



**PROTECTING RIGHTS OF ASYLUM SEEKERS AND
REFUGEES UNDER INTERNATIONAL LAW: A CASE
STUDY OF THE PRACTICE OF ZAMBIA**

BY

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ABSTRACT

The world is currently facing unprecedented refugee crisis which has forcibly displaced 65.3 million people world-wide. This has deleterious effect worse than of the First and Second World Wars. Thus, the present refugee crisis has brought untold misery ever witnessed by humanity before. Millions of these refugees are languishing in foreign countries as they are unable to access international protection. Even those that have been granted asylum, their rights and fundamental freedoms are not respected. While millions of others have perished in the waters in their struggle to seek international protection across the Seas and millions of others are internally displaced and persecuted by their own oppressive governments. These are traumatising events which precipitated this research to investigate into the factors responsible for refugee flight, the condition of refugees in countries of asylum and the extent to which international law, the 1951 Refugee Convention and its 1967 Protocol protect the rights and fundamental freedoms of asylum seekers and refugees. A Case Study for this research was conducted in Zambia investigating into its protection system of asylum seekers and refugees, its asylum laws, policies and its implementation of the 1951 Refugee Convention and other international human rights conventions as they constitute part of the Refugee Convention and its Protocol. Thus, this study has established that most violations of human rights of refugees happen the moment they fall into effective control of States of asylum and prior to refugee recognition in form of physical assault, sexual harassments, arbitrary arrests and detention. But this research has proved that every refugee is initially an asylum seeker protected under international law. This research has applied syntheses of doctrinal and non-doctrinal analysis of legal documents, facts and the data qualitatively. Its theoretical framework is predicated on universalism of human rights as inalienable, interrelated and interdependent applicable to every individual human being. Further established that the object and purpose of the Refugee Convention is to ensure that refugees enjoy maximum protection and the rights enumerated in the Convention in the territory of States Parties. It is for this reason that reservations to the Refugee Convention are incompatible with this object and purpose. And further established that human rights conventions including Refugee Convention do not confer on States Parties any reciprocal rights or mutual benefit, but only confer the rights on all individuals in their territory. Another primary focus of this research was on protection system of refugees from Islamic law perspective critically analysed in Chapter Five. This was triggered by the shocking statistics released by the UNHCR that 54 % of the world refugee population is produced from three Muslim States only and, paradoxically, most of these refugees are also hosted by the Muslim States. Further, although Muslim Jurists have not developed Islamic refugee law, this study has established that Islam has long history of refugee protection which predates modern refugee law. By the 6th century, Islam had established all basic principles for the protection of refugees such as the principles of *non-refoulement*, *al-Aman wa al-Musta'amin* (safety and protected person), local integration and naturalisation of refugees as a durable solution, the concept of cessation of *Hijrah* (migration and refugee status), *inter alia*.

