Report on the Situation of Refugees in Zambia

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1. INTRODUCTION
I spent three and a half weeks in Zambia, from the 29th August - 24th September. The aim was to acquire an overview of the refugee situation in Zambia, and to collect information on the role of non-governmental agencies purporting to provide legal aid for refugees in Zambia. The study was undertaken on behalf of Africa and Middle East Refugee Assistance (AMERA) which is seeking to expand pro bono legal services to refugees in African and the Middle East. Hence I concentrated on the providers of legal aid services rather than on the recipients of those services.

2. METHODS AND APPROACH
This report is based on information obtained from semi-structured interviews with key officials and stakeholders. All interviewees were sent a draft version of the report. The majority of interviewees returned the draft to me with corrections prior to completion of the report. I would like to thank the IOM, UNHCR, JRS, Barbara Harrell-Bond and Africa IDP Voice for their helpful feedback on my draft. During my time in Zambia, I was fortunate enough to meet with a large number of individuals including: Dr Mgbangson, Senior Protection Officer, (UNHCR), Jacob Mphepo, Commissioner for Refugees (COR), Towa Silweya Chaiwila, Senior Legal Advisor (COR), Douglas Tambulukani, Legal Advisor (COR), Manny Villaflor, Finance/Administrative Officer (IOM), Mulenga Nkula, National Policy Director, (JRS), Lillian Lupiya, Policy Officer (JRS), Harry Chilufya, Project Co-Ordinator, (Zambian Red Cross Urban Refugee Project), Robert Shabwanga, Projects Officer, (LRF) Ms Mary Chisanga, Assistant Projects Officer (LRF), Grace Zulu, Lawyer in Legal Resources Chambers (LRF), Felix Kaoma, Para-Legal (LRF), Mwaanga Malambo, Para-Legal (LRF), Khalid Mahgoub, Field Officer for Meheba Settlement, (UNHCR) and Joseph Chilengi, Executive Director (Africa IDP-Voice).

A desk review of relevant policy documents, legislation, literature and websites was also conducted (see bibliography). Finally, two short visits were undertaken. Accompanied by a team from the UNHCR Field Office in Solwezi, I conducted a brief tour of the Meheba settlement. The second was to the Independence Township, (the IDP camp for those displaced from Ngombe) in Lusaka accompanied by staff from Africa IDP Voice and camp residents. Unfortunately, I had little opportunity to speak to asylum seekers and refugees in Zambia. I did have informal chats with refugees at various locations including: JRS Peace Centre, the COR office and the IOM Office. I did not undertake any structured interviews with any refugees.

3. TERMINOLOGY
    Camps
Camp do not have land available for cultivation, while settlements have. A camp means indefinite dependence on food aid, while a settlement resembles a Zambian village.\(^1\)

\(^{1}\) This distinction between camps and settlements is not always made, for example in one of the UNHCR reports (Refugee health in Zambia: Joint UNHCR-WHO evaluation of health and health programmes in refugee camps in Zambia) only the term camps is used.
Internally Displaced Person (IDP)  There is no legal definition of IDP, as there is for refugee, and there is no consensus on what causes of the internal displacement (e.g. political persecution) render an individual an IDP. This is problematic because many of the IDPs in Zambia have been displaced as an indirect result of the Zambian land tenure system, which does not allow individuals to acquire formal rights over it. Thus some members of the international community in Zambia believe that the individuals concerned are ‘squatters’ rather than IDPs.

Settlements  Land is available for cultivation. Settlements are generally a lot larger than camps (eg Meheba is the size of Belgium).

4. ACRONYMS

COR  Commissioner for Refugees (A Department of the Ministry for Home Affairs)
DJOC  District Joint Operational Committee
IDP  Internally Displaced Persons
IOM  International Organisation of Migration
IP  Implementing Partner
JRS  Jesuit Refugee Service
LRF  Legal Resources Foundation
LR Chambers  Legal Resources Chambers
PJOC  Provincial Joint Operational Committee
RSD  Refugee Status Determination
UNHCR  United Nations High Commissioner for Refugees
WFP  World Food Programme

5. THE CONTEXT

a)  BBC Website Country Overview:

- Population: 11 million (UN, 2005)
- Capital: Lusaka
- Area: 752,614 sq km (290,586 sq miles)
- Major language: English (official), Bemba, Lozi, Nyanja, Tonga
- Major religions: Christianity, indigenous beliefs, Hinduism, Islam
- Life expectancy: 33 years (men), 32 years (women) (UN)
- Monetary unit: 1 Kwacha = 100 ngwee (At time of writing 8,000 Kwacha was equal to £1 Sterling.)
- Main exports: Copper, minerals, tobacco
- Internet domain: .zm
- International dialling code: +260

2 This explanation is taken from the JRS Website.
b) Economic Situation:
According to the US Department of State, ‘Over 70% of Zambians live in poverty. Per capita annual incomes are currently at about one-half their levels at independence and, at $430, place the country among the world's poorest nations3. Social indicators continue to decline, particularly in measurements of life expectancy at birth (about 37 years) and maternal mortality (729 per 100,000 pregnancies). The country's rate of economic growth cannot support rapid population growth or the strain which HIV/AIDS related issues (i.e., rising medical costs, decline in worker productivity) place on government resources. ...Unemployment and underemployment are serious problems.

HIV/AIDS is the nation's greatest challenge, with 16% prevalence among the adult population. HIV/AIDS will continue to ravage Zambian economic, political, cultural, and social development for the foreseeable future.’

c) Rising Xenophobia in Zambia
A statement by Evangelical Fellowship of Zambia, Council of Churches and the Zambia Episcopal Conference to Commemorate World Refugee Day, 20 June 2005 claims that:4 ‘One does not have to look far for evidence of the fact that refugees are increasingly unwelcome in Zambia. We have seen a disturbing rise in the verbal abuse, harassment, arbitrary detention, and physical violence that refugees suffer in Zambia. The church regrets the fact that people with genuine protection concerns have been forcibly returned from Zambia to countries where their lives or freedom are in jeopardy. Needless to say, this practice violates the human rights of refugees and does not reflect well on Zambia’s international image. ...’

6. THE REFUGEE POPULATION IN ZAMBIA

a) Size of the Refugee Population
I met with the UNHCR Lusaka’s statistician, who gave me detailed information on the refugee population correct as of July 2005. I was told that the information was collected on a monthly basis from the focal point at each camp, and was agreed with COR. I also asked COR for their July 2005 statistics, the numbers were indeed identical save for the Congolese population in Mwange. UNHCR stated that the population was 24,375, yet COR gave the number as 23,847.

There are six camps and settlements: Mayukwayukwa, Meheba, Kala, Mwange, Nangweshi and Ukwimi. Ukwimi has recently been closed down. The map below shows the locations of the camps. According to UNHCR Lusaka,5 the total number of Refugees in Zambia is: 171,584. The encamped refugees in Zambia consist of the following nationalities: 36,715 Angola, 997 Burundi, 49,930 from DR Congo, 3,582 Rwandan, 6 Somalian, 16 Ugandan and 114 Other. The total number of encamped refugees in Zambia is 91,360 Kala camp has 22,068 refugees, Mayukwayukwa has 5,969, Meheba has 18,037, Mwange 24,375 and Nangweshi 20,911.

5 Information correct as of July 2005
b) Urban and Self-Settled Refugees

UNHCR estimate that the total number of urban refugees is 5,224. The difference between the ‘Total Urban’ category and the ‘Self Settled’ category is unclear. \(^6\) ‘Total Urban’ appears to describe those refugees who live anywhere outside of a refugee camp, yet are only there by permission of the Residency Committee having formerly lived in the camps. Meanwhile ‘Self Settled’ refers to those refugees who are not registered and don’t have refugee status. The estimate of total number of refugees who are settled amongst their hosts is 75,000 (this category is termed Self Settled by UNHCR.) COR told me these refugees were located in the border areas. COR last assessed the number of ‘Self Settled’ refugees in 2002, so the UNHCR statistician agreed with me that these figures are likely to be the least reliable. It is also notable, that the statistics for the ‘Self-Settled’ refugees are calculated to the nearest hundred, unlike all the other statistics, suggesting that these figures are estimates.

As JRS have noted, the estimate for ‘Total Urban’ refugees may be problematic. According to JRS’s website ‘In May 2001, official figures placed urban refugees (Lusaka) at about 14,000. The registration of refugees with a new electronic card has reduced this figure to 4,000. What has become of the remaining 10,000 is unexplained.’ \(^7\)

c) Numbers in Detention

According to The Post, (Zambia’s independent newspaper), the prison population as of Monday 29th August was 14,427 which included 294 prohibited immigrants. \(^8\) Prohibited Immigrants were not included in the statistics for convicted and un-convicted individuals. According to the US Department of State’s website, ‘the authorities held in detention pending deportation approximately 300 illegal immigrants, principally from neighbouring countries .... As the immigration authorities lack funds for deportation, illegal immigrants may be detained for extended periods,’

\(^6\) I was offered differing explanations by COR and UNHCR.

