finds out if the project is realistic, if there is enough knowledge and material and if there is a market for the products so that the loans given to the

²⁰² Interview with refugees, supra note 198.

²⁰³ Interview with Mrs. Mwange, supra note 200.

²⁰⁴ Ibid.

refugees can be paid back.²⁰⁵ It has already been said that refugees who live outside the settlements also have the opportunity to start projects with YMCA-Refugee Project.

Refugee children can attend schools at primary and secondary levels. For the pre-school children there is a day-care center, consisting of a class-room and a play-ground in each settlement.²⁰⁶

What will happen to *Meheba* and *Mayukwayukwa* in the future? The answer to the question is dependent on what happens in refugees' countries of origin. If there should be an influx of refugees, *Meheba* can still accommodate around 20,000 refugees, while *Mayukwayukwa* can still accommodate around 15,000 refugees. The problems which usually arise in case of an influx are related to the lack of food, health services and transport. UNHCR is aware of these problems and has an emergency preparedness plan in readiness for an influx of refugees. The plan has been discussed with the Government of Zambia and with the organizations involved. It presupposes, however, that the Zambian borders remain open to refugees.²⁰⁷

²⁰⁵ Ibid.

²⁰⁶ Ibid.

²⁰⁷ Interview with P. Dessout, *supra* note 197.

IV. URBAN REFUGEES

Refugees who are not placed in settlements can be allowed to remain in urban areas, mostly in *Lusaka*. Like those in settlements, these refugees enjoy some *UNHCR* protection through *YMCA-Refugee Project* consisting mostly of medical treatment, financial aid for basic expenditures such as food, clothing and accommodation.²⁰⁸

During the period when refugees are looking for jobs, or making necessary arrangements to start business or studies, some financial assistance is supposed to be provided. It consists of a monthly supplementary allowance covering a period of 3 to 6 months. The amount varies according to the size of the family. To enjoy it, one has to produce the following documents to *YMCA-Refugee Project*:

- a refugee identity card;
- a residence permit;
- birth certificates for children, if any; and
- marriage certificate for married refugees.²⁰⁹

The residence permit is issued by the Office of the Commissioner for Refugees after the issuance of the refugee identity card. To obtain it, one has to prove why he wants to stay in a given urban area.²¹⁰

²⁰⁸ Interview with L. Caffiero, *supra* note 198.

²⁰⁹ Interview with L. Luando, *YMCA-Refugee Project*, *Lusaka*, June 7, 1996.

²¹⁰ Interview with E. Tukombe, *supra* note 179.

An application for supplementary allowance is to be made in writing to the Director of YMCA-Refugee Project and the applicant will be called by the Social Service worker for an interview. After some days following the interview the Social Service worker will visit the applicant at his home to evaluate his standard of living. If he finds that the applicant is not living in miserable conditions no allowance will be provided by the Project.²¹¹ According to refugees the money given is not sufficient to enable them meet elementary needs in towns.²¹² In most of the cases, refugees are not informed on which bases allowances are calculated, nor why some are assisted for a longer period than others.

The most striking fact is that there is no special programme providing food and accommodation for refugees who opt to settle in towns. The small amount of money (supplementary allowance)²¹³ is the only source of income refugees have to lean on during all the period they will be waiting for the improvement of their situation.²¹⁴

²¹¹ Interview with Mrs. Bwalya, supra note 194.

²¹² Interview with refugees: A. Muneza, K. Mukendi, P. Sebugele, and Abd el Kadel, Sept. 5, 1996.

²¹³ The only information available is that a single person gets 9,000 Kwacha, whereas a family of 4 persons will get 56,250 Kwacha.

²¹⁴ Interview with refugees, supra note 212.

V. CONCLUSION

The foregoing discussion has shown that Zambia hosts 115,000 refugees fleeing from different countries. A good number live in the two existing settlements, Meheba and Mayukwayukwa, whereas the rest live in urban areas.

Upon arrival in Zambia, an asylum-seeker who is not able to prove that all the requirements to reside in town are met is immediately driven to the refugee settlement. This is a deprivation of the right to reside in a place of one's choice.

In the settlement, the Government of Zambia, the *UNHCR* and the Lutheran World Federation, Department of World Service cooperate to assist refugees especially with food, medical services and primary and secondary education for children, while in town a refugee relies on himself except for the supplementary allowance and medical assistance provided to refugees who manage to prove that within a period not exceeding six months they will be able to live on their own. Scholarships are also awarded to some refugees for educational programs. The problem will be that of a refugee who, after the supplementary allowance period, will not have found either a job or a place in an educational institution. If one is not able to find a small project of which he can apply for a loan, he can be reduced to beggary or driven to the refugee settlement if there is no individual or institution to provide assistance.

The next chapter will discuss the protection of refugees' rights in the Zambian territory.

CHAPTER FOUR

THE PROTECTION OF REFUGEES' RIGHTS

INTRODUCTION

After being recognized as a refugee and being granted asylum, the refugee has to start a new life in Zambia. The refugee is then under the Zambian jurisdiction. Zambia has the power of legislation over persons within its territory.²¹⁵ Refugees, like other aliens and citizens, have to conform to the laws and regulations of Zambia. This principle is laid down in Article 2 of the 1951 Convention. According to the same article, refugees shall also conform to measures taken for the maintenance of public order.

After stating the obligations of refugees, the 1951 Convention goes on to state their legal rights in comparison with other aliens or nationals.²¹⁶ This chapter will examine how some of these rights are provided for in international law and are implemented in the Zambian legislation and practice. The rights to be considered are: in the group of civil and political rights, the freedom of movement, the right to personal liberty and the

²¹⁵ M. Akehurst, A Modern Introduction to International Law, 15th ed., (London: George Philip Ltd., 1984), p. 102.

²¹⁶ P. Nobel, 'A Review of the Legal Situation of Refugees in Africa within their Countries of Asylum', a paper commissioned by the Faculty of Management and Commerce, University of Dar es Salaam, 1987, p. 4.

right to a nationality; in the group of economic, social and cultural rights, the right to work.