ملخص البحث

يواجه العالم حالياً أزمة لاجئين لم يسبق لها مثيل، مما أدى إلى تشريد ٦٥,٣ مليون شخص قسراً في جميع أنحاء العالم. وهذا له تأثير ضار أسوأ من الحرب العالمية الأولى والثانية. وبالتالي، جلبت أزمة اللاجئين الحالية للبشرية بؤساً يعجز عنه الوصف. ويتعرض الملايين من هؤلاء اللاجئين لقيود في بلدان أجنبية نظراً لعدم قدرتهم على الحصول على الحماية الدولية. وحتى أولئك الذين مُنحوا حق اللجوء، لا تُحترم حقوقهم وحرابتهم الأساسية. في حين أن ملايين آخرين قد لقوا حتفهم في المياه في كفاحهم من أجل التماس الحماية الدولية عبر البحار، وملايين آخرين قد نزحوا داخلياً واضطهدتهم حكوماتهم القمعية. وهذه الأحداث المؤلمة هي التي دفعت هذا البحث للتحقيق في العوامل المسؤولة عن هروب اللاجئين، وحالة اللاجئين في بلدان اللجوء، ومدى تطبيق القانون الدولي، واتفاقية اللاجئين لعام ١٩٥١ المتعلقة بوضع اللاجئين وبروتوكولها عام ١٩٦٧ المتعلق بوضع اللاجئين وحماية الحقوق والحريات الأساسية لطالبي اللجوء واللاجئين. وأجريت دراسة حالة لهذا البحث في زامبيا للتحقيق في نظام حمايتها لطالبي اللجوء واللاجئين وقوانينها المتعلقة باللجوء وسياساتها وتنفيذها لاتفاقية اللاجئين لعام ١٩٥١ وغيرها من الاتفاقيات الدولية لحقوق الإنسان التي تشكل جزءاً من الاتفاقية الخاصة بوضع اللاجئين والبروتوكول الملحق بها. ومن ثم، أثبتت هذه الدراسة أن معظم انتهاكات حقوق الإنسان للاجئين تحدث عندما يقعون تحت السيطرة الفعلية لدول اللجوء وقبل الاعتراف باللاجئين في شكل اعتداء جسدي، ومضايقات جنسية، واعتقالات تعسفية، واحتجاز. ولكن هذا البحث أثبت أن كل لاجئ هو في البداية طالب لجوء محمي بموجب القانون الدولي. وقد طبق هذا البحث مزيج من التحليل النوعي العقائدي وغير العقائدي للوثائق القانونية والحقائق والبيانات. ويستند إطاره النظري إلى عالمية حقوق الإنسان باعتبارها غير قابلة للتصرف ومترابطة ومتشابكة تنطبق على كل إنسان. وأكد كذلك أن الغاية من اتفاقية اللاجئين والغرض منها هو ضمان تمتع اللاجئين بأقصى قدر من الحماية والحقوق الواردة في الاتفاقية في إقليم الدول الأطراف. ولهذا السبب فإن التحفظات على اتفاقية اللاجئين لا تتفق مع هذا الهدف والغرض. كما أن اتفاقيات حقوق الإنسان، بما في ذلك اتفاقية اللاجئين، لا تمنح الدول الأطراف أي حقوق متبادلة أو منفعة متبادلة، ولكنها تمنح الحقوق لجميع الأفراد الموجودين في أراضيها. وقد ركز هذا البحث أساساً على نظام حماية اللاجئين من منظور الشريعة الإسلامية الذي تم تحليله بشكل نقدي في الفصل الخامس. وقد نجم عن ذلك الإحصائيات الصادمة التي أصدرتها مفوضية الأمم المتحدة لشؤون اللاجئين بأن ٥٤٪ من اللاجئين في العالم من ثلاث دول مسلمة فقط، ومن المفارقات أن معظم هؤلاء اللاجئين تستضيفهم الدول الإسلامية أيضاً. وعلى الرغم من أن الفقهاء المسلمين لم يضعوا قانون اللاجئين الإسلامي، فقد أثبتت هذه الدراسة أن الإسلام له تاريخ طويل في حماية اللاجئين والذي يسبق قانون اللاجئين الحديث. ففي القرن السادس، وضع الإسلام جميع المبادئ الأساسية لحماية اللاجئين، مثل مبادئ عدم الإعادة القسرية، والأمان والمستأمن (السلامة والحماية الشخصية)، والإدماج المحلي وتجنيس اللاجئين كحل دائم، ومفهوم وقف الهجرة (المجرة ووضع اللاجئ)، في جملة أمور.

APPROVAL PAGE

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DECLARATION

I hereby declare that this thesis is the result of my own investigations, except where otherwise stated. I also declare that it has not been previously or concurrently submitted for any other degrees at IIUM or other institutions.

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The Refugees Act, No.1 of 2017 of the Laws of Zambia.
The Statute of the United Nations High Commissioner for Refugees (UNHCR) of 1950.