\(^7\) [http://www.jrs.net/old/jrs/zmb/refugees.htm](http://www.jrs.net/old/jrs/zmb/refugees.htm) In relation to the whereabouts of the ten thousand UNHCR said: ‘It must be noted that the government undertook the exercise in 2002 to register and to issue electronic cards to those refugees who met the criteria to live in the urban areas. Those who did not meet the set criteria, were requested to relocate to camps and settlements. Some refugees without electronic cards relocated to the camps or settlements, others decided to continue to stay in urban areas without authorisation or valid documents. As of today, the refugees officially living in Lusaka municipality is 5,255. However, the total number of refugees living in Lusaka not officially, could be estimated to be up to 10,000’.

\(^8\) No 3242 Friday September 2, 2005. www.post.co.zm p6,
7. LOCATION OF REFUGEES: THE CAMPS AND SETTLEMENTS

a) Freedom of Movement within the Camps
Refugees are granted permits (gate passes) by the Refugee Officer to allow them to leave the camp or settlement for legitimate purposes.

b) Self-Sufficiency
Refugees are given food assistance during their first two years in the camps/settlements by the World Food Programme. Refugees are given a plot in a village, two hectares of land and enough food for two growing seasons and sufficient farming tools and seeds to begin to cultivate. Refugees who reside in the camps (rather than settlements) remain dependent on food assistance (see below on food related problems).

c) Identification Documents
There are two types of identification documents. Electronic identification cards for those refugees in open areas, and Green Cards (made of cardboard) for those refugees in the camps. Both cards are clearly labelled ‘Office of the Commissioner for Refugees, Refugee Identity Card’. The cards contain personal data such as date and place of entry into Zambia, and stated that they are ‘issued under Section 6(2) of the Refugees (Control) Act’. I was also provided with a specimen of the new type of identity document that is due to be introduced for Spontaneously Settled Refugees.

d) Meheba Settlement
Meheba is now spread over an area of around 800 square kilometres accommodating refugees in eight administrative zones. Due to the recent repatriation efforts, the settlement is shrinking, and those refugees left remaining are moving closer into the centre of the settlement.

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e) Nangweshi Camp
Nangweshi lies on the west side of the Zambezi in Shangombo District of Western Province, about 20km south of the pontoon which carries traffic across the river to Senanga. According to UNHCR’s own report, ‘The refugee camp was established in January 2000 to house approximately 14,000 of the Angolan refugees who ran into the Zambia with the upsurge in the fighting in the last quarter of 1999.’\(^{10}\) They also claim that: ‘From the outset Nangweshi has been known as a camp which operates to a great extent under UNITA discipline and many, if not all, of the people involved in the camp leadership have held high party positions in Jamba. The Zambian government has taken steps to remove some of the most high profile UNITA officials within the camp and has sent them to Ukwimi in Zambia’s Eastern Province. These removals included the refugee leader in the camp.’\(^{11}\)

f) Lusaka
There are two transit centres for refugees in Lusaka. Makini Transit Centre is under the Zambian Red Cross. This centre is for refugees with results pending, or for those refugees who have permission to travel from the camps to Lusaka for educational or medical purposes. The second transit centre, Chilenje Transit Home, is limited to those refugees requiring medical assistance which is not available in the camps.

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\(^{10}\) UNHCR CORD p13 para 44.
\(^{11}\) UNHCR CORD p14 para 46
8. REFUGEE LAW AND POLICY IN ZAMBIA

a) An Overview
Zambia does have a relatively tolerant policy towards refugees, although cynics might say that it is very easy to have such generous policies when these are entirely funded and managed by international organisations and external donors. Such generosity from international organisations has not been evident when dealing with internally displaced persons in Zambia (see below on IDPs). Over the last couple of decades, many thousands of refugees have been granted asylum in Zambia and have grown up in Zambia, attended Zambian schools and Universities and otherwise made Zambia their home. Yet in many ways Zambian policy towards refugees is incoherent and arbitrary. Refugee policy can change over night, and when it does change those refugees who had previously enjoyed rights such as that to reside where they like, may wake up to find their residency rights removed. Some refugees are given residency rights, yet not provided with any means to earn a living. Yet when those same refugees try to support themselves, they are detained in prison and face losing their refugee status for immigration offences. Zambian domestic law continues to discriminate against refugees, who are denied rights granted by the Constitution to all those in Zambia. Whilst refugees can marry Zambian citizens, they can never become citizens in Zambia and are always vulnerable to forced repatriation (the application of the cessation clause). Above all, there is an urgent need for the Immigration Department to be trained regarding refugee rights particularly non-refoulement, and for the Department to work more closely with COR\(^\text{12}\).

\(^{12}\) Regarding this UNHCR commented: ‘between February and August 2005, more than 16 workshops, training, consultations, round tables and radio programmes were conducted where high government officials including the Immigration personnel, the IPS and the general public where among the participants. In such meetings, the relevant protection matters including the principle of non-refoulement, the need to review the reservation made by Zambia to the 1951 Convention and other related issues like voluntary repatriation, local integration and resettlement were adequately addressed. Both the government of Zambia and UNHCR agree that the training, workshops and symposia, have impacted positively in the may the general public, and the Immigration officials relate to the refugees and asylum-seekers. Notwithstanding, UNHCR will continue with similar training in due course to address new challenges for the benefit of refugees’ protection in Zambia. UNHCR will also not relent in its efforts to constructively
9. THE LEGAL FRAMEWORK

The Zambian Legal System is based on English common and customary law; there is provision for judicial review of legislative acts in an ad hoc constitutional council. The Supreme Court is the final court of appeal; justices are appointed by the president. The High Court has unlimited jurisdiction to hear civil and criminal cases. English jurisprudence is persuasive authority in the Zambian courts. According to the CIA World Factbook, Zambia has not accepted compulsory ICJ jurisdiction.

9.1) RELEVANT DOMESTIC LEGISLATION

a) Refugee Control Act 1970

Under this act, all refugees must live in an area designated by the Zambia government unless they receive special permission to remain outside. Section 16 of the Act allows an authorized officer to arrest a refugee without a warrant if they are ‘reasonably suspected’ of attempting to commit, or committing an offence against the Refugee Control Act. Section 15 of the Act provides that breaches of the Act shall be punished with a period not exceeding three months imprisonment (my emphasis), in practice these periods are far longer (see below on detention.)

b) Definition of Refugee Status

According to the Refugees (Control) (Declaration of Refugees) Order (No.2) of 1971, (which amends the Refugee Control Act) refugees are defined as (section 2): ‘Persons who are, or prior to their entry in Zambia were, ordinarily resident outside Zambia and who have sought asylum in Zambia owing to a well-founded fear of being persecuted for reasons of race, religion, nationality membership of a particular social group or political opinion are declared to be refugees for the purposes of the Refugees Control Act, 1970.’ The 1969 OAU Convention definition of a refugee has not been incorporated into the national legislation, although in practice it is applied.

Neither the Refugee Control Act nor the Immigration Act makes any distinctions between refugees and asylum seekers.

c) Immigration and Deportation Act, Chapter 123 of the Laws of Zambia

‘Prohibited Immigrants’

The presence within Zambia of a ‘prohibited immigrant’ is unlawful, (section 24(1) of the Immigration Act.) The Second Schedule of the Immigration Act defines who is a prohibited immigrant. This includes those capable of transmitting certain diseases, persons previously deported, persons of or about the age of 16 entering without proper travel documents (my emphasis), and persons who fail to report to an immigration officer on entering Zambia. Significantly in the light of COR’s plans to apply the cessation clause, it also includes a person in Zambia with respect to whom a permit to

engage the government to make positive changes both in its policy and practice to favour refugees and asylum-seekers’.

13 UNHCR Cord p9 para 22.
remain in Zambia has been revoked or has expired. Furthermore, the Minister has the power to declare any person a prohibited immigrant. However there is Zambian jurisprudence that it is *ultra vires* the Minister’s powers to declare a person recognised as a refugee under the Refugee Control Act 1970 to be a prohibited immigrant (*Edward Yapwantha v The Attorney General (1972)*).