I. INTERNATIONAL LAW

The heart of the argument in this chapter is that human rights must, by definition, apply to all humans. Are refugees legally considered human? Are they awarded rights already recognized as universal? The African Charter on Human and Peoples' Rights, the Universal Declaration on Human Rights, and the International Covenant on Civil and Political Rights agree on the universality of the rights that they contain. As the Charter clearly states:

Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, color, sex, language, religion, political or any other opinion, national or social origin, fortune, birth or any other status.²¹⁷

Refugees rights are provided for in the 1951 Convention in addition to those in other international instruments.

Article 26 of the 1951 Convention concerns Freedom of Movement. It provides as follows:

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

²¹⁷

African Charter on Human and Peoples' Rights, art. 2.

The two rights stated are, firstly, the right to choose where to live in the country of refuge and secondly, the right to move freely within its territory. According to *Grahl-Madsen*, these rights can only be claimed by those refugees who are in the country lawfully, such as those who have been officially recognized as refugees and who have permission to stay in the territory of the contracting state.²¹⁸

The meaning of the latter part of the article is that refugees are subject to the same conditions as other aliens, and may not in any way be discriminated against because of their refugee status.²¹⁹

Freedom of movement, as laid down in Article 26, does not include the right to leave and re-enter the country of refuge. For this purpose, 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 and the Schedule to the 1951 Convention. The Schedule 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 (paragraphs 6,7 and 13). In paragraph 13, the contracting states undertake to readmit the holder of a travel document to their territory as long as the document is valid. However, this

²¹⁸ A. Grahl-Madsen, *supra* note 135, at 315 and 427.

²¹⁹ *Id.*, at 427.

agreement between states is not a guarantee that the individual refugee will be re-admitted. It is, therefore, important that a return clause is included in the travel document, stating that the holder is authorized to return to the state of issue. Such a return clause is found in the annex to the Schedule, which consists of a specimen travel document.²²⁰

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 on Human Rights of 1948, the International Covenant on Civil and Political Rights of 1966 and the African Charter on Human and Peoples' Rights of 1981, in Article 13 (1), Article 12 (1) and Article 12 (1) respectively. Each of these international instruments deals with Freedom of Movement within the territory of a state.

With the expression 'every individual', the contracting states agree to the right of every person within their territory without discrimination. This means that no distinction is made between citizens, refugees or other aliens. There is, however, one condition which affects them all: the individual's right only applies if he "abides by the law" of the state. Besides this there is a general restriction found in Article 27 (2) of the African Charter which is applicable to all rights outlined in the Charter: the right and freedom of each individual shall be exercised with due regard to the rights of others, to collective

²²⁰

ILIRA, 1979, p. 46, 58-60, 62.

security, to morality and to common interest.²²¹

According to *Grahl-Madsen*, restrictions authorized by human rights instruments are also applicable to refugees, provided that there is no discrimination against refugees as such. Article 12 (1) of the African Charter does not limit the application of the condition, that a person must abide by the law, to any special group of persons. Instead, it states that 'every individual' is subject to the laws of the country. If a person is found guilty of a criminal act, for instance, he has not abided by the law of the country and his freedom of movement could then be limited. Article 27 (2) does not limit the application of the condition to any particular group of persons either, but takes into account the interests of others. Articles 12 (1) and 27 (2) are, therefore, in accordance with Article 26 of the 1951 Convention.

In the case of Zambia, the state has ratified all the above mentioned international instruments. As a state party to the African Charter, Zambia is, therefore, internationally obliged to accord to every individual within its territory the right to freedom of movement and residence. The application of these rights will be discussed.

The Universal Declaration of Human Rights lays down in Article 3 that "Everyone has the right to liberty and security of person". This right is also dealt with by Article 9 of the

²²¹

1 CAB/LEG/67/3/Rev. 5.

International Covenant on Civil and Political Rights and by the African Charter in Article 6. The Charter incorporates freedom from arbitrary arrest and detention in the same article. It provides that,

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.

The purpose of this provision is to protect the individual against arbitrary arrest or detention and, in most cases, demonstrating its applicability is quite straightforward. A person has obviously suffered a deprivation of liberty if he has been detained at a police station, thrown into gaol or locked up in a mental hospital and so the only question in such cases will be whether the detention can be justified.²²²

After establishing the right to liberty and security of person, Article 3 refers to domestic law for the establishment of reasons and conditions of deprivation of liberty. This means that the domestic law must establish the types of situation in which arrest or detention is permissible. The list must be exhaustive and domestic law must lay down a procedure to be used by those authorized to carry out arrests and detention.²²³

The right to liberty and security of person is a fundamental

²²² A. H. Robertson and J. G. Merrills, Human Rights in Europe, 3rd ed., (Turku: Leif Nordberg, 1987), p. 57.

²²³ *Id.*, at 59.

right guaranteed for every individual without any distinction. As far as refugees are concerned, there is no provision establishing any distinction based on nationality.

The right to work is regulated in Articles 17-19 of the 1951 Convention. These provisions deal with wage-earning employment, self-employment and liberal professions respectively. Article 19 deals with the treatment of refugees lawfully in the country, who hold diplomas that are recognized by a contracting state, while Article 18 deals with the treatment of refugees who wish to be self-employed in different business-related activities on their own account. 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.²²⁴

In article 17, paragraph 2, on the other hand, 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.²²⁵ It, therefore, means a more favorable treatment of refugees in relation to other aliens. Besides this, in paragraph 1 of the article, the contracting states have reached a general agreement to treat refugees as favorably as other aliens as regards the right to engage in wage-earning employment.

²²⁴ ILIRA, 1979 pp. 38-40.

²²⁵ Ibid.