LIST OF ABBREVIATIONS

ACHDEG07	African Charter on Democracy, Elections and Governance, 2007
ACHPR81	African Charter on Human and Peoples' Rights, 1981.
AU/OAU Refugee Convention 69	Convention Governing the Specific Aspects of Refugee Problems in Africa, 1969
ALCCPCTR69	African Legal Consultative Committee, Principles Concerning the Treatment of Refugees, 1969.
ACHRAP88	American Convention on Human Rights, Additional Protocol 1988.
ADRDM48	American Declaration of the Rights and Duties of Man 1948
CDHRI90	Cairo Declaration on Human Rights in Islam.
CDRCIPR84	Cartagena Declaration on Refugees, Colloquium on the International Protection of Refugees in Central America, Mexico and Panama Adopted by the Colloquium on the International Protection of Refugees in Central America, Mexico and Panama, Held at Carta, 1984.
CSR51	Convention Relating to the Status of Refugees 1951
PSR67	Protocol Relating to the Status of Refugees 1967.
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984.
CERD65	Convention on the Elimination of All Forms of Racial Discrimination, 1965
CEDAW79	Convention on the Elimination of All Forms of Discrimination Against Women, 1979.
CRC89	Convention on the Right of the Child 1989.
GC48	Convention on the Prevention and Punishment of the Crime of Genocide 1948.
CADE60	Convention Against Decrimination in Education, 1960
DSPRC&P01	Declaration of States Parties to the 1951 Convention and / or Its 1967 Protocol of 2001
DRD86	Declaration on the Right to Development, 1986.
ECOSOC	The United Nations Economic and Social Council
EUCPHR50	EU. Convention for the Protection of Human Rights and Fundamental Freedoms, 1950
ECtHR	European Court of Human Rights
ExCom	Executive Committee of the High Commissioner's Programme
ICCPR66	International Covenant on Civil and Political Rights, 1966
ICESCR66	International Covenant on Economic, Social and Cultural Rights, 1966
Inter-Am CHR	Inter-American Court of Human Rights
ICJ	International Court of Justice
ICRMW90	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990.
IOM	International Organization for Migration
IDP	Interally Displaced People
HL	House of Lords
HCZ	High Court of Zambia
HCK	High Court of Kenya
HCS	High Court of South Africa

HRC	Human Rights Commission
HRCs	Human Rights Committees
OIC	Organization of Islamic Cooperation,1990.
COR	Office the Commissioner for Refugees
RSP	Respondent of Study Population
SCZ	Supreme Court of Zambia
SCK	Supreme Court of Kenya
SCS	Supreme Court of South Africa
UKHL	United Kingdom House of Lords
UKSC	United Kingdom Supreme Court
UDHR48	Universal Declaration of Human Rights ,1948.
UNESCO	UN Committee on Economic, Social and Cultural Rights
UNCESCR	United Nations Education, Scientific and Cultural Organization
UNHCR	United Nations High Commissioner for Refugees
OCHA	United Nations Office for the Coordination of Humanitarian Affairs.

CHAPTER ONE

INTRODUCTION

1.1 BACKGROUND OF THE RESEARCH

This Chapter critically discusses the background of this research and provides the conceptual framework for international protection of rights of asylum seekers and refugees under the international law. This topic is selected primarily because of the untold sorrow of the present refugee crisis which has forcibly displaced 65.3 million people from their homelands, the on-going flagrant violation of rights of asylum seekers fleeing persecution and difficulties they experience in accessing international protection globally. Although there is a presumption that asylum seekers are not protected persons under the international law, this study has established that those asylum seekers fleeing persecution are subject of international protection under international law. This approach finds its expression in the UNHCR's struggle of securing international protection and rights of asylum seekers and refugees.¹ Globally, the influx of asylum seekers has continued to deteriorate since the end of the Second World War.² It is believed that the effects of the current world refugee crises resulting from persecution, the on-going wars and atrocities around the global and particularly in the Middle-East, have more deleterious effects than of the Second World War. In fact, currently the Middle-East and African regions are more affected than Europe was

¹ UNHCR, "The Executive Committee of United Nations High Commissioner for Refugees' Programme (ExCom)" (Geneva: UNHCR, 1981), Conclusion Nos. 21 and 22 (XXXII, 1981), "Protection of Asylum Seekers in Situation of Large-Scale Influx" Conclusion on the International Protection of Refugees, adopted by the ExCom of UNHCR Programme, UN Doc. HCR/IP/Eng/REV.1991, p. 28-29. Currently there are 98 ExCom members as of October 2014 – October 2015, obtained from :<www.unhcr.org/pages/49c3646c89.html>,(accessed 10 September 2015.
²"UNHCR – Global Trends – Forced Displacement in 2014" (UNHCR, 2015), <http://unhcr.org/556725e69.html>.

in the post-World War II.³ To this end, it is unreservedly accepted that although the 1951 UN Refugee Convention was Euro-centric negotiated in the wake of World War II solely to protect European refugees specifically stated in Article 1A (2),⁴ the Convention is no longer a Euro-centric Refugee Convention. With the passage of the 1967 Protocol Relating to the Status of Refugees,⁵ which removed the date-line and geographical limitation of its scope of application to events which occurred in Europe before 1 January 1951, both the Refugee Convention and its Protocol have acquired universal status as framework conventions for the protection for persons fleeing persecution and other traumatic events.⁶ In fact, this Refugee Convention and its Protocol are considered human rights framework conventions which set the minimum human rights standards which refugees should enjoy within the territories of the States Parties.

