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FACULTY OF LAW

DEPARTMENT OF POSTGRADUATE STUDIES

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TOPIC

An analysis of the legal protection of the right to work for refugees in Zimbabwe

DECLARATION

I, Deline Kudzai Jonga do here declare that I personally carried out this research on this study from the Faculty of Law, the Department of Post-Graduate Studies, University of Zimbabwe under the supervision of Dr. T. Mutangi. I solemnly declare that this research paper has never been published elsewhere, this is the first of its kind and it is the product of my own hard work. All work included from the other scholars has been carefully referenced, the work includes books, journals, newspapers, published manuscripts and even respondents from the field. I therefore guarantee the originality of this work.

Signature.....

Date.... / / 2022

Dedications

I dedicate my dissertation work to my family and friends. A special feeling of gratitude to my loving parents whose words of encouragement and push for tenacity ring in my hears.

And to my brother Terrence Tafadzwa and my kids Tanatswa Charmaine and Takudzwa Ryleigh Aubrey for being so understanding by letting me take your time to study and not leaving my side, you are very special.

Acknowledgements

I would like to acknowledge everyone who played a role in my academic accomplishments.

A special thanks to Dr T Mutangi, my supervisor for his countless hours of reflecting, reading, encouraging and most of all patience throughout the entire research process. Without you, I could never have reached this current level of success.

Secondly, I would like to thank my learned colleagues, the Masters in International Law students of the class of 2022, each of whom has provided patient advice and guidance throughout the research process. Thank you all for your unwavering support.

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CHAPTER 1: INTRODUCTION

1.1 BACKGROUND

The basis of international protection system addressing the rights of refugees is founded on the 1951 Convention relating to the Status of Refugees, the 1967 Protocol, other treaties, conventions and declarations. The 1951 Refugees Convention is the foundation or starting point of the refugee law. It defines a refugee, set principles preventing forced return of refugees to places where their lives or freedom will be at risk or be threatened, establishment and signing countries rights and responsibilities. When the 1951 Refugees Convention came into being it was meant to resolve refugee problems arising out of the 2nd world war by defining refugees as persons who faced persecution owing to the situations that arose in Europe only.¹

The 1967 Protocol came as a result of the emergence of refugee crisis between the 1950 and early 1960. The Protocol removed the timeline that were set and geographical limits set out in the 1951 Convention, thereby having the refugee definition eligible to all persons (more of an extension from Europe only to a general application to every refugee).²

The 1951 Convention and its Protocol ensure protection of refugees against refoulment and provide them and their families with civil, political, economic, social and cultural rights similar to those enjoyed by nationals of host countries. The two instruments work together with other international human rights laws and treaties including but not limited to, the 1948 Universal Declaration of Human Rights (UDHR), 1966 Covenant on Civil and Political Rights (ICCPR), Cartagena Declaration on Refugees, 1969 Organisation of African Union Convention governing the specific aspects of Refugee problems in Africa (OAU Convention) and 1994 Arab Convention on regulating status in the Arab countries.³

Countries that are party to the 1951 Convention and the 1967 Protocol are expected to create and preserve a national asylum system, while the signing states to one or both documents agreed to protect refugees. The laws require them to create or authorise competent national authorities to establish a framework for refugees protection in their countries.⁴ Zimbabwe in conformity with the 1951 Refugees Convention, 1967 protocol and the OAU Convention to which it is party to recognises refugees through the Zimbabwe's Refugees Act.⁵

In 1981 Zimbabwe acceded to the 1951 Convention relating to the Status of Refugees (hereinafter referred to as the "1951 Refugees Convention") and its 1967 Protocol(

¹ Fact sheet: International protection system, accessed 21 April 2022, [immigrationforum.org](https://www.immigrationforum.org)

² *ibid*

³ n1 above

⁴ *ibid*

⁵ Zimbabwe, accessed 21 April 2022, www.unhcr.org

hereinafter referred to as “ the Protocol”) and entered reservations to Article 17 (wage-earning Employment), Article 23(public relief), Article 24 (social security), and Article 26 (freedom of movement).