The right to work is also laid down in other international instruments concerning human rights. Both the Universal Declaration of 1948, (Article 23), and the International Covenant on Economic, Social and Cultural Rights of 1966, (Articles 6-8) deal with the right to work. In the Covenant, the State parties do not only declare but also recognize each person's right to work. 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 right of freedom from discrimination at work.²²⁶

In the African Charter, Article 15 deals with the right to work, and provides as follows:

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

With the expression "the right to work under ..." the state parties do not guarantee a right to be employed. Instead, they declare which rights apply if the person is already employed. The individual then has the right to equitable and satisfactory conditions and to the same pay as those who have the same employment. The meaning of equitable and satisfactory conditions is not defined, but as the contracting states in the Preamble reaffirm their adherence to human rights instruments adopted by

²²⁶ Id., at 152 and 154.

the United Nations, it is possible that, for example, Articles 6-8 of the International Covenant on Economic, Social and Cultural Rights of 1966 would influence the interpretation.²²⁷ In Article 7, for instance, the expression "just and favorable conditions for work" is used and examples such as decent living, safe leisure and reasonable limitation of working hours are given.²²⁸ Therefore, it cannot be said that Zambia through its ratification of the African Charter has extended the right of refugees as laid down in Article 17 of the 1951 Convention. However, through Article 15 of the African Charter, refugees are declared to have the same rights as other aliens or nationals if the refugee is already employed.

In Article 34 of the 1951 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. This could be a consequence of a general rule in international law that leaves each state to define who is a national.²²⁹ The two most common ways to become a citizen of a state are by birth or by naturalization.²³⁰

²²⁷ CAB/LEG.67/3/Rev. 4, the African Charter on Human and Peoples' Rights, OAU Ministerial meeting in Banjul, Gambia.

²²⁸ ILIRA, *supra* note 226.

²²⁹ Akehurst, *supra* note 215, at 82.

²³⁰ *Ibid.*

The primary solution to the refugee situation is for refugees to return to their home country, but if this is impossible for some reason, they may wish to settle permanently in the country of asylum. One way to do this is to acquire citizenship which would give former refugees the same legal rights as citizens of the country.

Zambia has ratified the 1951 Convention without reservation against Article 34, so the country is legally bound to facilitate the assimilation and naturalization of refugees. Is there any possibility for refugees to apply for Zambian citizenship?

II. NATIONAL LEGISLATION AND PRACTICE

The right to freedom of movement is provided under Article 22 of the Constitution of Zambia as a fundamental right and freedom. The article defines freedom of movement as well as lays down restrictions. The first part of the article states that no citizen shall be deprived of his freedom of movement. The right is defined as "the right to move freely throughout Zambia, the right to reside in any part of Zambia and the right to leave Zambia and to return to Zambia".

With the expressions "no citizen", "the right to move freely throughout" and "the right to reside in any part", the rights stated in Article 26 of the 1951 Convention are also accorded to refugees without discrimination. It has already been said that the contracting states have agreed to the right of every person

to move within their territory without discrimination. This means that no distinction is made between citizens, refugees or other aliens. The imposition of restrictions should be based on provisions in law.²³¹

As already described in chapter three, the policy of Zambia through the Refugee (Control) Act of 1970 and through the practice in refugee issues has been to accommodate all refugees in refugee settlements, not permitting them to reside elsewhere, unless they are self-supporting. In this respect there is a discrimination of refugees in relation to other aliens within the country due to the fact that the latter are not confined to the settlements.²³²

It is not only freedom of residence which is restricted for refugees in Zambia, but also the right to move freely throughout the country. The right is restricted for those refugees who live in settlements. They are not allowed to leave the settlements without a pass. This restriction has been in practice since 1972, on the orders of the Government of Zambia for purposes of control. It was one of a number of measures to protect "genuine refugees" and the people of Zambia from what was called undesirable activities. It was even stated that refugees who were found outside the settlement without a pass would be presumed not to be "genuine refugees" and would be deported back to their home

²³¹ Constitution of Zambia, art. 22.

²³² Interview with B. Mporokoso, supra note 58.

countries.²³³

The refugee has to apply for a new pass every time he wishes to leave the settlement. According to the Settlement Commandant, there is no problem obtaining this pass and this opinion was confirmed by an Angolan refugee.²³⁴ If a refugee is involved in a project in the settlement and needs to leave the settlement on account of such a project, the Projects Officer writes a brief note which is added to the application for a pass. The note should contain information about the refugee, his name, identity card number, where he is going, why and for how long. If the refugee is not involved in any project, the refugee representative will write a note for him.²³⁵

Other reasons for leaving the settlement temporarily could be job interviews, visits to hospital or applications to educational institutions. In these cases *LWF/WS* will assist the refugee with the application for a pass, and help him with transport and travel allowances provided the reasons for *the* application are verified.²³⁶

Urban refugees also should apply for passes to move from

²³³ Interview with E. Tukombe, supra note 210.

²³⁴ Interview with P. Zulu, Meheba Settlement Officer, Lusaka, July 7, 1966; Diego Lukulu, refugee, July 7, 1966.

²³⁵ Interview with Mrs. Mwange, supra note 205.

²³⁶ Ibid.

place to place since they have to be issued with permits to reside in a particular area.²³⁷

From the information available, it is not clear whether the practice of passes is based on provisions in law or on an administrative rule. However, as the restriction to move freely within Zambia applies to a specific group of aliens, namely refugees, and since it was imposed just because they were refugees, it counts as a discrimination against refugees in relation to other aliens.

Another fact relating to freedom of movement is that refugees in settlements are exempt from the requirement imposed on aliens of needing a residence permit to reside legally in Zambia. According to some sources there are practical reasons for this exemption. Due to scholarships, resettlement and repatriation, refugees are often on the move and the administration involved in issuing permits and in cancelling them when a person leaves the country would be very complicated.²³⁸ Another reason could be that one of the qualifications for acquiring a residence permit is that the applicant should be in a position to support himself, which is not the case with the great majority of refugees.²³⁹

If refugees in Zambia wish to go abroad, they must apply for

²³⁷ Interview with E. Tukombe, supra note 233.

²³⁸ Interview with L. Caffiero, supra note 208.

²³⁹ Interview with E. Moyo, supra note 171.

a travel document. If they have valid reasons, such as studying or receiving medical treatment, visiting friends or relatives, or taking part in wedding feasts, there should be no problem obtaining a travel document with a return clause.²⁴⁰

The right to liberty and security of person is guaranteed by Article 13 of the Zambian Constitution. The Constitution establishes a list of cases in which a person ^{shall} shall be deprived of his personal liberty. Most of those cases refer to order of court in respect of a criminal offence.

However, refugees in Zambia are sometimes deprived of their right to liberty and personal security. The cases of 22 refugees arbitrarily arrested by the Zambian immigration officers in Lusaka illustrates amongst others this assertion. As already seen, the detainees have challenged the arrests and detention in the High Court of Zambia.