Those deemed to be prohibited immigrants and given notice that they are required to leave Zambia (section 23), are entitled to forty-eights hours reprieve in order to make an appeal and make representations (section 24 of Immigration Act). Further failure to comply with the notice, may lead the individual to be arrested without warrant, detained and deported from Zambia (section 26). An individual convicted of a breach of the Immigration Act renders an individual liable to punishment for twelve months (section 30).

d) Law Reform

Both the Commissioner for Refugees and COR’s Senior Legal Adviser stressed their willingness to reform the current RSD mechanisms, especially the appeal procedure. COR feel restricted by a lack of resources (e.g. COR only has three lawyers) and they are dependant on governmental approval for legislative change. A recent review of the Refugee Control Act recommended its reform, and the placing of the National Eligibility Committee on a statutory basis. The aims of the Refugees Bill 2002 are to a) provide for the administration and control of refugees, implement the 1951 Convention, 1967 Protocol and the OAU Convention 1969 and repeal the 1970 Refugee Control Act. However Parliament did not accept the Refugee Bill 2002, and in order to save the Bill the Minister withdrew it for consultation. In the last few years the xenophobic attitudes of some governmental officials have been aired in public, and some have been reported in the national press.14 Ostensibly a General Election is due early next year (2006), although no one knows when elections will actually be as they are called at the discretion of the president. It is unlikely that the Bill will be re-submitted until after the elections. In the meantime COR are running a number of workshops to enhance the sensitization of Parliamentarians to refugee issues.

e) The Constitution

Article 11 of the Constitution grants ‘every person in Zambia’ the right to life, liberty, security of person, protection of law, freedom of conscience, expression, assembly, movement, and association as well as other rights and proceeds to provide that the exercise of these rights is irrespective of ‘place of origin, race, political opinion, colour, creed, sex or marital status.’15 Yet there is Zambian jurisprudence that the rights enshrined in the Constitution do not extend to refugees. In *Radebe v The Attorney General (1972)* the High Court found that the guarantee of freedom of movement in the Constitution is not applicable to non-citizens of Zambia.

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Furthermore, the Constitution provides that any person who is arrested or detained must be furnished with the grounds for his detention in writing within 14 days. According to Zambian jurisprudence detention of an individual after 14 days without provision of these grounds is illegal (Chipango v The Attorney General (1972 ZR..)) Yet the Zambian courts have held that this provision does not apply to refugees or those deemed to be prohibited immigrants (Mifiboshe Walulya v The Attorney General 1984 ZR 89.) In that case the Supreme Court held that that provision of the Constitution did not apply to a Ugandan national detained under the Immigration Act, and it was not necessary that he was provided with written grounds. It is thought that, especially in the light of the provisions of the African Charter and other international humanitarian law, the above named decisions could easily be challenged in the Zambian courts.

The Constitution is currently being revised, and I was made aware of three planned changes in the Constitution regarding refugees. Article 60 will incorporate the right of non-refoulement into Zambian Law. Article 46 will specify the need for the state and society to give special protection to children, including refugee children. Article 20 specifies that those with refugee status are not entitled to citizenship, although if they are born in Zambia then they are entitled to apply to be registered as a citizen.

9.2) RELEVANT INTERNATIONAL LEGISLATION
Zambia is a party to 1951 Convention and 1967 Protocol as of 1969. However in Zambia the 1951 Convention is not a part of domestic law. The recent Refugee Bill 2002 attempted to effect this incorporation. Zambia has reservations to the 1951 Convention

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17 60. (1) An individual who has sought asylum as a refugee in Zambia has a right not to be returned to the country of origin if that person has a well-founded fear of -
(a) persecution in the country of origin; or
(b) other treatment in that country that would justify that person being regarded as a refugee.
(2) An individual who has sought asylum as a refugee in Zambia has a right not to be sent to a third country in violation of international law.
(3) Parliament shall enact legislation, in compliance with international law and practice, governing persons who seek refugee or asylum in Zambia.
18 46 (6) Children with special needs, including girls, orphans and children either of whose parents is in prison, children with disability, refugee children and homeless children, are entitled to the special protection of the State and society.
19 20. Citizenship by Registration
(1) A person who –
(a) is born in Zambia but neither of whose parents is a citizen; and
(b) renounces the citizenship of any other country on attaining the age of twenty-one years;
is entitled to apply to be registered as a citizen.
(2) A person who has –
(a) attained the age of twenty-one years;
(b) been ordinarily resident in the Republic for a continuous period of not less than twelve years immediately preceding that person’s application for registration; and
(c) who renounces the citizenship of any other country;
is entitled to apply to be registered as a citizen of Zambia.
(3) A child of a diplomat accredited to Zambia or a person with refugee status in Zambia shall not be entitled to be registered as a citizen.
20 Like in England, international legal instruments need to be formally incorporated into domestic law to be effective.
regarding the right to work, education, freedom of movement and provision of travel documents. In fact the reservation on education is not state practice, as the current policy is that all recognised refugees are able to access schools on the same basis as Zambian nationals and pay the same fees.

Zambia is also a party to the 1990 International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families. (Party as of 1992) and The 2000 Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (signed in 2002).

There are no agreements with neighbouring countries regarding refugees. Zambia is a member of the Organisation for African Unity.

10. STATUS-DETERMINATION PROCEDURES

a) Obtaining Refugee Status

In order to claim asylum in Zambia, asylum-seekers must present themselves at the Immigration Office (Regional Immigration Office, Pension House, Rooms 308-316 Cairo Road, Tel. 23 84 31 05 or Immigration HQ, Kent Building, Rooms 105-6, Haile Selassie Road, 251 305) or at the Police station within seven days after arriving in Zambia. According to the Refugee Control Act section 11, ‘no refugee shall remain in Zambia unless within seven days of his entering Zambia he is issued with a permit to remain by an authorised officer.’ Those asylum-seekers in Lusaka can address themselves directly to COR. None of the NGOs are able to provide housing to those seeking asylum. In April 2005, the Red Cross allowed asylum seekers to stay at the Zambia council along Mumbwa road or Chilenje Lodge whilst awaiting the result of RSD, and provided some basic food to those who have no other means of subsistence. There is no facility for children of asylum seekers to attend schools.

b) Non-Delegation by COR

Until 1993 UNHCR carried out Refugee Status Determination alone. However by 1998 it was felt that the three lawyers that UNHCR had financed and trained for COR were suitably qualified for COR to takeover. COR is a department of the Ministry of Home Affairs, the Ministry through COR grants refugee status and designates the place of residence. The Immigration Department of the Ministry of Home Affairs deals with all foreigners in the country.

c) Two Separate RSD Systems: Provincial RSD

Zambia has two parallel systems for refugee status determination, which system is relevant depends firstly on where an individual applies for refugee status, and secondly which treaty their case falls under. The first system operates using the 1969 OAU Convention, awarding refugee status on a prima facie basis. When refugees arrive in the provinces, their claims are heard by two bodies, either the District Joint Operational Committee (DJOCC) or the Provincial Joint Operational Committee (PJOC), which are located at border points and are essentially security organs. The individuals who staff
these bodies are neither lawyer nor judges, but tend to be individuals from either the police or from immigration.

JRS drew my attention to the fact that the two bodies do not meet regularly, perhaps every three months. As a result refugees may have to wait for months to be interviewed and have nowhere to stay since none of the NGOs offer assistance to asylum seekers. However UNHCR responded to this comment by saying: ‘The District Joint Operation Committee (DJOC) or Provincial Joint Operation Committee, (PJOC), meets as often as there are new arrivals of asylum-seekers into Zambia through border crossing. There are no fixed dates for either of the bodies to meet. In most entry points in the Luapula, Northwestern and Northern Provinces there are Transit centres to receive asylum-seekers and it is in these centres that either the PJOVC or DJOC interviews the asylum-seekers. While waiting to be interviewed, the asylum-seekers are assisted by the Zambian Red Cross and monitored by the Refugee Officer who represents the Office of the Commissioner for Refugees and UNHCR. After the interviews they are then assigned to the various camps or settlements’.

Whilst asylum seekers undergo the RSD procedure, in theory they should be issued with report orders by the Immigration Department. In practice, many are at risk of being deemed ‘prohibited immigrants’ by the Immigration Department and detained. I was also told that sometimes, if asylum seekers register with Immigration whilst awaiting their interviews, they are also detained ‘for their own protection’. The decision of the DJOC or PJOC is sent to COR for confirmation. COR told me that there was an obligation on the DJOC and PJOC to refer any claims that might fall under the 1951 Convention to the Eligibility Committee. However this is not a legal obligation.

d) Appeal against DJOC or PJOC
According to COR, in practice, refugees do have a right to appeal against the decision of the DJOC or PJOC to the National Eligibility Committee, although this right is not contained in any legislation.