In 1985 Zimbabwe also became a member state of the Organisation of African Unity Convention governing specific aspects of Refugees in Africa (hereinafter referred to as the “OAU Convention”). In Zimbabwe refugee protection is governed by the Refugees Act which incorporated both the 1951 Refugees Convention and the OAU Convention. Through the Refugees Act,⁶ Zimbabwe has a Zimbabwe Refugee Committee which is a National Legibility Commission with the mandate to conduct Refugees Status Determination (RSD) to which the United Nations High Commissioner for Refugees (UNHCR) has the privilege to sit as an observer during the refugee determination process.⁷

According to the UNHCR’s reports, refugees and asylum seekers in Zimbabwe are mostly from the Democratic Republic of Congo with around 79% fleeing from war, sexual violence and undiscerning attacks whilst the remainder originate from Burundi, Angola, Ethiopia, Rwanda, Syria, Malawi, Uganda, Tanzania etc.⁸

It is of paramount importance at this juncture to present the definitions of a refugee especially for the purposes of determining what amounts to a refugee and who can be awarded international protection. Generally, a refugee is ‘a person who has been forced to leave their country or home, because there is a war or for political, religious or social reasons’.⁹ The 1951 Refugees Convention has a more extensive definition which defines a refugee as ‘ a person who, owing to well-founded fear of being persecuted for reason of race, religion, nationality, membership of a particular group or political opinion, is outside the country of his nationality and is unable to or owing to such fear is unwilling to avail himself for the protection of that country or return there because there is fear of persecution’.¹⁰

Article 1 of the OAU Convention defines a refugee for the purpose of its convention to mean “every person who, owing to well-founded fear of being persecuted for reasons of race, religion, nationality and is unable or, owing to fear, is unwilling to avail himself of the protection of that country, or who, not having a nationality and being outside the country of his former habitual residence as a result of such events is unable or, owing to fear, is unwilling to return to it.”¹¹sub-article (2) states that ‘the term “refugee” shall also apply to every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled

⁶ Zimbabwe Refugees Act (chapter 4:03)

⁷ n5 above

⁸ ibid

⁹ Oxford learner’s dictionaries, accessed 21 April 2022, www.oxfordlearnersdictionaries.com

¹⁰ 1951 United Nations Convention relating to the status of Refugees

¹¹ Article 1 (1) of the OAU convention

to leave his habitual residence in order to seek refuge in another place outside his country of origin or nationality’.

The Zimbabwean definition of a refugee is in terms of Section 3 of the Refugees Act which is couched as follows: “(1) subject to this section, a person shall be a refugee for the purposes of this act if: (a) owing to well-founded fear of being persecuted for reason of race, religion, nationality, membership of a particular group of political opinion, he is outside the country of his nationality and is unable to or owing to such fear is unwilling to avail himself for the protection of that country; or (b) not having a nationality and being outside the country of his former habitual residence, he is unable or, owing to a well-founded fear of being persecuted for reason of race, religion, membership of a particular social group or political opinion, is unwilling to return to it; or (c) owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, he is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality; or (d) he is considered a refugee under the arrangements of the 12th May 1926, the 30th June 1933 and the 10th February 1938, the Protocol of the 14th September 1939 or the Constitution of the International Refugee Organisation; or (e) he is a member of a class of persons declared in terms of subsection (2) to be refugees”.¹²

In a nutshell, from the above the OAU Convention has an extended definition of the 1951 Refugees Conventions of a refugee yet Zimbabwe did a wholesale adoption of the two Conventions.

It is however worth noting that refugees in Zimbabwe require full care and upkeep (assistance) because of the encampment policy, lack of freedom of movement and lack of self-reliance opportunities which was affected by the reservations entered by Zimbabwe in the 1951 Convention. The foregoing brings the writer to the discussion of the right to work or wage- earning employment.