The applications concerned the issue of a writ of *Habeas Corpus ad Subjiciendum*. They were made by refugees coming from the Republic of Rwanda in East Africa, seeking political asylum in Zambia.²⁴¹

The applicants were said to have entered Zambia between

²⁴⁰ Interview with L. Caffiero, supra note 238.

²⁴¹ See for example Gerard Gatare V. Attorney General, 1995/HP/4595 and Libanje V. Attorney General, 1995/HP/4395.

August 1994 and early 1995, through *Mpulungu* Port and travelled to Lusaka, where they reported themselves to the UNHCR, who advised them to apply to the Ministry of Home Affairs for refugee status. UNHCR assisted them by recommending to the Zambian authorities to grant them refugee status. The Government of Zambia ignored the fact that the applicants failed to report themselves to the Immigration Office at the port of entry at *Mpulungu* and granted them refugee status by issuing them with identity cards and travel documents to enable them to leave and return to Zambia. Some of them had valid Rwandan passports when they entered Zambia. Others had no travel papers of any sort.²⁴²

Between August and October, 1995, the Immigration officers confiscated from all the applicants their passports, travel documents, refugee cards, alien identity cards, and declared them prohibited immigrants. This was after most of them had lived in Zambia for about one year. Their stay was described as 'inimical' to Zambian interests and they were served with a notice which stated that they would be deported from Zambia.²⁴³

Upon seizure of their papers the applicants were all arrested by immigration officers and detained at *Kamwala* and *Kabwata* prisons pending deportation, either back to Rwanda or any other country that would be willing to receive them. The

²⁴² Interview with E. Ntakirutimana, C. Bizimungu, P. Ruhumuliza, A. Muneza, Lusaka, July 29, 1996.

²⁴³ G. Gatere v. Attorney General, supra note 241.

authorities did not give any reasons for withdrawing the refugee status from the applicants. However, in the case of Sithole v. Attorney General ²⁴⁴ the Supreme Court had said that the detaining authority must furnish the detainee with reasons. The state did not also explain to the applicants in what way their stay had become inimical. It was for these reasons that the applicants were asking the High Court to order their release from detention so that they can continue with their peaceful stay in the country as refugees or leave the country. They alleged that the seizure of their travel and refugee status papers as well as their detention in prison were *mala fide*.²⁴⁵

In arguing for the Zambian government, the State Advocate submitted to Court a letter from the Rwandan Embassy in South Africa dated September 6, 1995. The letter contained a list of names of ten Rwandans who were alleged to have taken part in the mass ethnic killings in Rwanda in 1994.²⁴⁶ It was addressed to the Permanent Secretary, Ministry of Foreign Affairs, in which the Zambian Government was asked to repatriate to Rwanda all those named in the letter, so that they would be handed over to the International Criminal Tribunal for Rwanda in Arusha, Tanzania, for trial on charges of committing crimes against humanity. However, this tribunal was asking for only two of the detainees

²⁴⁴ (1977) Z.R.P 55.

²⁴⁵ Interview with refugees: supra note 242.

²⁴⁶ FF/099/95, 06.09.1995.

and was not asking for their transit to Rwanda.²⁴⁷

After giving the matter careful consideration, the judge decided to grant twenty of the applicants the writ of *Habeas Corpus* and ordered that the two remaining be handed over to the International Criminal Tribunal for Rwanda and not to the Rwandan Government.²⁴⁸

According to section 18 of the Immigration and Deportation Act of 1969 both refugees and other aliens need a work permit to be employed or otherwise engage in any occupation.

In the case of employment, it is difficult for a non-citizen to get a work permit, as the policy of Zambia is to give priority to citizens on the labor-market. A non-citizen will only be granted a work permit if he has special qualifications needed for a job and Zambian applicants do not have these qualifications. As Zambia has a shortage of skilled citizens in some fields, a non-citizen will have little problem in getting a job if he is a qualified medical doctor, teacher or accountant, or if he has technical or professional skills.²⁴⁹ This policy is not explicitly expressed in the law, but according to the Immigration Department and the Commissioner for Refugees, it is not fair to employ aliens when there are Zambians who are able to work but are not

²⁴⁷ ICTR/95, 22.11.1995; See also Statute of the International Criminal Tribunal for Rwanda, art. 15 and 18.

²⁴⁸ G. Gatara v. Attorney General, supra note 243.

²⁴⁹ Interview with B. Mporokoso, supra note 232.

employed. For this reason , "when issuing work permits to aliens, the effect on Zambian citizens employment opportunities should be taken into account".²⁵⁰

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. Licences are required from both citizens and non-citizens but the practice is that non-citizens are excluded from the possibility of acquiring licences for certain businesses. Non-citizens are, for instance, "excluded from acquiring licences for the public transport business". If non-citizens wish to operate taxis and/or minibuses, "they should form a company because such licenses are not issued to individual foreigners".²⁵¹ This and certain other businesses are reserved for citizens of Zambia. "The purpose is to obtain control of the business environment which has become more complex, and to encourage Zambian citizens' participation".²⁵²

According to *LWF/WS*, refugees living in settlements who are engaged in an established project are exempt from the work permit requirement, but it is not clear whether they are also exempt

²⁵⁰ Interview with M. Matonka, supra note 148; E. Tukombe, supra note 237.

²⁵¹ This was declared by a Road Traffic Department officer who did not want his name to be revealed for fear of "being fired". It was confirmed by Mrs. Mwila working at the Registry of Companies, Ministry of Commerce, Trade and Industries. Interview with Mrs. Mwila, Lusaka, Sept. 29, 1996.