However, it is established that Syrian refugees are most affected people in the current refugee crises living under life-saving humanitarian assistance and in dire need of international protection.⁷ Thus, the Syrian refugees and the Rohingya Muslims from Myanmar are currently the most vulnerable people in serious need of urgent

³ Report published by Afro-Middle-East Centre (AMEC), “Brief No.12/2015 of 10 September, 2015” (AMEC, 2015). <Available on www.amec.org.za>.

⁴ United Nations, *Convention Relating to the Status of Refugees*, 1951, Text: 189 U.N.T.S 137, Adopted on 28 July 1951 and entered into force on 22 April 1954. Currently there are 145 States Parties to the Refugee Convention as of November 2015. Obtained from UNTC at: <<http://treaties.un.org/Pages/Treaties.aspx?id=5&subid=A&lang=en>> (accessed 9th November 2015).

⁵ United Nations, *Protocol Relating to the Status of Refugees*, 1967, Text: 660 U.N.T.S. 267, Adopted on 31 January 1967 and entered into force on 4 October 1967. Currently there 146 States Parties to the Protocol as of April 2015. Obtained from UNTC at: <<http://treaties.un.org/Pages/Treaties.aspx?id=5&subid=A&lang=en>> (accessed 9th November 2015).

⁶ Antonio Guterres, “The 1951 Refugee Convention Relating to the Status of Refugees and Its 1967 Protocol, ‘The Legal Framework for Protecting Refugees’” (Geneva: UNHCR, 2011), p.1.

⁷ 3RP, “3RP Regional Refugees Report,” 2015., pp.2.-4. < www.3rpsyriancrisis.org/wp-content/uploads/2015/06/3RP-Progress-Report.pdf>. See also “UN High Commissioner for Refugees Antonio Guterres - Written Text of Speech to the UN Security Council - 26 February 2015,” 2015, <http://www.unhcr.org/print/54ef66796.html>.

international protection.⁸ Conversely, there is an overtone of negative perception of refugees world-wide. Generally, refugees do not enjoy human rights and fundamental freedoms in most countries of asylum and particularly in developing countries. They are made a scapegoat and accused of causing monumental socio-economic and demographic changes to the countries of asylum. And yet it has been established that it is the actions of States which are responsible for refugee flows and forcible displacement.⁹ Mainly, because of the escalation of wars which immensely cause unbearable pain and suffering of asylum seekers and refugees globally. Countries which used to have flexible refugee policies, particularly industrialised countries, have now adopted more restrictive refugee policies which thwart international refugee protection.¹⁰ For example, in the United States, several attempts have been made to enact laws to restrict the resettlement of refugees particularly those fleeing persecution from Syria and Iraq.¹¹ Although previous reports indicated that the Senate and national security experts during the Obama administration had rejected the enactment of such discriminatory laws,¹² subsequent reports have shown that the Trump's administration regime is working tirelessly to prevent refugees from majority Muslim countries from seeking asylum in the United States.¹³

⁸ Abdul Ghafur Hamid and Shaban Abdul Majeed Phiri, "Protecting Asylum-Seekers Prior to Determination of Refugee Status: Reinterpreting the Refugee Convention and Assessing Contemporary State Practice on Non-Refoulement," *International Islamic University Malaysia Law Journal* 25, no. 1 (2017): 55-58.

⁹ Afro-Middle-East Centre (AMEC), "Brief No.12/2015 of 10 September, 2015." <Available on www.amec.org.za>.

¹⁰ Susan Kneebone, "Refugees and Displaced Persons: The Refugee Definition and 'humanitarian' Protection," in *Research Handbook on International Human Rights Law*, ed. Sarah Joseph and Adam McBeth (United Kingdom: Edward Elgar Publishing Limited, 2010), 218.

¹¹ Brenda Bower Soder, "Human Rights First, Washington Week on Human Rights, International Human Rights, Inside the Beltway," 2015, (November 23, 2015).

¹² *Ibid.*, (February 1, 2016).

¹³ *Ibid.*, (March 20, 2017). See also Phiri, "Protecting Asylum-Seekers Prior to Determination of Refugee Status: Reinterpreting the Refugee Convention and Assessing Contemporary State Practice on Non-Refoulement," pp.52-53.

