



UNHCR

United Nations High Commissioner for Refugees
Haut Commissariat des Nations Unies pour les réfugiés

Submission by the United Nations High Commissioner for Refugees

For the Office of the High Commissioner for Human Rights' Compilation Report Universal Periodic Review:

ZAMBIA

I. BACKGROUND INFORMATION AND CURRENT CONDITIONS

A. Scope of international obligations

Zambia is a State party to the *1951 Convention relating to the Status of Refugees (1951 Convention)* and its *1967 Protocol*, but has entered reservations with regard to the right to employment (Art. 17.2), education (Art. 22.1), freedom of movement (Art. 26) and travel documents (Art. 28). Zambia also is party to the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa (1969 OAU Convention), and most refugees in Zambia have been recognized under its Article 1.2 on a *prima facie* basis.

Zambia is party to the *1954 Convention relating to the Status of Stateless Persons (1954 Convention)*, but not to the *1961 Convention on the Reduction of Statelessness (1961 Convention)*. However, at the Ministerial Meeting held in Geneva in December 2011, in commemoration of the 60th anniversary of the *1951 Convention* and the 50th anniversary of the *1961 Convention*, the Zambian Government pledged “to take all necessary measures to become party to the *1961 Convention on the Reduction of Statelessness*.”

B. Constitutional and legislative framework

At the national level, the Refugee (Control) Act of 1970 and other pieces of subsidiary legislation regulate the institution of asylum. The Refugee (Control) Act reflects the reservations made to the *1951 Convention*. For example, it has an encampment policy and does not incorporate certain international standards, such as the principle of *non-refoulement*. In fact, the Act gives the Minister of Home Affairs wide discretion to deport refugees from the territory. Also, the Act does not provide for the possibility to appeal rejections of asylum applications to an independent authority.

At the time of submission, the Refugee Bill, intended to replace the Refugee (Control) Act, is pending submission to Parliament for adoption. Although the Refugee Bill is a great improvement compared to the Refugee (Control) Act, it retains the following restrictions of concern: the encampment policy and restrictions on freedom of movement; limitations on refugees' right to work; restrictions on refugees' freedom of association and expression; and the requirement to submit an asylum application within 7 days of entry into the country. Like the 1970 Refugee (Control) Act, the Refugee Bill also lacks provisions on facilitated local integration.

The new Immigration and Deportation Act adopted in 2010 is more in compliance with relevant international standards than the previous Act from 1965. Nonetheless, it neither incorporates the principle of *non-refoulement*, as set out in Article 33 of the

1951 Convention, Article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 7 of the International Covenant on Civil and Political Rights or Article 16 of the International Convention for the Protection of All Persons from Enforced Disappearance, nor provides for an effective remedy against deportation orders.

The current Constitution of the Republic of Zambia was enacted in 1996. At the time of submission, Zambia is in the process of drafting a new constitution and bill of rights. In this context, UNHCR notes the concern expressed by the Human Rights Committee (HRC) “...that the exceptions taken to the right not to be discriminated against, as provided for in article 23 of the Constitution, are not in compliance with articles 2, 3 and 26 of the Covenant [on Civil and Political Rights]. The Committee is concerned, in particular, at exceptions relating to “(a) non-citizens...” UNHCR thus supports the HRC’s recommendation that Zambia “...should review article 23 of the Constitution in order to bring it in line with articles 2, 3 and 26 of the Covenant.”¹ UNHCR likewise supports the recommendation by the Committee on the Elimination of Racial Discrimination (CERD) to Zambia “...that it facilitate the constitutional review process and amend article 23 (4) of the Constitution so as to ensure the full implementation of the prohibition of racial discrimination. The Committee draws the attention of the State party to its general recommendation XXX (2004) on non-citizens. It also stresses that respect for customary law and practices should not be ensured through a general exception to the principle of non-discrimination, but should rather be implemented through positive recognition of cultural rights.”²