²⁵² Interview with E. Tukombe, supra note 249.

from the licence requirement.²⁵³

On the other hand, refugees who wish to be employed or to establish their own business outside the refugee settlement require several permits. Written permission must be obtained from the Office of the Commissioner for Refugees to reside outside the settlement, a Special Residence Permit must be issued by the Immigration authorities. Moreover, a Work Permit is required and a licence for the business, if self-employed.²⁵⁴

The application for permission to live outside the settlement should be addressed to the Commissioner for Refugees, Ministry of Home Affairs. If the refugee needs to leave the settlement to take up employment, documentary evidence that he has been given a firm offer of a job must be added to the application.²⁵⁵ Such evidence could be a letter from the employer stating that the refugee is employable.²⁵⁶ When given written permission to reside outside the settlement, the refugee must take the permit to the Immigration Head Office in Lusaka, together with an application letter for a work permit signed by the Commissioner for Refugees and an application form signed by the employer to document his willingness to employ the refugee. The refugee will then be issued with a special residence permit

²⁵³ Interview with Mrs. Mwange, supra note 235.

²⁵⁴ Ibid.

²⁵⁵ Interview with E. Tukombe, supra note 251.

²⁵⁶ Ibid.

and with the work permit.²⁵⁷

The special residence permit gives the refugee the right to move freely throughout Zambia as well as the right to reside wherever he wishes. Urban refugees are also required to apply for that permit.²⁵⁸ However, it must be pointed out that Zambia has made a reservation against Article 17 of the 1951 Convention which provides for the exemption of refugees from restrictions imposed on aliens in terms of employment in Zambia.

Concerning urban refugees it has already been said that some of them are sometimes deprived of their right to personal liberty. This illegal treatment has resulted in the denial of work permits to those who had applied after their release. According to the information available "it is only the Minister of Home Affairs who is entitled to decide upon those cases".²⁵⁹ It is therefore fair to say that refugees who have challenged their arrest and detention in the High Court are discriminated against in the issuance of work permits.

The question of Zambian citizenship is regulated by the Constitution of Zambia and the Citizenship Act of 1975. However, this Zambian legislation does not provide for the possibility of refugees becoming citizens. There is a provision for naturalization of immigrants, but it is not mentioned anywhere

²⁵⁷ Interview with M. Matonka, supra note 249.

²⁵⁸ Ibid.

²⁵⁹ Ibid.; Interview with refugees, supra note 214.

that refugees can be naturalized.²⁶⁰ The definition of citizenship by birth is given in Article 5 of the Constitution. Its wording is as follows:

A person born in or outside Zambia after the commencement of this Constitution shall become a citizen of Zambia at the date of his birth if on that date at least one of his parents is a citizen of Zambia.

The effect of the definition is that a child born to refugee parents will not acquire citizenship and the question is whether these children have acquired any citizenship at all or if they are stateless. The answer depends on the laws of the father's country of origin but even if they should acquire citizenship of their father's country of origin, they will in fact lack that country's protection as their father has fled from it. The situation is not unique for this group of children, since children born to refugee parents have the same problem.

The problem is aggravated by the fact that children who have not acquired citizenship by birth cannot acquire it through naturalization.

According to the only information available concerning the Zambian policy on this problem, "given Zambia's current legal code, all of the refugees must remain strangers (refugees) forever".²⁶¹ Speaking of children, the fact that one of the

²⁶⁰ Citizenship Act of 1975, art. 14, 15, 16.

²⁶¹ Interview with L. Mwaba, Commissioner for Refugees, Ministry of Home Affairs, September 6, 1996.

parents is a citizen of Zambia seems to be enough for their
Zambian citizenship.

III. CONCLUSION

According to Article 26 of the 1951 Convention, Freedom of Movement consists of two rights, the right for a refugee to choose where to live in the country of asylum and the right to move freely within the territory of a contracting state. As a party to this convention, Zambia is legally bound internationally by it. On the other hand, by ratifying the African Charter in 1986, without making any reservation against Article 12.(1), Zambia is internationally obliged to allow every individual, including refugees, the freedom of movement and residence.

As mentioned before, refugees in Zambia who are not self-supporting are restricted to specific areas, *Meheba* and *Mayukwayukwa*. They also need a pass to leave the settlement. These two facts mean that refugees living in settlements are denied both the freedom of choosing where to reside and the freedom to move freely throughout the country. They are, however, not prevented from travelling in the country, only from moving freely. They have to declare to the government representative where they are going, for how long and for what reasons. The decision whether or not to permit them to leave lies with the Government, even if the general view is that it is easy to obtain a pass. With reference to available national legislation and to the international law, the same conclusion can be drawn. The

restrictions imposed on freedom of movement and residence only apply to a specific group of persons, namely refugees. Accordingly, there ^{is} ~~is~~ discrimination against this group in relation to other aliens and citizens.

According to the Government of Zambia the reasons for this practice are to facilitate catering and for purposes of control. However, it can be argued that it is never a good policy to restrict peoples' freedom of movement for a long period of time, as it is a part of human nature to try to find solutions to one's own problems. While being restricted to living in a specific area, the question always remains: Would life be better elsewhere?

Refugees right to liberty and personal security is sometimes violated by government officials by way of threats, arbitrary arrests and detention. However, once the case is brought to court, the right is restored.

It has been said that Zambia is a party to the 1951 Convention and to the African Charter. Concerning the right of refugees to engage in wage-earning employment, laid down in Article 17 of the 1951 Convention, Zambia is legally bound internationally to accord to refugees the most favorable treatment accorded to other aliens. This concerns also the right to be self-employed and the opportunity of practicing liberal professions.

As seen in the description of national legislation and practice, Zambia abides by the obligations in Articles 18-19. Refugees are not discriminated against in relation to other aliens and citizens are given priority on the labor market. Both refugees and other aliens are excluded by regulations from possessing certain types of licenses for businesses and trades. However, the refugees could be said to be in a better position than other aliens, as they do not need work permits for their occupations in the refugee settlement. From available information, it is not certain whether they require licences.

The practice that refugees who wish to work outside the settlements must have a special residence permit, would not be looked upon as a discrimination against refugees, as other aliens also need a residence permit to reside in the country legally. It would instead be looked upon as a consequence of the policy of restricting refugees who are not self-supporting to the settlement area where residence permits are not needed.

As one of the conditions for obtaining a residence permit is that the refugee can support himself, there is a connection between employment and the acquisition of a special residence permit. Since refugees also need special permission from the Office of the Commissioner for Refugees to live outside the settlement, other qualifications than being self-supporting determine the refugee's possibility of living outside the settlement. This factor makes an important difference between refugees and other aliens' opportunities of employment.