The Eligibility Committee and the DJOC and PJOC currently have no statutory basis, but are administrative bodies. I asked the Commissioner for Refugees if Judicial Review of asylum decisions was possible. COR felt that in theory it was possible, yet they knew of no instances in which it had occurred. Judicial Review as a means to appeal RSD decisions appears to be possible on a similar basis as in English Law (impropriety, procedural irregularity or irrationality). It is likely that judicial review of some policies would be possible using the concept of ‘legitimate expectations,’ for example the legitimate expectation that a refugee once granted a residence permit will not have it removed from him.

If individuals are recognised as refugees by either the DJOC or PJOC then they are sent to the refugee camps. If they are not recognised then the DJOC or PJOC can recommend that their claims are individually assessed under the 1951 Convention, and the individuals

21 See English case law on the use of substantive legitimate expectations in Judicial Review. English jurisprudence is persuasive authority in Zambian courts.
are therefore re-routed to Lusaka for assessment by the Eligibility Committee. COR told me that when individuals are referred their cases are generally heard at the next sitting of the Eligibility Committee, and the largest back-logs are around 2 months long.

e) The Eligibility Committee (Lusaka based RSD)

The second system is refugee status award by the Eligibility Committee. The Eligibility Committee is chaired by the Commissioner for Refugees and made up of individuals from the police, immigration, Minister for Foreign Affairs and from the Presidents Office. Members of the Eligibility Committee as of the 31st of August 2005 were: Mr Jacob Mphepo (COR), Chairperson, Mrs Chaiwila (COR Senior Legal Adviser, Ms Membe (COR Legal Adviser), Mr Tambulukani (COR Legal Adviser), Mr Chiyokoma, COR, Secretary, Mr Punza, Zambia Police Service Headquarters, Mr Nyambe, Immigration Headquarters, Mr Salumayi, Regional Immigration Office, Mr Makanta, Minister of Labour and Social Security, Ms Malunga, UNHCR, Mr Mukupili, Dept of National Reg. Passport and Citizenship and Mr Kazia, Office of the President. Here award is based on the 1951 Convention and the 1970 Refugee Control Act. This system is applicable to those refugees who have been referred by the DJOC or PJOC, or those who arrived in Lusaka (rather than the provinces.) COR told me that the Committee meet every fortnight, and usually hear three cases a session. UNHCR were able to give me further information on the number of refugees accepted using this route.

At COR individuals are asked to fill in an application form for refugee status. Refugees are first interviewed by a member of COR’s Legal Department. They then prepare a file to be passed to the Committee. The county of origin information they use includes Refworld 2004, Human Rights Watch, Amnesty International and IRIN reports. The refugees are not represented by a lawyer before the Committee. Refugees are not provided with a copy of their interview transcript. COR do not have an interpreter, so a UNHCR interpreter is used for when the Committee interview refugees. Full ‘eligibility assessments,’ and relevant county of origin information is placed before the Committee. The Committee make a recommendation and this must be endorsed by the Commissioner to constitute a final decision.

If refugees are accepted, then they are transferred to a camp or settlement. If they are rejected they have a right to appeal, but again, this right is not contained in any statutes. COR told me that when refugees collect their ‘result’ letter from the office they are advised of their right to appeal. Refugees learn of their rejection in the form of a written response with reasons from the Commissioner for Refugees. I spoke to a Congolese refugee who had just received his letter when I visited the JRS Peace Centre. He had not been advised of his right to an appeal. Since he did not speak English he did not understand the content of the letter. There was no mention of his right to appeal in the

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22 This list of members was compiled by the COR for me upon request.
23 UNHCR stated: ‘As indicated in UNHCR annual statistical reports for Zambia, for 2003, 2004, and the quarterly report for 2005, the following figures could bear testimony on how many asylum-seeker’s applications are seen by the Eligibility Committee. 2003: 322 applied, 99 recognised, 68 rejected, and pending 180. 2004: 360 applied, 77, recognised, 89 rejected, pending, 84. 2005 (January to September), 78 applied, 41, recognised, 18 rejected, 54 pending. Please note that this is a simplified version of our statistic, other details are not included’.
letter. Since I did not have time to undertake any research into this issue, it is impossible to say if his case is atypical or not. If refugees are rejected, then their status is immediately that of ‘prohibited immigrant’ and a deportation order is issued by the Immigration Department.

**f) No Real Appeal**

Refugees are able to appeal the decision of the National Eligibility Committee by sending a written letter of appeal to the Minister for Home Affairs. Refugees must take their letter of appeal to the Minister’s office. There is no published time limit for making this appeal, but COR’s Senior Legal Officer said that it must be within a reasonable period. In their Guide for Refugees, JRS suggest that a reasonable period is seven days.\(^{24}\) In the Refugee Bill 2002, section 8 allows refugees fourteen days to make an appeal in writing to the Minister. The letter should set out why refugees fall within the 1951 Convention. COR agreed that there was scope for NGOs to provide assistance to refugees in writing these letters. Some guidance is already provided by JRS in their pamphlets.

COR explained that not all Ministers interview refugees personally, some rely on deputies and it depends on the Minister how the appeal system operates. Ultimately the Ministers make their decisions based on the refugees file which is supplied by COR. I asked COR how many refugees appeal. They estimated that it was about 85%, yet of those only about 1% of cases succeeded.

**g) Protection of Appellants**

While refugees are appealing, the Department of Immigration are supposed to extend the report order (temporary authorization) to protect refugees from being treated as being ‘prohibited immigrants’. COR admitted that there was a gap in the social and economic protection offered to appellants. Appellants are not deemed to be refugees, and only the extremely vulnerable are offered protection by UNHCR.

**h) Acceptance**

Those who are accepted and are authorized to reside in Lusaka are eligible to receive an electronic identity card from COR. Those who are accepted and placed in a camp or settlement, will receive the refugee card from the Refugee Officer (COR representative in each camp/settlement) upon arrival there.

**i) Rejection**

COR stated that it was possible to re-open files, but that there had been only a few incidents when files had actually been re-opened and they had been upon the discovery of fraudulent claims. When refugees are rejected they are issued with a document by the Immigration Department (a Form 15) which facilitates their removal at the border. I asked COR how many rejected asylum-seekers were still in Zambia, they said simply that there must be many. This number is not included in the spontaneously settled figures provided for in the statistics referred to above. COR leave it to the Immigration department to deal with rejected asylum seekers.

j) Difficulties Obtaining Refugee Status
I was informed that Ugandans have difficulty obtaining refugee status in Zambia, and that this difficulty was related to the fact that UNHCR are not taking up their cases.

COR’s Registration Officer provided me with a detailed breakdown of the numbers of asylum seekers being rejected and accepted by the Eligibility Committee. The statistics for the DJOC and PJOC were not available. In 2004 360 people applied for asylum. Of those 179 were Congolese, 88 were Somali, 57 Burundi, 14 Rwandan, 5 Ugandan and 17 Other. Of this number, 3 were found to be refugees under the 1951 Convention, 74 under the 1969 OAU Convention, 89 were rejected, 84 had their results pending and 109 did not show up for their interview.

The statistics for January to March 2005 reveal that 80 individuals applied for asylum. This number included 54 Congolese, 20 Burundi, 5 Rwandan, 1 Other. Of those, 36 were awarded refugee status under the 1969 OAU Convention, 0 under the 1951 Convention, 14 were rejected, 29 had their cases pending and 1 No show. Between April and June 2005, 73 individuals applied for asylum. This included 38 Congolese, 17 Burundi, 1 Rwandan, 16 Ugandan and 1 Other. Of these 6 were awarded refugee status under the 1969 OAU Convention, None under the 1951 Convention, 52 had their cases pending and 10 no show.

k) Disincentives to Applying for Refugee Status Determination

Since a successful refugee claim entails being transferred to the camps, many refugees are reluctant to make a claim. JRS believe that it is particularly true for those refugees from the Great Lake areas, who are more likely to be urban professionals, or businessmen, who have great difficulty trying to adjust to the rural lifestyle of refugee camps and settlements where they are expected to survive as subsistence farmers.25

11. ‘PERSONS NOT OF CONCERN’

Irregular Movers

I was informed that so-called ‘irregular movers’ are not being assisted by UNHCR and COR. This belief is not enshrined in international law. Zambia is applying the doctrine of the ‘first country of asylum’. This doctrine has not been incorporated into domestic legislation. Thus ‘irregular movers’ are regarded as ‘prohibited immigrants’ by the Immigration Department, (and are generally detained for very long periods of time) and are not entitled to any of the legal or other protection afforded to refugees and asylum seekers.