C. Institutional and human rights structure

The Office of the Commissioner for Refugees, headed by the Commissioner for Refugees, in the Ministry of Home Affairs (MHA) bears primary responsibility for the administration of refugee affairs in Zambia. The Office receives and determines asylum-applications submitted directly to the Office in the capital city (as opposed to in refugee-prone border districts, where Provincial and District Joint Operations Committees initially screen applications, *see below*), registers asylum-seekers and refugees in the *proGres* database and maintains statistics. The Commissioner for Refugees has the authority to grant refugee status pursuant to the 1969 OAU Convention and chairs the National Eligibility Committee (NEC), which determines applications for refugee status that fall within the terms of the *1951 Convention* (as opposed to Art.1.2 of the OAU Convention), as well as the Sub-Committee on Urban Residency, which reviews applications from refugees for residence outside the designated settlements. The NEC also reviews appeals. UNHCR is an observer with an advisory role on both the NEC and the Sub-Committee on Urban Residency.

Asylum-seekers arriving in refugee-prone border districts are screened by Provincial and District Joint Operations Committees (PJOC and DJOC), which are responsible for establishing the identity of the applicant and his/her reasons for leaving the country of origin, as well as for screening out armed elements, combatants and others considered to be a threat to national security. PJOCs and DJOCs also have the authority to grant refugee status pursuant to Article 1.2 of the 1969 OAU Convention.

¹ CCPR/C/ZMB/CO/3, Human Rights Committee, 90th Session, 20 July 2007.

² CERD/C/ZMB/CO/16, Committee on the Elimination of Racial Discrimination, 67th Session, 27 March 2007.

The PJOCs and DJOCs comprise representatives from the Army, Office of the President, Police and Immigration authorities and derive the competencies described from government policy rather than from any legal instrument or statute. Normally, claims assessed by DJOCs to fall within the *1951 Convention* criteria are referred to the Office of the Commissioner for Refugees for refugee status determination by the NEC.

D. Policy measures

The Government's reservation to Article 26 on freedom of movement in the *1951 Convention* has been domesticated into an encampment policy that requires refugees to reside in one of the two designated settlements, Mayukwayukwa and Meheba, unless they qualify for a permit to reside in urban areas. Such permits are granted by the Sub-Committee on Urban Residency, chaired by the Commissioner for Refugees and comprising officials from, *inter alia*, the Immigration Department and Ministry of Labour and Social Services. Urban residency permits are granted to refugees who meet one or more of the restricted grounds, including employment, self-employment, study, medical, security, resettlement, special protection needs or based on family/dependency links with refugees eligible for a permit. These criteria for urban residency were introduced in 2000.

As of December 2011, Zambia hosted 46,653 refugees and asylum-seekers from Angola (23,520), the Democratic Republic of the Congo (DRC) (12,857), Rwanda (5,676), Somalia (2,267), Burundi (2,119) and other countries (214). The majority live in the Mayukwayukwa (9,445) and Meheba (17,332) refugee settlements, while 14,427 are recorded as self-settled around the country. Of the 46,653 asylum-seekers and refugees, 4,407 refugees are registered in urban areas as being, or having been in possession of an urban residence permit and having been verified since 2010. In addition, several thousand refugees recognized by the Government live in urban areas without the required urban residency permit and consequently without being registered in the *proGres* database and without documentation; most of them lived in urban areas prior to 2000 when the restrictive criteria for urban residency were introduced.

II. ACHIEVEMENTS AND POSITIVE DEVELOPMENTS

Zambia has a long tradition of hosting refugees, starting with Polish refugees fleeing the Holocaust during World War II. In the period between 1960 and 1990, Zambia received several hundred thousand refugees, including liberation fighters from many of the African countries who were engaged in long struggles to win independence from colonialism and apartheid. In the decade that followed, Zambia became the country of asylum for approximately another 100,000 refugees fleeing conflicts in the Great Lakes Region, in particular the DRC, Burundi and Rwanda. This hospitality has been recognized by many, including UNHCR and the UN Special Rapporteur on the question of human rights and extreme poverty, Ms. Magdalena Sepúlveda Carmona, in her report to the Human Rights Council.³ Today, Zambia annually receives a relatively small number of asylum-seekers fleeing persecution, generalized violence and armed conflict, primarily from Somalia and the DRC.

³ A/HRC/14/31/Add.1, Report of independent expert on the question of human rights and extreme poverty, Magdalena Sepúlveda Carmona, Human Rights Council, 14th Session, 11 May 2010, para. 35.