The Zambian government has shown its commitment to protect the people of Zambia from competition on the labor market. In fact unemployment is growing fast in Zambia. The system of work permits, licenses and identity cards is in accordance with the purpose of protecting Zambians from competition on an already overcrowded labor market. It is, however, important to make use of the knowledge and skills of aliens in the development of the country. Since work permits are only valid for a limited period, renewal could be denied if citizens of Zambia with the necessary skills have become available. Without accessible figures, it is not possible to ascertain whether other aliens are given priority before refugees in obtaining work permit for jobs which demand skills.

Zambia has made no reservation against Article 34 of the 1951 Convention, dealing with measures to facilitate the assimilation and naturalization of refugees who wish to be integrated locally in the country of asylum. However, refugees are not mentioned in the provisions of the Constitution and the Citizenship Act, and from available information it does not appear possible to be integrated through naturalization of a refugee in Zambia.

For children born to both parents refugees, they cannot acquire Zambian citizenship. In this case, the question is whether these children will be citizens of their parents' country of origin or if they will be stateless. Whatever the result may

be, this group of children will need protection by the international community, because even if the children should be citizens of their parents' country of origin, it is questionable whether that country is interested in protecting them, since their parents have fled from the protection of that country.

Although inter-marriage can mean local integration of the refugee in the country of asylum, the question is if the lack of citizenship of the children born to parents of which one is a refugee and another Zambian should in fact result in discrimination in comparison with Zambian children. Their legal status should in theory be the same as that of children born to refugee parents who have grown up in the refugee settlement. Notwithstanding the fact that refugees are not mentioned in the provisions regulating Zambian citizenship, it seems that belonging to parents of which "at least one is a citizen of Zambia" is enough for a child to become a citizen of Zambia.

According to available information, it can be said that children born to parents who are both refugees could be stateless, while adult refugees will remain refugees forever in Zambia.

CHAPTER FIVE

GENERAL CONCLUSIONI. SUMMARY

In 1996 Zambia had a refugee population, enjoying asylum, accounting for not more than 1.5% of the Zambian population. Of these refugees more than 50% were living in the refugee settlements, *Meheba* and *Mayukwayukwa*, while the rest mostly lived in urban areas.

An asylum-seeker or a recognized refugee in Zambia is a person of concern to the international community, represented by the *UNHCR*, and the Government of Zambia. The two parties are however independent of each other and this is manifested in the respective refugee definitions and investigations of asylum-seekers' reasons for flight. The person could therefore fall within the mandate of *UNHCR* and under the national legislation of the asylum country, Zambia at the same time, or only come under one of them.

Although *UNHCR* is not a party to any of the international conventions concerning refugees, it has been authorized to ensure their implementation in the contracting states. *UNHCR* should, therefore, promote the interests of refugees by influencing the legislation in the country of asylum. For an effective

implementation of this and other functions, *UNHCR* is dependent on good cooperation with the government of the asylum country within which it works.

In the case of Zambia, good cooperation seems to exist between the two parties generally, both concerning *UNHCR*'s protection function and *UNHCR*'s material assistance function. In the latter case, *UNHCR* is the financial party, while the execution has been delegated to two non-governmental organizations, the *YMCA-Refugee Project* and the *LWF/WS*. *UNHCR*, therefore, has to cooperate not only with the Government, but also with these two organizations. The parties meet regularly and are also in daily contact when required.

As material assistance consists of both economic and administrative measures, it is a valuable contribution to Zambia which carries the burden of longstanding economic recession and increasing unemployment. The execution of the protection function has, however, another character as it is related to the question to what extent international conventions are implemented in the national legislation and practice. In other words, this function is related to the country's sovereignty on legislation and decisions concerning asylum.

The work of national implementation of international refugee conventions in Zambia has dealt especially with questions concerning determination of refugee status, the refugees' freedom

of movement, their right to liberty and security of the person, their opportunity of employment, and their local integration by acquisition of Zambian citizenship.

When determining refugee status, the refugee term laid down in the Refugee (Control) Act of 1970 is political refugee. The definition is quite similar to that found in the 1951 Convention as modified by the 1967 Protocol. In practice, Zambia also applies the extended refugee concept, as laid down in the 1969 OAU Convention, which includes persons fleeing for other reasons than persecution.

The investigation of asylum-seekers' reasons for flight has been delegated to a department of the Ministry of Home Affairs, Called the Commission for Refugees.

A few other legal problems relating to refugee status have been discussed in this thesis. In national legislation and practice, freedom of movement is restricted for refugees who are not occupied in employment or education outside the settlements. The possibility of employment outside the refugee settlement is restricted to jobs where there is a shortage of skilled Zambian citizens. There is no provision concerning the acquisition of citizenship through naturalization for refugees. This means that a refugee will remain refugee forever together with his children in Zambia.

These problems are dealt with by the 1951 Convention

Relating to the Status of Refugees in Articles 17, 26 and 34, and by the 1981 African Charter of Human and Peoples' Rights in Article 6. But through reservation against Article 17 of the 1951 Convention, Zambia is not internationally legally bound by this article concerning refugees' right to wage-earning employment. This allows a more restrictive refugee policy which may partly be explained by the security situation and the problems with unemployment.

On the other hand, it is more difficult to see why Zambia has made a reservation against Article 17 and acceded to the 1969 OAU Convention Governing the Specific Aspects of Refugees in Africa, especially as Zambia applies the extended refugee definition in Article I paragraph 2.

Is the reservation to that provision a result of a general wish to remain independent? Is it a wish to be free to act in accordance with the demands of the specific situation without risking legally based accusations of not following the content of the conventions?

In contrast to this hesitation to be legally bound by international instruments concerning refugees, there is Zambia's ratification of the African Charter on Human and Peoples' Rights in 1986. Of immediate interest for refugees is Article 12 (1) in which every individual is declared to have freedom of movement. On the other hand, the rights of the individual should, in accordance with Article 27, be weighed against collective

interests, generally described as collective security and morality. By the general wording of the article, the contracting states reserve their right to decide to whom, and when, rights will be given.