Generally the right to work includes the right to everyone to the opportunity to gain his or her living by work which he or she freely chooses or accepts¹³ whilst other scholars define the right to work as a concept that people have a human right to work, or engage in productive employment, and should not be prevented from doing so.¹⁴ The phrase “the right to work” was devised by the French socialist leader Louis Blanc as a result of the uproar of the early 19th Century and rising unemployment in the wake of the 1846 financial crisis which led to the French Revolution of 1848.¹⁵

¹² Section 3(1) of the Refugees Act (Chapter4:03)

¹³ Right to work and work right at work, accessed 21 April 2022, <https://www.ag.gov.au/.../right-work-and-rights-work>

¹⁴ Right to work, accessed 21 April 2022, wikimili.com/en/Right-to-work

¹⁵ Robertson, Priscilla Smith (1952). *Revolutions of 1848: a social history*. Princeton University Press, page 69

For the reason that not everyone was a property owner, the right to work was enshrined to allow everyone to at least attain an acceptable standard of living.¹⁶

From a human rights perspective, the right to work is enshrined in the Universal Declaration of Human Rights and other human rights instruments which comprise of the International Covenant on Economic, Social and Cultural Rights (ICESCR) where the right to work emphasises economic, social and cultural progress¹⁷ and the African Charter on Human and Peoples' Rights (ACHPR) which underscores conditions and pay.¹⁸ The Human Rights Measurement Initiative measures the right to work for countries worldwide based on their level of income.¹⁹

For the refugee, the right to work is strengthened by the labour rights at work which reduce vulnerability, enhance flexibility and securing dignity. The participation of the refugees in the national labour force can boost skills and free innovativeness which can be advantageous to the national economic activities and development. There are however many hitches of allowing refugees in the labour market of the host country which include among others political economic concerns, labour market structure and capacities of the refugees.²⁰

Most host countries with developing economies (Developing countries) and those with weak labour markets are very hesitant to allow refugees to work. From a political economist perspective, the political restrictions are based on the distortion of the labour markets and limited capacity, scarcity of jobs available for the citizens, reduction of wages and working conditions.²¹ Prolonged stay by refugees and long-term settlement as a result of employment may lead to the complication of refugees claiming citizenship and/or naturalisation which most developing countries including Zimbabwe are against or discourage.²² Roughly most host countries are influenced by the public outcry by the citizens in that host country to oppose refugee work rights and for security reasons as there is a general belief that a large scale of refugee population settling and working will lead to xenophobic attacks to the refugees and foreigners as is mostly evident in South Africa almost every year.

Out of 145 member states to the 1951 Refugees Convention, only 75 states formally granted refugees the right to work whilst the rest which is almost half of the states entered reservations on/to conditions of work. Giving refugees the right to work is in line with the United Nations 2030 Sustainable Development Goals to end poverty

¹⁶ Alfredsson, Gudmundur; Eide, Asbjorn, *The universal declaration of human rights: a common standard of achievement*. Martinus Nijhoff Publishers (1999) @p533

¹⁷ Right to work, accessed 21 April 2022, https://en.wikipedia.org/wiki/Right_to_work

¹⁸ Article 15 of the African Charter on Human and Peoples' Rights

¹⁹ Right to work, accessed 21 April 2022, HRMI Rights Tracker

²⁰ Zetter R, Ruaudel H, *Refugees right to work and access to labor markets- an assessment*

²¹ Asylum access and the refugee work rights coalition.2014. "Global refugee work rights report: Taking the movement from theory to practice." Asylum access, Oakland, CA.

²² ibid

and fight inequality although states are still reluctant to grant such a privilege and right to refugees. Generally speaking, denial of the right to work usually means working denial to work in the formal sector which is believed to be most likely to increase vulnerability of refugees in the informal sector.²³ Zimbabwe is among the other half that reserved the right to work.