III. CHALLENGES AND RECOMMENDATIONS

Issue 1: Solutions for long-term refugees

The protection environment and operational context in Zambia is generally receptive and hospitable towards refugees and asylum-seekers. Of the refugees registered in the settlements or urban areas, 47% were born in Zambia and 12% fled to Zambia more than 15 years ago. 59% of the Angolan refugees registered in the Mayukwayukwa and Meheba refugee settlements were born in Zambia. Although most of the refugees are socially and economically integrated, legal integration is not currently facilitated under national law, and refugees are not eligible for naturalization, as they are not considered 'ordinary residents' under the Constitution in force.

However, despite resistance expressed in the past by some towards introducing legal provisions that would allow for facilitated local integration, UNHCR is hopeful that this durable solution could become an option in the near future for refugees, in particular from Angola, with strong family, social and/or economic links to Zambia as a result of long stay. At the Ministerial Meeting held in Geneva in December 2011 to commemorate the 60th anniversary of the *1951 Convention*, the Zambian delegation presented a pledge of commitment to locally integrate some 10,000 Angolan refugees who have stayed in Zambia for decades, provided the international community supports certain host area infrastructural projects.

Recommendation: In this context, UNHCR supports the recommendation by the CERD, which encourages Zambia “to review its current refugee policy with a view to enhancing prospects for local integration of long-term refugees.”⁴ The Special Rapporteur on human rights and extreme poverty, Ms. Magdalena Sepúlveda Carmona, has similarly recommended the Government “take all necessary steps to ensure and facilitate durable solutions for refugees who decide to stay in the country because they have a well-established connection thereto or owing to other factors prohibiting their return to their country of origin.”⁵ In particular, UNHCR encourages the Government to formally implement the pledge made at the Ministerial Meeting to locally integrate Angolan refugees with strong family, social and/or economic links to Zambia as a result of long stay in this country, and extend such local integration possibilities to refugees of other nationalities who meet the same criteria.

Issue 2: Respect for international obligations

A major obstacle to refugees' ability to enjoy their rights, access services and attain self-reliance are the reservations Zambia has entered to the *1951 Convention* on freedom of movement and the right to employment, which consequently hamper UNHCR's ability to implement effectively its policy on refugee protection and solutions in urban areas. As a result of the encampment policy, several thousand

⁴ CERD/C/ZMB/CO/16, Committee on the Elimination of Racial Discrimination, 67th Session, 27 March 2007.

⁵ A/HRC/14/31/Add.1, Report of independent expert on the question of human rights and extreme poverty, Magdalena Sepúlveda Carmona, Human Rights Council, 14th Session, 11 May 2010, para. 39.

refugees recognized by the Government reside outside the designated settlements without being in possession of the required residence permit, granted on restricted grounds, and consequently without being registered, documentation and equal access to services. Many of these refugees, particularly the women and children, are at heightened risk of exploitation and abuse due to their lack of documentation and difficulties in securing a livelihood. As mentioned in the report by the Special Rapporteur on human rights and extreme poverty: *“The expert met with a group of refugees from various backgrounds living in Lusaka. Reports and their testimonies indicate difficult conditions of living resulting from limited access to work. Because of the impediments to legal work, many resort to informal markets where they are exposed to exploitative working conditions. At the same time, social discrimination makes it difficult for refugees and asylum-seekers to access health facilities and the educational system. All these factors make them tremendously vulnerable to extreme poverty.”*⁶

Recommendations: UNHCR supports the recommendation by the CERD that Zambia *“review the Refugee Control Act and consider withdrawing its reservation to the 1951 Convention relating to the Status of Refugees.”*⁷ Additionally, UNHCR encourages the Government to speedily implement the pledge made at the Ministerial Meeting held in Geneva in December 2011, *“to repeal and replace the domestic refugee legislation, the 1970 Refugees (Control) Act in order to bring it more in conformity with the 1951 UN Convention..”* through adopting the Refugee Bill and subsequently enact implementing legislation, including on the establishment of an independent appeals body. UNHCR urges the Government to also engage in a review of the four reservations to the *1951 Convention*, including in regard to the right to education, freedom of movement and the right to work, which can subsequently lead to a further alignment of the new refugee legislation to international refugee and human rights law standards, including on freedom of movement. Pending a withdrawal of the reservation to Article 26 on freedom of movement in the *1951 Convention*, UNHCR encourages the Government to consider a relaxation of its encampment policy, at least to allow for the registration and documentation of all refugees in its territory.