Zambia often refers to its international obligations concerning refugees. It seems, however, to be more an expression of its willingness to grant asylum than of how refugees should be treated during asylum. For the individual refugee it is, of course, of great importance to not be sent back to the country from which he has fled, but it is also important for him to take an active part in solving his problems in the country of asylum which, however, is limited by Zambia's restrictive legislation and practice.

As the policy is to restrict freedom of movement for refugees who are not self-supporting, it is, however, very difficult for them to do anything on their own. To support themselves outside the settlements they need a job, but there is no organization which can help them to find one. But if refugees could leave the settlement to search for jobs, they would probably be more successful. On the other hand, it is not only the restricted freedom of movement which makes it difficult for refugees to take their own initiatives, but also the lack of money required for travel and for the acquisition of the necessary permits. There is no sponsor to alleviate this problem. Even if a refugee should find a job, he needs a work permit, permission to live outside the settlement and a special residence

permit, before he can live outside the settlement.

One of the purposes of *UNHCR*'s material assistance is to make refugees self-supporting during their asylum period. This is difficult to fulfil as the national legislation and practice of Zambia contains several restrictions for refugees. As outlined in Chapter three, one of the functions of *UNHCR* is to promote the treatment of refugees to be in accordance with the international conventions concerning refugees. This is, however, a delicate task as it can be in conflict with the sovereignty of a state to make laws and put them into practice. It is particularly sensitive if the state has made reservations against articles since *UNHCR* is dependent on good relations with the government.

Another part of the protection function of *UNHCR*, to ensure that refugees will not be sent back to the country of flight, can apparently be carried out without problems in Zambia. *UNHCR* is allowed to find another country of asylum when refugees are not allowed to stay in Zambia for one reason or other. This presupposes, however, that *UNHCR* is informed by the Government of Zambia of such cases. This appears to be the practice, but there could also be situations when *UNHCR* is informed by persons outside the government administration instead, such as friends or relatives of persons who are not allowed to stay in the country and who may be kept in detention. As the *UNHCR* has its Branch Office in Lusaka, it may be easier for a refugee or

asylum-seeker to contact *UNHCR* if he has friends or relatives in the Lusaka area rather than if he has friends in the settlement. Due to the restrictions in refugees' freedom of movement, the very big distance between the settlements and Lusaka (700 kilometers from *Meheba* and 450 kilometers from *Mayukwayukwa*) and the difficulties of making phone calls from the settlement, it is difficult for refugees living in the settlement to contact *UNHCR* on their own initiative. They are, therefore, dependent on *UNHCR*'s visits to the settlement for contact with the organization which is responsible for their protection.

One problem which has become apparent during this work relates to the legal status of refugees who would not like to go back home in any case because they are more integrated and feel at home in Zambia. There is a provision for naturalization of immigrants, but there is no agreement that refugees can be naturalized. Having entered the country with the status of refugee, the refugee is not permitted to drop or exchange the status. This problem relates also to their children who cannot acquire Zambian citizenship by birth. Will this group of children obtain citizenship in their father's or mother's country or will they be stateless? Under what legal conditions are they brought up in their parents' home country and asylum country? Who is responsible for the protection of these children?

II. RECOMMENDATIONS

The legal problems discussed in this thesis that relate to the refugee policy of Zambia seem to be influenced by security considerations and by a wish to protect the Zambian population from economic competition but this is done in violation of international instruments concerning refugees to which Zambia is a party. To alleviate this problem, it is important that Zambia, having acceded to the 1951 Convention Relating to the Status of Refugees, the 1967 Protocol and the 1969 Convention on Refugee Problems in Africa, should focus its attention on strengthening the enforcement of these instruments. There should be a policy and appropriate legislation which would enable refugees to enjoy their rights as human rights must, by definition, apply to all humans and are already recognized as universal. For this reason, the present Refugee (Control) Act should be repealed accordingly. Furthermore, Zambia should have an independent Commission responsible for receiving complaints from both Zambian nationals and refugees whenever they allege that their human rights have been violated. This Commission should advise the Government on human rights and consult with other bodies concerned with human rights in general and refugees' rights in particular for their better protection in Zambia.

BIBLIOGRAPHYBOOKS

1. Akehurst, M. A Modern Introduction to International Law, fifth ed. , London: George Philip Ltd., 1984.
2. Blackburn, B. and Taylor, R. Human Rights for the 1990s, London: Monsell, 1991.
3. Brooks, C. and El-Ayouty, Y. Refugees South of the Sahara: An African Dilemma, Westport: Conn. Negro Universities Press, 1979.
4. Brown, R. Recent History in Africa South of the Sahara, London: Europa publications Ltd., 1987.
5. Bwalya, T. Zambian Social Studies, Lusaka: MacMillan, 1992.
6. Chanda, A.W. Zambia: A Case Study in Human Rights in Commonwealth Africa (J.S.D Thesis), Yale University, 1992.
7. Cohen, R., Hyden, G., and Nagan, W.P. Human Rights and Governance in Africa, Gainesville: University Press of Florida, 1991.
8. David, A. M. The New Asylum Seekers: Refugee Law in the 1980s, Dordrecht: Martinus Nijhoff Publishers, 1988.
9. El-Ayouty, Y. The Organization of African Unity After Thirty Years, London: Praeger, 1994.
10. El-Ayouty, Y. and Zartman, W. The OAU After Twenty Years, New York: Praeger Publishers, 1984.
11. Erikson, L.G., Melander, P. and Nobel, P. An Analysis of the Conference on the African Refugee Problem (Arusha, May 1979), Uppsala: Scandinavian Institute of African Studies, 1981.
12. Fagan, A. A Short Story of Southern Africa, London: Oxford University Press, 1973.
13. Goodwin-Gill, G.S. Non-Refoulement and the New Asylum Seekers, Oxford: Clarendon Press, 1983.
14. Goodwin-Gill, G.S. The Refugee in International Law, Oxford: Clarendon Press, 1983.
15. Goodwin-Gill, G.S. The Refugee in International Law, Oxford: Clarendon Press, 1985.
16. Grahl-Madsen, A. The Status of Refugees in International Law, Vol. I, Leiden: A.w. Sijthoff, 1972.