However UNHCR Lusaka contended that it was assisting irregular movers. UNHCR said: ‘UNHCR regards irregular movers to be of concern to it. We have had many irregular movers especially in the past two years coming to Zambia mostly form Somalia and a few from West Africa, (Sierra Leone and Liberia). When these individual asylum-seekers or

refugees, are discovered during UNHCR prison visitations to the prisons or made known to UNHCR by the Immigration Department or COR, UNHCR usually seeks for their release including assisting them to return to the country where they were accorded refugee status in the first place or back to their country of origin if they so wished. In 2004, two refugees from Sierra Leone and from Liberia who were refugees in Central African Republic who left that country with the hope of travelling to South Africa passing Zambia, were arrested and charged by the Zambian authorities for violating Zambia’s immigration law. With the assistance of the COR, UNHCR requested the release of the two refugees and assisted them with air tickets to Sierra Leone and Liberia’.

JRS told me that many of the ‘irregular movers’ are West African, and can be detained for very long periods of time, some up to six years. JRS refer these cases to COR and UNHCR, however JRS contended that neither of these organisations feels that ‘irregular movers are persons of their concern’. Sometimes the problem is essentially a financial one, since if JRS can find someone to purchase a one-way flight ticket for irregular movers, then they will be issued with a one way visa and are able to leave detention. JRS have managed to find funding for two individuals so far. However, as the Commissioner for Refugees explained, this is not always a practical solution, since many irregular movers are Somali and can not be flown home.

The Commissioner related to me a discussion at a recent SADAC meeting on irregular movers. He feels that the essential problem is one of communication between countries, and that there is no reason why countries within the SADAC can not co-ordinate themselves, so that ‘irregular movers’ are transported back to their first country of asylum. The Commissioner felt that there was scope for UNHCR involvement in this, for example in securing such an agreement and providing logistical support to ‘irregular movers.’

12. REPATRIATION

a) Current Repatriation: Angola, Rwanda and the Congo

According to the UNHCR Global Appeal 2005 for Zambia: ‘UNHCR will promote voluntary repatriation of Angolans and Rwandans in close coordination with the Government, UN agencies and NGOs…. If conditions in DRC improve and repatriation becomes possible in 2005, UNHCR will promote the voluntary repatriation of the Congolese.’ At the time of my visit, no mention was made of the repatriation of the Congolese.

b) Repatriation to Angola

UNHCR in conjunction with its implementing partners and IOM are currently trying to encourage the voluntary repatriation of Angolans. It is evident that UNHCR and its implementing partners are under considerable pressure from donors to meet target figures for ‘voluntary’ repatriation. In 2003 18,157 Angolans were repatriated. In 2004

26 UNHCR Global Appeal p5.
27 This number is taken from the IOM Lusaka Newsletter, 1st June 2005.
according to the IOM they succeeded in repatriating 27,525 refugees to Angola. However in 2005 repatriation has been much slower. The aim was to repatriate 33,000 refugees. By September they had expected to repatriate 12,000 refugees - so far they have only repatriated 8,000. By June 2005 they had only repatriated 2,487 as opposed to a projected figure of 5,449. The reasons given for this low number are: on-going harvesting season (May-June) especially in Meheba, waiting for children to complete current school year (November), Manbury virus scare in Northern Angola, concern about the election outcome in Angola, and insufficient basic services in areas of return in Angola.

c) Angola Repatriation Policy
During 2005 all repatriation of Angolans is on a voluntary basis and refugees are offered assistance with returning. 2005 is supposed to be the last year of organised repatriation, according to an agreement between the government of Zambia, Angola and UNHCR (the June 202 Tripartite Agreement). The IOM currently only has funding to assist with repatriation until mid-November 2005. It is unclear whether there will be assistance with returning in 2006. In 2007 COR plans to apply the cessation clause to all those refugees remaining in Zambia.

28 The UNHCR figure is higher than this, however it is thought that this is a projected rather than an actual figure. The UNCHR Global Appeal for Zambia states that: 'In 2004, UNHCR continued actively to pursue durable solutions through the voluntary repatriation of Angolan refugees. Immediately after the rainy season in July 2004, repatriation by road to accessible areas in Angola resumed. By August 2004, UNHCR and its partners had repatriated 26,000 Angolans (18,000 in 2003 and 8,000 in 2004). In addition, in September 2004, the Office launched an airlift operation to accelerate the repatriation. By the end of 2004, some 33,000 Angolans would have been repatriated by road and air.'

29 This number is taken from the IOM Lusaka Newsletter, 1st June 2005.

30 Reasons taken from article on voluntary repatriation of Angolan refugees, in IOM Lusaka Newsletter, 1st June 2005.
d) Problems with Repatriation to Angola

According to an article in The Post, Zambia’s independent daily newspaper, during September 2005 over 700 Angolan refugees awaiting voluntary repatriation were stranded in Mongo whilst awaiting flight clearance from Angola. The article claimed that refugees were engaging in piecework to earn money to buy food. The Director of the IOM, Josiah Ogina, stated in the same article that the refugees were being fed by UNHCR. When I met with the IOM they confirmed this report, explaining that IOM had chartered a flight to Angola from Lusaka International Airport, however the flight clearance for the aircraft to land in Angola has not been approved yet by the Angolan Authorities. This problem was resolved shortly after.

e) Repatriation to Rwanda and Burundi

It was clear from both UNHCR statements and from talking to COR that it was difficult to persuade Rwandans to volunteer for repatriation. The UNHCR Global Appeal 2005 says: ‘UNHCR and the Government of Zambia continued to promote repatriation to Rwanda. Despite information campaigns to increase awareness amongst Rwandans of an inclusive new constitution in Rwanda, and peaceful presidential elections, they have taken a negative view of repatriation. At the time of writing, only 26 Rwandan refugees had repatriated in 2004.’ According to IOM statistics in 2003 107 Rwandan and
Burundians were repatriated. In 2004 44 were repatriated. In 2005 16 Rwandans have been repatriated but no Burundians.

f) The ‘Cessation Clause’
The clause referred to by COR is Article 1 (c) of the 1951 Convention. COR They explained that within the next two years there will be a need to ‘deal with’ the ‘Angolan caseload’. This procedure they referred to as the ‘Application of the Cessation Clause’. The process involves an individual assessment of each and every claim to stay, and is essentially a second refugee status determination. COR’s Senior Legal Officer stated that the government is concerned about invoking the procedure without sufficient resources, in case they do not comply with international law. The Commissioner for Refugees stated that the Ministry of the Interior does not have enough staff, and that there is a need for retraining, and the drawing up of guidelines. The Commissioner has requested that UNHCR take on this job, however, UNHCR also lacks the resources.

COR’s Senior Legal Officer explained that the ‘cessation clause’ procedure had never previously been used in Zambia, but that she had personally been involved as a UNHCR representative (despite being employed by the Zambian government at the time) when the clause was used in Sudan for the Eritrean refugees. She explained that all refugees would be assessed according to one test, whether there was a continued need for international protection or not. Refugees were not entitled to rely on a reason that they had not formerly relied on, since this would constitute a fresh claim for refugee status. She felt that any Zambian attempts at the process would build on the lessons learnt in Sudan and other countries where the procedure had been followed. In Sudan the procedure was carried out by two lawyers, one government lawyer and one UNHCR lawyer. The two lawyers had discussed each case, and if there was any dispute the matter had been referred on to a supervisor. Since the Commissioner for Refugees only has three lawyers, additional lawyers will have to be brought in from the Ministry of Justice and given training regarding refugee issues. I asked if there would be scope for NGO participation in this process. She felt not, although it might be possible to work with UNHCR in bringing in NGO lawyers. The procedure would first be used for Rwandan refugees, of which there are currently 5,000 in Zambia. Only 111 Rwandans have so far volunteered to be repatriated.