However, it is consternating to note that the current global refugee trend had reached 65.3 million of forcibly displaced people; while 21.3 million of these were recognised refugees as by the end of 2015 world-wide.¹⁴ The total of 16.1 million of these refugees is under the UNHCR mandate; while 5.2 million are Palestinian refugees registered with the UN Relief and Works Agency (UNRW). The UNHCR has reported that 86% of these refugees are hosted in developing countries with Turkey hosting the largest number of 2.5 million of refugees. Thus, Syria Arab Republic is reported to be the world largest producer of refugees.¹⁵

The UNHCR has also released yet another shocking report that 54 % of the total world population of refugees is produced from three Muslim countries only. These are Syria Arab Republic with the highest number of 4.9 million refugees, followed by Afghanistan with 2.7 million and Somalia with 1.1million refugees.¹⁶ It is estimated that almost 51 % of these were children below the age of 18.¹⁷ It is for this reason that Chapter Five has been considered as it discusses protection system of refugees from Islamic perspective. Thus, Chapter Five is quite relevant to this present study. It has critically investigated into Islamic principles relating to the protection for refugees and whether Muslims States conform to such Islamic principles in their asylum system of those asylum seekers and refugees in their territories.

By the beginning of 2003, Zambia had a total number of 250,000 refugees. This number has gradually dropped due to the on-going voluntary repatriation of

¹⁴ UNHCR, “Global Trends: Forced Displacement in 2015” (Geneva: UNHCR, 2015).<www.unhcr.org/uk/about-us/key-facts-and-figures.html> (accessed 31 March 2017).

¹⁵ UNHCR, “Global Trends: Forced Displacement in 2015” (Geneva: UNHCR, 2015).<www.unhcr.org/uk/about-us/key-facts-and-figures.html> (accessed 31 March 2017).

¹⁶ Ibid.

¹⁷ UNHCR, “Global Trends: Forced Displacement in 2015,” 2015.< <http://www.unhcr.org/figures-at-a-glance.html>>.

Angolan, Rwandan and Congolese refugees.¹⁸ Consequently, the current refugee population in Zambia is about 54, 261 as of November 2014 according to UNHCR Zambia Office. However, this number does not include the other 26, 542 of the former Angolan and Rwandan refugees who are still in Zambia for various reasons.¹⁹ These numbers are likely to have multiplied disproportionately due to the influx of hundreds of thousands of asylum seekers currently arriving in Zambia from Democratic Republic of Congo (DRC).²⁰ In addition, there is another estimate of more than 50,000 refugees believed to have self-integrated into the Zambian society of which neither the Government of Zambia nor the UNHCR have official record.²¹ The UNHCR Zambia Office has stated that refugees opted to by-pass *ProGres* data-base and self-integrated themselves into Zambian communities to avoid the wrath of “encampment policy” administered by the Government of Zambia discussed in Chapter Seven.²²

The Table below only represents the official refugee population in Zambia which was captured prior to the influx of new arrivals of refugees from DRC. Mainly, these refugees come from Angola, Democratic Republic of Congo (DRC), Burundi, Rwanda and Somalia. Others come from Uganda, Sudan, Egypt, Libya, Iraq, Yemen and Syria.²³ Consequently, as discussed in Chapter Seven, all the 50,000 self-integrated refugees are presumed to be staying in Zambia illegally. For this reason, they are at heightened risk of becoming Stateless persons and susceptible to

¹⁸ Kelvin Shimoh and Muyebe Singumbe, “The History of Zambia and Refugees” (UNHCR, Zambia Office, 2007), 7.

¹⁹ UNHCR, “UNHCR Zambia Magazine, Issue No.5” (UNHCR, Zambia Office, 2015.), 28.

²⁰ Currently there is no official statistics of the total population of refugees in Zambia considering the mass exodus of refugees into Zambia from DRC as of 30th September 2017.

²¹ Mpho Makhema, “Mpho Makhema, ‘Social Protection for Refugees and Asylum Seekers in the Southern Africa Development Community (SADC)’”, Social Protection & Labor, The World Bank, Discussion Paper No. 0906,” 2009, p.13. <siteresources.worldbank.org/.../Resources/SP.../0906.pdf> (accessed 20 May 2015).

²² UNHCR, “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,” 2012, pp.3 -5.

²³ Kelvin Shimoh and Muyebe Singumbe, “The History of Zambia and Refugees,” pp.2-5.