17. Grahl-Madsen, A. The Status of Refugees in International Law, Vol. II, Leiden: A.W. Sijthoff, 1972.
18. Hakovirta, H. Third World Conflicts and Refugeeism, Turku: Leif Nordberg, 1986.
19. Hamrell, S. Refugee Problems in Africa, Uppsala: The Scandinavian Institute of African Studies, 1967.
20. Hannum, H. The Right to Leave and Return in International Law and Practice, Dordrecht: Martinus Nijhoff Publishers, 1987.
21. Hathaway, J.C. The Law of Refugee Status, Vancouver: Butterworths, 1991.
22. Keith, L. World Fact Book, London: George Philip Ltd., 1995.
23. Melander, C. and Nobel, P. African Refugees and the Law, Uppsala: Scandinavian Institute of African Studies, 1970.
24. Nobel, P. National Law and Model Legislation on the Rights and Protection of Refugees in Africa, Uppsala: The Scandinavian Institute of African Studies, 1978.
25. Omer-Cooper, J.D. Recent History in Africa South of the Sahara, London: Europa Publications Ltd., 1987.
26. Plender, R. International Migration Law, Dordrecht: Martinus Nijhoff Publishers, 1988.
27. Potten, D. The Resettlement Scheme in Southern Africa, London: Zed Books, 1976.
28. Robertson, A.H. and Merrills, J.G. Human Rights in Europe, 3rd ed., Turku: Leif Nordberg, 1987.
29. Shapera, I. A Handbook of African Law and Custom, London: Publications Ltd., 1984.
30. Southall, R.J. Resettling the Refugees in Africa, Uppsala: The Scandinavian Institute of African Studies, 1980.
31. Tomasevski, K. Development Aid and Human Rights Revisited, London: Printer Publishers Ltd., 1993.
32. United Nations, Human Rights and Refugees, Geneva: U.N., 1993

ARTICLES

1. Krenz, F.E 'The Refugee as a Subject of International Law', The International and Comparative Law Quarterly, 15, (1966), 690.

2. Nobel, P. 'Refugees, Law and Development in Africa', Michigan Yearbook of International Legal Studies, (1982), 380.
3. Rwelamira, R.M. 'Some Reflexions on the OAU Convention on Refugees: Some Pending Issues', The Comparative and International Law Journal of Southern Africa, 16, (1983), 319.
4. Rwelamira, R.M. 'Two Decades of the 1969 OAU Convention Governing the Specific Aspects of the Refugee Problem in Africa', International Journal of Refugee Law, vol. 1, No. 4, (1989), 730.

INTERNATIONAL TREATIES AND OTHER INTERNATIONAL INSTRUMENTS

- 1948, 10 Dec. The Universal Declaration of Human Rights, GA Res.217 (III), (ILIRA, 1979, pp 254-264)
- 1951, 28 Jul. The Convention Relating to the Status of Refugees, 189 UNTS 137, (ILIRA, 179, pp 24-64)
- 1966, 16 Dec. The International Covenant on Civil and Political Rights, GA Res 2200 (XXI), (ILIRA, 1979, pp 160-179). 1966, 16 Dec. The International Covenant on Economic, Social and Cultural Rights, GA Res 2200 (XXI), (ILIRA, 1979, pp 148-160).
- 1966, 7 Mar. The International Convention on the Elimination of All Forms of Racial Discrimination, 660 UNTS 195, (ILIRA, 1979, pp 140-148).
- 1967, 14 Dec. Declaration on Territorial Asylum, GA Res 2312, (XXII), (ILIRA, 1979, pp 282-286).
- 1967, 31 Jan. Protocol Relating to the Status of Refugees, 606 UNTS 267, (ILIRA, 1979, pp 66-74).
- 1969, 10 Dec. The OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, (ILIRA 1979, pp 118-131).
- 1976, 16 Dec. GA Res 31/126, (ILIRA, 1976, pp 294-296)
- 1977, 19 Oct. A/AC.96/549, Report on the twenty-eighth session of the Executive Committee of the High Commissioner's Program.
- 1977, 16 Dec. GA Res 32/549, (ILIRA, 1979, pp 296-301).
- 1979, 29 Nov. GA 34/61, General Assembly Official Records: Thirty-Fourth Session Supplement No 46 (A/34/46).

- 1981, 7-19 Jan. CAB/LEG/67/3/Rev 5, The African Charter on Human and Peoples' Rights, OAU Ministerial meeting in Banjul, Gambia.
- 1981 A/Conf. 106/1, The Refugee Situation in Africa: assistance measures proposed (to ICARA 9-10/4 1981 in Geneva).
- 1981 The Recommendations from the Arusha Conference on the African Refugee Problem, Scandinavian Institute of African Studies, Uppsala.
- 1982 HCR/INF/1/Rev 3, Statute of the Office of the United Nations High Commissioner for Refugees.
- 1985, 11 Sept. S/174 53, Report to the Secretary-General pursuant to security council resolution 568 (1985).
- 1985, 27 Sept. A/AC.96/657/Add1 Report on UNHR assistance on 1984-85 and proposed voluntary funds programs and budget for 1986.
- 1986 31, Jul. A/AC.96/677 (part II), UNHCR activities financed by voluntary funds: Report for 1985-86 and proposed programs and budget for 1987.
- 1995 A/AC.96/577 UNHCR Expenditure in Zambia.
- 1995, 10 Oct. UNHCR, General Information Paper.
- 1996, 12 Nov. UNHCR, General Information Paper.

ZAMBIAN LEGISLATION

- 1965 The Employment Act.
- 1965 The Immigration and Deportation Act.
- 1965 The Trade and Licencing Act.
- 1966 The Citizenship of Zambia Act.
- 1966 The Liquor Licencing Act.
- 1970 The Refugee (Control) Act.
- 1971 Statutory Order No 240.
- 1991 The Constitution of Zambia, as amended in 1996.

NEWSPAPERS

1. Kinyamateka
2. Times of Zambia

CASES

1. Akayesu v. Attorney General 1995/HP/4590.
2. Bizimungu v. Attorney General, 1995/HP/4295.
3. Gatara v. Attorney General, 1995/HP/4595.
4. Libanje v. Attorney General, 1995/HP/4594.
5. Sithole v. Attorney General (1977) Z.R.P 55.