13. RESETTLEMENT
The logistics of resettlement are handled by the International Organisation for Migration (IOM) Lusaka. IOM works in close collaboration with UNHCR Lusaka in order to resettle refugees to Australia, Canada, Europe and USA. It is UNHCR who decide who is to be resettled, the IOM are simply provided with a list. UNHCR’s criteria for eligibility for resettlement include: ‘survivors of violence and torture, refugees requiring life-saving medical care, women-at-risk, family reunification cases, and/or refugees with no local integration prospects.’ In 2003 112 refugees were resettled to Canada, 68 to the USA, 1

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34 2005 Global Appeal
to the Netherlands, 13 to Australia and 50 to Denmark.\textsuperscript{35} In 2004 125 refugees were resettled to Canada, 267 to the USA, 4 to the Netherlands, 67 to Australia, and 96 to Denmark.\textsuperscript{36} In 2005 so far 103 refugees have been resettled to the USA, 25 to Canada, 33 to Australia, 48 to Denmark, 64 to Norway.\textsuperscript{37}

14. PROJECTS

The Zambia Initiative

This is a project supported by the government, UNHCR and donors which aims to ‘integrate refugees into their host community while helping the local region to develop.’ The Zambia Initiative is expected to support the development of small-scale projects in agriculture, health, education and infrastructure within refugee affected areas in Western Province, in particular around Mayukwayukwa and Nangweshi. It was established in March 2002 when the chances of repatriating Angolans in the near future appeared dim. According to Irin, ‘the Zambia Initiative Development Programme ... has already boosted crop production, improved health and education facilities, and opened access to markets for thousands of refugees and Zambians.’\textsuperscript{38} Furthermore, the initiative is due to ‘be expanded to include the remote North-Western province, which borders Angola and the Democratic Republic of Congo (DRC).

A shop in Meheba Refugee Settlement Central Market

15. CIVIL AND POLITICAL RIGHTS

a) Freedom of Movement

Residence in Urban Areas

\textsuperscript{35} IOM Zambia Departure Statistics for 2003.
\textsuperscript{36} IOM Zambia Departure Statistics for 2004.
\textsuperscript{37} IOM Zambia Departure Statistics for 2005.
\textsuperscript{38} IRIN news, Thu, 28 Jul 2005, ZAMBIA: Refugees and host communities benefit from development project
A subsidiary organ of the Eligibility Committee, the Residency Sub-Committee decides which refugees from the camps may be permitted to reside in urban areas. COR explained that the criteria had been agreed between UNHCR and the government, and included employment, study, health, security and resettlement. Essentially a healthy refugee needs to either have a work permit for self-employment or for salaried employment (see below on difficulties obtaining these) or a study permit to register at an educational institution recognized by the Ministry of Education (see section 16 -21 of Immigration Act on obtaining these permits). A residence permit does not allow refugees to work or to study if the permit does not authorize this. Those who breach this regulation have committed an offence.

**No Real Appeal in Residency Applications**
Those who are unsuccessful can lodge an appeal; however this appeal is to exactly the same committee. A final appeal is possible to the Minister of Home Affairs; again the Minister is reliant on information provided by COR.

One problem with the rules regarding residency seems to be that the policy towards residency is inconsistent, and has changed. These new policy measures affect refugees who have already been granted residence permits for urban areas and mean that they are being asked to give up their freedom of movement to return to the camps. For example the new Electronic Refugee card was introduced in December 2000 for recognised refugees already authorized to live in urban areas. Refugees with whom I spoke highlighted their concern that the Electronic Card expires after three years, regardless of the length of time that refugees have already been resident in urban areas. In order to renew the card, refugees require employment or a study permit or resettlement. If not then they will be required to return to the camps.

**b) Detention**
Refugees who are detained are being held with convicted criminals, even if they have not yet been charged with an offence. This is despite the Prisons Act (section 36c) which provides for the separation of convicted and un-convicted prisoners, and that these should be separated as far as is possible. The Prisons Act is not being applied to refugees. There are no separate detention facilities for refugees. An interview with the chair of the Zambian Human Rights Commission, published in *The Post*, highlighted the extent of

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39 The Legal and Factual Situation of Refugees and Asylum Seekers in Zambia, Geoffrey Mulenga in A Reference Guide to Refugee Law and Issues in Southern Africa, LRF, p26. Regarding this UNHCR Lusaka said: ‘UNHCR Regional office in Zambia established a system of visitations to prisons and detention centers in Lusaka and some prisons in refugees’ impacted areas like Mungo, Solwezi, in 2003 to monitor the situation of the people of concerns to UNHCR, (Refugees and asylum-seekers). It must be admitted that it is a common practice that refugees find themselves in prisons and detention centres for one reason or another. The most common one being refugees who found themselves illegally in the urban areas. When the immigration officials come across undocumented migrants during their operations, such persons are rounded up and charged to court and imprisoned or deported. If the persons are found to be asylum-seekers, UNHCR solicits through the COR for their release so as to enable them present their claims to the Eligibility Committee for a refugee status. The Regional Office in Lusaka keeps monthly, quarterly and annual records on persons of concern to UNHCR who founds themselves in some prisons and detention centres in Zambia’
overcrowding in prisons, in particular the fact that 1924 prisons built to house 120 inmates were currently accommodating over 1,341 inmates.  

JRS were able to provide me with some information on the numbers in detention. For example during the week 16/8/2005 – 23/8/2005 33 refugees were detained in Kamwala prison and 11 in Central Prison. In 2004 JRS’s work with detainees included: 137 new prison cases were opened, 94 cases were closed (i.e. refugees were released to camps or Lusaka after assistance from JRS Policy Unit), 47 prison visits were made, 11 detained irregular movers were also assisted, 9 cases of irregular movers were brought to the attention of UNHCR and COR, 2 Irregular movers were removed from prison and taken to their first country of asylum. JRS are aware that refugees are being held in detention outside of Lusaka. Recently JRS assisted with the release of an Angolan refugee who had been held in prison for a year before he was transferred to Lusaka and they became aware of his existence. Unfortunately JRS do not currently have sufficient funds to undertake prison visits outside of Lusaka.

**Length of Detention**

According to LRF, refugees are being detained for far longer than is provided for in the legislation. Whilst a breach of the Refugee Control Act 1970 is punishable with a three month sentence, LRF believe that violations of the restrictions to the freedom of movement and residence are frequently punished with administrative detention often exceeding three months. Furthermore LRF believes that refugees are not actually formally charged with an offence, but are detained without charge.

Samples of Litigation undertaken by the Legal Resources Foundation reveal the nature and extent of the arbitrary detention of refugees. In *The People v Abdi ali Musa* a Somali individual with refugee status and permission to be resident in Lusaka, was arrested and detained for six days without being charged and then taken to the Immigration Department. The Immigration Department issued a detention warrant and detained him at Lusaka central prison. In response, Legal Resources Chambers issued a writ of habeas corpus, challenging his detention on the grounds that it was unlawful and without ground. The Solicitor General acknowledged that the detention was unlawful and executed a Consent Order acknowledging this. The Applicant was released.

c) Naturalisation

‘Once a person comes into Zambia as a refugee there is no provision under the law whereby they can become a Zambian citizen through naturalisation. Many of those now living in Mayukwayukwa were born in Zambia, attended Zambian schools and yet they remain with the status of refugees.’ Refugees are unable to attain Zambian citizenship regardless of the length of time they stay in Zambia. Even if refugees are married to

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40 No 3242 Friday September 2, 2005. www.post.co.zm p6,
41 Ibid, p 27.
42 This summary was taken from the LRF Annual Report 2004, p19.
43 UNHCR Cord p 10 para 25
Zambians, they do not gain citizenship and may still be forcibly repatriated. Children born in Zambia to refugee parents assume the nationality of their parents, unless one of the parents is Zambian when it is possible to register the baby as a Zambian national. Even if the new Constitutional changes occur under the proposed Article 20, this will only entitle refugees to apply to be registered as citizens. The actual grant of citizenship is governed by Chapter 124 of the Laws of Zambia which permits the citizenship board to grant or deny citizenship to applicants. The discretion of the board is unregulated and not reviewable in Court. Citizenship can be denied for any reason or no reason at all.

Repatriation means that some married couples, where one spouse is Zambian and the other refugee, will have to choose between dissolving the marriage or moving back to the refugee’s country of origin, since there is no provision for a refugee to remain in Zambia regardless of their marital status.

16. ECONOMIC, SOCIAL AND CULTURAL RIGHTS

a) Employment (see section 18-21 of Immigration Act)
In order to acquire a self-employment permit, refugees require $25,000 in assets. The same regulation applies to external investors. They also need a letter from COR supporting the application and must pay a statutory fee of 1,500,000 Kwacha (£190). They also need a certificate of registration of the business in Zambia or a certificate of incorporation.

In order to acquire a work permit, refugees need a letter showing that they have a job offer from an organisation and that organisation is also required to show that no Zambian is qualified to do the job that has been offered to the refugee. Furthermore, refugees must obtain a letter from COR supporting the application for an employment permit. The fee for an employment permit is 1,000,000 Kwacha (£125) if a government sponsored permit or 2,000,000 Kwacha (£250) if private sector application. Despite these obstacles, some refugees do manage to gain employment in the medical and educational sectors where there are acute shortages as a result of the brain drain and HIV/AIDS crisis.