Issue 3: Protection against refoulement

As mentioned above, both the 1970 Refugee (Control) Act and the 2010 Immigration and Deportation Act give the Minister of Home Affairs authority to deport non-citizens from its territory without the safeguards required by the principle of non-refoulement.

Recommendations: UNHCR supports the recommendation by the Committee against Torture (CAT) that Zambia *“should ensure that the new Refugee Bill and the Immigration and Deportation Act fully comply with article 3 of the Convention. The State party should also provide the Committee with detailed information on cases of denial of extradition, return or expulsion owing to the risk that the person might be*

⁶ A/HRC/14/31/Add.1, Report of independent expert on the question of human rights and extreme poverty, Magdalena Sepúlveda Carmona, Human Rights Council, 14th Session, 11 May 2010, para. 36.

⁷ CERD/C/ZMB/CO/16, Committee on the Elimination of Racial Discrimination, 67th Session, 27 March 2007.

subjected to torture, ill-treatment or the death penalty upon return.”⁸ The Special Rapporteur on the question of human rights and extreme poverty, Ms. Magdalena Sepúlveda Carmona, has similarly “...welcome[d] the fact that the Government intends to adopt the new Refugee Act to replace the Refugee Control Act (1970). She is concerned that existing legislation is not in line with international human rights standards. From a human rights perspective, it is crucial that any new act not only ensures the right to work and freedom of movement for refugees and asylum-seekers, but also explicitly provides for the principle of non-refoulement and local integration.”

Issue 4: Combat sexual and gender-based violence (SGBV)

As noted by the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo,⁹ “[v]iolence against women, including defilement, rape, early marriages and survival sex, continues to be a major problem affecting women asylum seekers and refugees, both those in camps and settlements and those residing in urban areas outside the designated settlements.” However, the number of reported cases is low. Gender inequality, lack of self-reliance opportunities and impunity of perpetrators are among the contributing factors. Girls also report sexual abuse and harassment by teachers in both community and basic schools in the settlements.

Recommendations: UNHCR urges the Government to integrate refugees, in particular women and girls, in its efforts to promote gender equality and to support the law enforcement and judicial authorities to take resolute steps to protect victims of SGBV and to prosecute perpetrators, including through implementation of the Anti-Gender Based Violence Act. In this context, UNHCR welcomes the recommendation by the Committee on the Elimination of Discrimination against Women to Zambia to “Take steps to investigate, prosecute and punish all perpetrators of violence against women refugees, to implement gender sensitive approaches to asylum claims, and to continue to collaborate with the international community, especially the Office of the United Nations High Commissioner for Refugees (UNHCR), in these efforts.”¹⁰ UNHCR also supports the recommendation by the Special Rapporteur on human rights and extreme poverty, that “[t]he Government must take all appropriate measures to modify social and cultural patterns that reinforce discriminatory practices against groups that are particularly vulnerable to poverty such as women, children, older persons, persons with disabilities, persons living with HIV/AIDS, migrants, asylum-seekers and refugees.”¹¹

Issue 5: Access to education for refugee and asylum-seeking children

⁸ CAT/C/ZMB/CO/2, Committee against Torture and other Cruel, Inhuman and Degrading Treatment, 40th Session, 15 May 2008.

⁹ A/HRC/17/26/Add.4, Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo, Human Rights Council, 17th Session, 2 May 2011.

¹⁰ CEDAW/C/ZMB/CO/5-6, Committee on the Elimination of all forms of Discrimination Against Women, 49th Session, 19 September 2011.

¹¹ A/HRC/14/31/Add.1, Report of the Special Rapporteur on the question of human rights and extreme poverty, Magdalena Sepúlveda Carmona, Human Rights Council, 14th Session, 11 May 2010, para. 111.