The ban on employment is especially difficult for those refugees who are allowed to be resident outside of the camps, for example for health reasons, yet are given no means of subsistence. In this scenario refugees resort to working in the informal sector, yet if they are caught by the Immigration Department then they will be detained.

b) Food

44 According to the JRS Guide for Refugees, p12.
Despite the forced dependence of those refugees in camps on food assistance, adequate food aid is not always forthcoming. According to an article on the Refugees International Project website dated 07/15/1999, on July 5 1999 refugees in Mwange camp rioted because of alleged deficiencies in the distribution of food and non-food items. A UNHCR field officer and several NGO staff were held hostage and threatened with death at knife-point. Some staff members were physically assaulted. The situation ended when Zambian police fired tear gas and rescued the hostages.

From November 2001 until July 2002, rations in Nangweshi camp (where 25,377 refugees were dependent on rations) were reduced by 50%. During the year 2002, lack of donations for the around 90,000 refugees that depend on food aid, forced the World Food Program to half the rations for several months. The standard ration of 2,100 kcal per person per day was thus reduced to 1,000 kcal. Increase in malnutrition, child mortality and eventually some riots followed. In early 2005 the national shortage of maize prompted the WFP to distribute red sorghum to refugees rather than maize. The red sorghum was rejected by refugees. The Zambian Times reported that refugees at Kala and Mwange had accepted the sorghum meal; however JRS reported that this was

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46 See JRS Website, Nangweshi.
48 In relation to this UNHCR stated: ‘During the Sorghum food distribution and the resentment expressed by the refugees over the sorghum, the Representative, the Senior Regional Social Services and the Senior Protection Officer including the Resettlement Officer from the Regional Office Lusaka visited the refugees and advised them that the sorghum food distribution was a temporary one and that WFP will, in the nearest future carry out the distribution of maize meal. They expressed the fact that sorghum was new to them especially in terms of preparation. UNHCR and WFP assisted the refugees to understand how to process the sorghum and most of them started adapting to the food. It was true that during that period some refugees left the camps spontaneously to the DRC. The number was estimated to be about 3000 refugees. However the spontaneous return was largely attributed to the information that was filtered into the refugee camps Kala and Mwange, that if the refugees failed to return to the DRC and register for the up coming election on time, they will loose their nationality. It must be stressed that UNHCR or WFP cannot use food to push refugees to return as doing so will be tantamount to forced repatriation which is contrary to the principle of voluntary repatriation.’
not the case.\textsuperscript{49} According to JRS the distribution of this foodstuff may have acted as a push factor forcing refugees to leave the camps and return home.\textsuperscript{50}

17. **INTERNALLY DISPLACED PERSONS**\textsuperscript{51}

According to Africa IDP Voice, there are some 600,000 IDPs in Zambia. There are four camps in Zambia specifically for IDPs. Two in Lusaka: One near Independence Stadium, (recently named the Independence Township) which houses 420 families (approx 3,200 people), and another in Linda Compound which houses 300 families (approx 2,100 people). A third camp is Masaiti, in the Copper Belt (NW Zambia) which houses 125 families (approx 700 people) and a fourth (soon to close), is near the Kariba lake and hosts 35,000 Zambians.

\begin{figure}[h]
\centering
\includegraphics[width=\textwidth]{school_in_independence_township.jpg}
\caption{The School in Independence Township}
\end{figure}

**Independence Township (IDP camp for those displaced from Ngombe)**

I visited an IDP camp on the outskirts of Lusaka. This camp is situated next to Lusaka’s rubbish dump. At least one member of the majority of the families in the camp spend their days at the dump, collecting bottles and paper that they can then sell. This work results in illness in camp inhabitants. The IDP camp is two years old, and came into being

\textsuperscript{49} JRS Press Review on Refugee Issues in Zambia, No. 24, 18 March – 15\textsuperscript{th} June 2005, p.4.
\textsuperscript{50} JRS Policy Unit 6 Month Project Report, p.3.
\textsuperscript{51} See above section on Terminology on the difficulties inherent in using the term IDPs.
when 702 families who had been living for over ten years in Ngombe on land owned by the Roman Catholic Church were displaced overnight.

When the displacement occurred, 420 families of the 700 families were given plots of land in ‘Independence Township’ by the government. The remaining families are in Ngombe waiting for promised plots of land, and staying with friends and family. Some of the camp inhabitants have managed to sell these plots of land and move out of the camp. The majority of the camp population are accommodated in tents, the tents are two years old and many are coming apart. The government did provide 50 one room concrete huts, however these were provided only on the basis that the inhabitants would pay the government back within a certain number of years. There is no electricity, water or sanitation, and there is no provision for education of children other than a ripped tent crammed with desks staffed by untrained teachers. The nearest government school and medical facilities are 2km away.

Causes of Internal Displacement in Zambia

Again, according to Africa IDP Voice (the only NGO working with IDPs in Zambia), the causes of this internal displacement are multifarious. Displacement has occurred because of development projects such as the Kariba Dam Construction that has resulted in the displacement of 35,000 Zambians and 20,000 Zimbabweans. There is also the World Bank-sponsored border demarcation with Malawi and Mozambique, which has resulted in those Zambians who lived in the former no-man’s land to be displaced. Africa IDP Voice also stated that some internal displacement was linked to refugee influxes, for example from the 1970s onwards there were frequent UNITA (Angola) invasions in pursuance of those who had fled to Zambia to seek persecution. In 1970 the trouble at the border areas prompted a government decree stating that they could no longer ensure the safety of the border areas and encouraging residents there to move inward. Finally, the troubles in Zimbabwe and South Africa have encouraged a growth in the purchase of Zambian land (especially land owned by chiefs which is 94% of Zambian land) by foreign investors. Land purchased by such investors often includes villages, and the villagers are often displaced. There is no land registration system in Zambia, and no government regulation of land sales to foreigners.
There is currently little assistance for IDPs in Zambia. The Red Cross is able to provide limited welfare. The Government Disaster Management Unit (part of the Office of Vice President) is involved if the situation is formally declared to be a ‘disaster’.

18. ROLE OF THE ZAMBIAN GOVERNMENT, UNHCR AND NGOS IN REFUGEE PROTECTION.

a) Overview of the Role of Governmental and Non-Governmental Organisations working with Refugees in Zambia

<table>
<thead>
<tr>
<th>NAME OF ORGANISATION</th>
<th>ADDRESS</th>
<th>PHONE</th>
<th>ZAMBIA WEBSITE</th>
<th>EMAIL</th>
<th>SERVICES PROVIDED TO REFUGEES</th>
</tr>
</thead>
<tbody>
<tr>
<td>African Humanitarian Action (AHA) (UNHCR IP)</td>
<td>PO Box E891, Postnet 366, Manda Hill, Lusaka</td>
<td>290075</td>
<td><a href="http://www.africahumanitarian.org">www.africahumanitarian.org</a></td>
<td><a href="mailto:ngoaha@zamtel.zm">ngoaha@zamtel.zm</a></td>
<td>UNHCR IP, provide welfare services to refugees in camps and settlements.</td>
</tr>
<tr>
<td>Africa IDP Voice (est.d 2001). HQ in Zambia, also offices in Nairobi, Malawi, Namibia.)</td>
<td>Plot 22714 Leopards Hill Road, Lusaka</td>
<td>2664689, 266482</td>
<td><a href="http://www.idpsadc.org">www.idpsadc.org</a></td>
<td><a href="mailto:idpsadc@executivemail.co.za">idpsadc@executivemail.co.za</a></td>
<td>Legal assistance to displaced persons: eg apply for injunctions against landowners (they do not have their own lawyers due to financial reasons). Raise awareness on protection, assistance and development plight of IDPs and promote their effective protection in Africa. National and international lobbying eg with General Assembly. To proactively facilitate establishment of legal, policy and institutional frameworks for improved assistance and protection mechanisms at national, sub-</td>
</tr>
</tbody>
</table>
Regional and international levels. **International Conventions:** Recently IDP Voice hired a consultant (Chaloka Beyani) to draft the Draft Protocol on IDPs and two others (see Bibliography). Also been assisted by Brookings Institution, Bern University, IDP Project. They are confident that this will be signed in Nairobi in November 2005. **Data Collection**—numbers and economic and social conditions of IDPs. **Include Refugees:** Some of their work has a holistic approach and includes refugees, eg Draft Protocol on Property Rights of Returning Populations.