In regard to refugee children, the Government has entered a reservation to Article 22.1 of the *1951 Convention*, which reads “*The Government of the Republic of Zambia wishes to state that it considers article 22 (1) to be a recommendation only and not a binding obligation to accord to refugees the same treatment as is accorded to nationals with respect to elementary education.*” Zambia has also made a reservation to ICESCR in regard to education. A corresponding reservation has not been made with respect to the *Convention on the Rights of the Child*.

Recommendations: UNHCR encourages the Government to withdraw its reservation to Article 22.1 of the *1951 Convention*.

Issue 6: Birth registration

Birth registration in Zambia remains low. In a joint re-registration exercise conducted by the Office of the Commissioner for Refugees and UNHCR in 2010, it was established that less than 5% of the refugee children living in the two settlements have obtained birth certificates. UNHCR consequently supported mobile registration campaigns in the settlements in 2011 and will do so again in 2012, until the backlog has been cleared.

Lack of birth registration puts children at risk of statelessness because such documentation provide important proof of elements that establish an entitlement to nationality, more particularly where the child was born and the nationality of his/her parents. Lack of birth registration also hinders children’s access to essential social services upon return and reintegration to their countries of origin as such services are typically available only to nationals, thereby increasing their vulnerability.

Recommendations: UNHCR urges the authorities to make its system for continuous issuance of birth certificates to newborn refugee children more efficient, including through decentralization of the process of reviewing applications for birth certificates and their issuance.¹²

Issue 7: Statelessness

Zambia’s nationality legislation lacks some important safeguards to prevent statelessness. For example, there is no safeguard against statelessness for children born in Zambia who would otherwise be stateless. In addition, there is no safeguard which provides for foundlings in Zambia to be granted Zambian citizenship. The *1961 Convention* establishes safeguards to prevent statelessness at birth.

At UNHCR’s Ministerial Meeting in December 2011, in addition to pledging “*to take all necessary measures to become party to the 1961 Convention on the Reduction of Statelessness*”, the Government also requested UNHCR’s support to conduct an independent Study on the issue of statelessness in Zambia, which will inform the

¹² In this context the following 2003 CRC concluding observation and recommendations continue to be relevant: “In the light of article 7 of the Convention, the Committee urges the State party to strengthen its efforts to ensure that all children are registered at birth, including through awareness-raising campaigns (e.g. using the Day of the African Child); to reinforce its efforts to facilitate birth registration procedures; and to take measures to decentralize the system, consider introducing mobile registration units, and register without fees those children who were not registered at birth.”

action required to become party to the 1961 Convention and help the Government develop a strategy to deal with statelessness in the country either for populations already affected or at risk of becoming stateless.

Recommendations: As part of its constitutional redrafting process, Zambia is encouraged to review its nationality provisions contained in the current Constitution with a view to bringing them into line with the international standards to prevent statelessness contained in the *1961 Convention*. Additionally, in accordance with its pledge made at the Ministerial Meeting, Zambia should take all necessary measures to become party to the *1961 Convention* in the near future.

IV. CAPACITY-BUILDING AND TECHNICAL ASSISTANCE

UNHCR plans to continue supporting the Government in its implementation of international and regional standards pertaining to the protection of refugees, including through the further development of a fair and efficient asylum procedure, and pertaining to the prevention and reduction of statelessness and protection of stateless persons. In regard to the pledges made at the Ministerial Meeting in Geneva in December 2011, UNHCR is committed to doing its utmost to support refugees and their hosting communities in realizing local integration as a durable solution and in supporting an independent study on the issue of statelessness in the country. Following adoption of the Refugee Bill, UNHCR stands ready to support the authorities in drafting implementing legislation and in developing the capacity of the new asylum system and bodies foreseen in the Bill. In support of Zambia's review of its reservations to the *1951 Convention*, UNHCR has commissioned an independent study, which will be ready in 2012, to examine the compatibility of the respective reservations with Zambia's human rights obligations, and their relevance in the contemporary context. Other specific areas in which UNHCR is eager to continue capacity building and providing technical support is in regard to birth registration and support to victims of gender-based violence in accessing justice, to ensure perpetrators are prosecuted and punished.

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