<table>
<thead>
<tr>
<th>Ministry of Home Affairs - Office of the Commissioner for Refugees</th>
<th>Plot No 1/4637, Chipowa Road, Rhodes Park, PO Box 50997, Lusaka</th>
<th>Ultimate responsibility for refugees within Zambia. Includes: Eligibility Committee, Residency Committee. Within each settlement or camp, COR is represented by a Refugee Officer (RO).</th>
</tr>
</thead>
<tbody>
<tr>
<td>Christian Outreach Relief Development (CORD) (UNHCR IP)</td>
<td>PO Box 30685, Ridgeway, Lusaka</td>
<td>261 655 <a href="http://www.cord.org.uk">www.cord.org.uk</a> <a href="mailto:cord@zamnet.zm">cord@zamnet.zm</a> Responsibility for community services in Mayukwayukwa refugee settlement and Nangweshi refugee camp. Services included: • Primary education (Nangweshi only) • Adult literacy • HIV/AIDS awareness raising • Apprenticeship training • Support for women’s groups • Sports and cultural activities • Small enterprise</td>
</tr>
<tr>
<td>Facilitating Opportunities for Refugee Growth &amp; Empowerment program FORGE</td>
<td>World Refugee Academy PO Box 3745 Gaborone, Botswana</td>
<td>(707) 529-3048 <a href="http://www.forgeprogram.org">http://www.forgeprogram.org</a> <a href="mailto:kjerstin@forgeprogram.org">kjerstin@forgeprogram.org</a> An ‘operational partner of UNHCR’, ‘FORGE projects are life-enriching development ventures’. Sends American undergraduates to refugee camps and settlements to live there for the summer. During this time students pursue their own projects eg arts and crafts with refugees. Also some fundraising.</td>
</tr>
<tr>
<td>HODI (UNHCR IP)</td>
<td>PO Box 290455 Lusaka</td>
<td>292376 <a href="mailto:Hodi@zamnet.zm">Hodi@zamnet.zm</a> Cord’s implementing partner.</td>
</tr>
<tr>
<td>International</td>
<td>PO Box</td>
<td><a href="http://www.ifrc.org">http://www.ifrc.org</a></td>
</tr>
<tr>
<td>Organization</td>
<td>Address</td>
<td>Phone Numbers</td>
</tr>
<tr>
<td>--------------</td>
<td>---------</td>
<td>---------------</td>
</tr>
<tr>
<td>Federation of the Red Cross, Zambia Delegation.</td>
<td>50001 RW 15101 Lusaka</td>
<td>253661; 251365; fax: 251599</td>
</tr>
<tr>
<td>IOM</td>
<td>P.O. Box 32036, Lusaka, Zambia or Plot 4624 Rhodespark</td>
<td>25-4055</td>
</tr>
<tr>
<td>Jesuit Refugee Service (UNHCR IP)</td>
<td>P O Box 37960</td>
<td>Tel.: 290912; 293320</td>
</tr>
<tr>
<td>Legal Resources Foundation</td>
<td>Woodgate House, Second Floor, Cairo</td>
<td>221263, 223758 Fax: 260-</td>
</tr>
<tr>
<td><strong>UNHCR:</strong></td>
<td>Horizon House, Leopards Hill Road, PO Box 32542, Lusaka.</td>
<td>265873-6</td>
</tr>
<tr>
<td>World Vision Development of Water Affairs (UNHCR IP)</td>
<td>PO Box 730159, Kawambwa</td>
<td>960177</td>
</tr>
<tr>
<td>Zambian Christian Refugee Service ie LWF (UNHCR IP)</td>
<td>Manda Hill Road, Stand No 3874, Po Box 32778, Lusaka</td>
<td>290 593 291 804</td>
</tr>
</tbody>
</table>
mainly from Angola with smaller numbers from Democratic Republic of the Congo, Rwanda and Burundi. The project provides basic services, including water and sanitation, health and nutrition, food distribution and community schools. An integrated approach includes an emphasis on agriculture, environmental protection and HIV/AIDS. In cooperation with the Zambian government and UNHCR, ZCRS is also responsible for the reception and transportation of new arrivals, and supports the process of repatriation of refugees.

<table>
<thead>
<tr>
<th>Zambian Red Cross Lusaka Urban Refugee Project (UNHCR IP)</th>
<th>Red Cross Urban Refugee Project, Bombay Street, Near Kamwala Market.</th>
<th>237 406</th>
<th><a href="http://www.ifrc.org/where/country/cn6.asp?countryid=12">http://www.ifrc.org/where/country/cn6.asp?countryid=12</a></th>
<th><a href="mailto:zrcs4csp@zamtel.zm">zrcs4csp@zamtel.zm</a></th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Run a transit centre (Makeni) for refugees with pending cases, providing them with food and shelter. 2. Funding education for urban refugees in national schools (refugees with status only). 3. Transportation for refugees who have been detained, back to the camps. 4. Provide basic health services (onsite registered nurse.) 5. Provide community services to those refugees unable to travel. 6. Make representations to COR's Residency Committee and Immigration Department on behalf of refugees who need their residency order extended due to medical or educational needs. 7. Provide welfare to refugees and asylum seekers in detention. Provision of blanket, second hand cloths, soap and toothpaste. No provision of food. Services offered to recognized refugees and those asylum seekers with report orders issued by the immigration department indicating that they are awaiting result of RSD.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### b) The Role of UNHCR

COR stressed that UNHCR currently had full access to refugee cases that went before the Eligibility Committee as an observer. However there are no observers at the level of the DJOC or PJOC. These bodies are obliged to forward cases if they fall under the 1951 Convention; however this obligation is not a legal obligation. The Senior Legal Officer informed me that 1951 cases are very rare.
UNHCR and COR obviously work very closely, and personnel at all levels are on friendly terms. It is also noteworthy that UNHCR funds the employment of the entire legal team (three lawyers) at COR. Furthermore; several of the vehicles belonging to COR are UNHCR donations.

c) The Relationship between COR & NGOs
Since many refugees are in camps, it is effectively COR who controls access to the camps. COR have suggested to several NGOs working in the field, that they should not offer their services to asylum seekers in case this acts as a ‘pull factor’ drawing asylum seekers to Lusaka. Ultimately COR could have an organisation deregistered so that they can no longer work in Zambia.

19. Conclusion: The Scope for Greater NGO Involvement

The current focus of NGOs currently providing legal aid to refugees in Zambia is on legal advice and short term remedies for those in detention. Whilst there is indeed an urgent need for this, if capacity of these organisations was increased then there are further gaps in the civil society protection of refugee rights that could be filled.

Whilst JRS have produced an extremely informative guide for refugees on their rights and obligations and do offer ad hoc legal advice, there is a need to establish a full-time permanent legal advice clinic in central Lusaka (and ideally also in the camps and settlements) that can advise those seeking asylum regarding the process. The Commissioner for Refugees told me that the government would welcome such an initiative, which would build on JRS’s current work.

It is hoped that this legal assistance could also take the form of legal representation before COR and the Eligibility Committee, however COR indicated to me that such NGO ‘participation’ in RSD would be unwelcome. The Commissioner explained that he feared a situation, as often happens in Zambia, where NGOs and the government become locked in an antagonistic relationship which benefits neither institution. The Commissioner also felt that it would not be acceptable to the government if NGOs took on the role of documenting information (preparing testimonies), and then seeking to present this information to the government.

There is also a need for legal assistance to those refugees writing their letters of appeal to the Minister, and to those refugees who may be eligible to have their files re-opened. There is a need to increase the number of lawyers and para-legals visiting detention centres, especially those detention centres outside of Lusaka, which currently are not being visited. Within the next few years, if COR continue with their plans to apply the ‘cessation clause’, there will be an urgent need for independent legal advice on a large scale to refugees who are due to be interviewed to ascertain if they have a ‘continued need for protection.’

There is real scope in Zambia for some high-profile litigation, which may offer long-term solutions to the gaps in refugee protection in Zambia. Given the incompatibility of current Zambian laws that discriminate against refugees, with international humanitarian
law it is hoped that the Zambian policies especially regarding long-term detention can be challenged. LRF already have experience of such litigation, both on a domestic and international scale.

Finally, there is scope for heightening the amount of lobbying of the Zambian government (especially Parliament) regarding reform of the Refugee Control Act, and incorporating the 1951 Convention and 1969 Agreement into domestic law. Such lobbying should also make it clear to the Zambian government that they need to accept their responsibility for Zambian citizens (the IDPs) who have been displaced and who are in urgent need of short term welfare assistance and clarification of their legal rights. In addition, there is a need for sustained lobbying of both UNHCR and its implementing partners regarding the welfare of so-called ‘irregular movers’ (who they currently consider not to be ‘persons of their concern’), since there is an urgent need to find a ‘durable solution’ to their long term detention.

Claire Darwin

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October 2005

clairedarwin25@yahoo.co.uk

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