1.2. PROBLEM STATEMENT

The global and ideal situation is that everyone by virtue of being human and through several human rights treaties, conventions and other international instruments, has a right to work. Since the paper is specifically dealing with refugees, the foundation is on the 1951 Refugees Convention to which Zimbabwe entered a reservation to Article 17 (Wage-Earning Employment) although the Constitution of Zimbabwe shows how the nation of Zimbabwe priorities work and labour relations as a national objective. The fact that Zimbabwe reserved Article 17 on the right to work for refugees takes away the right to work which the Constitution and other relevant Acts gave to everyone. By reserving the right to work Zimbabwe refrained from the obligation to allow refugees to work in Zimbabwe without restrictions. Therefore the problem is that Zimbabwe's legal framework gives the right to work to everyone which includes refugees whilst the Article 17 reservation entered by Zimbabwe of the 1951 Convention takes away that right by restricting it, so the question that then arise is : How are the refugees supposed to be treated(must they be given the right to work or not in this situation? Or are they treated as nationals or as foreigners?)

1.3. RESEARCH QUESTIONS

1.3.1 Main Question

To what extent does the Zimbabwe legal system allow refugees the right to work?

1.3.2 Sub-research questions

This study is guided by the following research questions:

- (a) What are the standards of best practice regarding awarding the right to work for refugees?
- (b) What is the nature and scope of the protection of the right to work for refugees by the law in Zimbabwe?
- (c) What are the required reforms regarding the enjoyment of labour rights or right to work by refugees in Zimbabwe?

1.4. METHODOLOGY:

This research will be based on desk review which is also known as qualitative research methodology with focus on mainly the primary and secondary sources. There will be a critical analysis of the Zimbabwean legislation, regional instruments and international instruments which include treaties, journal articles and case law. Some of the information will be extracted from E-books, journal articles and newspaper articles.

The descriptive methodology will be used to moderately describe the current or available protections of the right to work to refugees in Zimbabwe.

There will also be the use of comparative analysis of Zimbabwean laws (Constitution and Acts) on the right to work for refugees and the best regional and international practices especially in countries (like Iran and Kenya) that are member states of some instruments to which Zimbabwe is a member state.

1.5. LITERATURE REVIEW

This present research will rely on the valid categories of literature which include statutes and legislative texts, judicial precedents and caselaw and authoritative texts.

While there has been a lot of literature around the right to work there is little to none that has dealt with specific reference to refugees in Zimbabwe. In Zimbabwe there has been much focus on the right to work in general with some of the literature dwelling on questions of the equality of women and men in workplaces, wages, leaves and with some going to the extent at looking at the constitutionality of the right to work etc without referring to refugees.

For example, the study by Sharon Hofisi²⁴ discusses the right to work as of importance because it was constitutionalised to the extent that it is under the national objectives under section 14 and section 24 of the Zimbabwean constitution of 2013.²⁵ The article brought out the issue that although the right to work is open to everyone it has a caveat of a limitation for example to members of the security forces and explains why they can be called for duty when other civil servants in state institutions can exercise their constitutional right to strike.

In addition, is Mywage.org/zimbabwe which had a look on the issue of forced labour: its prohibition, freedom to change jobs and right to quit, inhuman working conditions. This article looks at the general aspects that have to be looked at to achieve fair treatment at a workplace without excluding or including refugees.²⁶

²⁴ Sharon Hofisi “*Worker’s rights and the constitution*”- Legal Matters, The Herald -11 April 2022

²⁵ Constitution of Zimbabwe Amendment (No.20) of 2013, accessed on 22 March 2022

²⁶ Forced labour- Mywage.org/Zimbabwe, accessed 20 May 2022,
<https://mywage.org/zimbabwe/decent-work-check/fair-treatment/forced-labour>

Furthermore, Daniel Nemukuyu had an article on the constitutionality of the right to strike without notice²⁷ with reference to the case workers of Mashonaland Tobacco Company, which makes it clear that the right to strike is a bill of right with restrictions only to members of security services and essential services under section 65(3) of the constitution. From the reading of the article it is apparent that as long as the Zimbabwean Labour Act is not in sync with the Constitution, Section 104 of the Labour Act which the employer sought to use in its argument, remains invalid.

This research, therefore seeks to speak on the labour rights of refugees in Zimbabwe and to try to cover the gap in literature on this aspect.

1.6. CHAPTER SYNOPSIS

This research will be presented in the following five Chapters

Chapter One: Introduction

This chapter will look into: the introduction and background of the study, the problem statement, the research topics (aims and objectives of the research), research questions, literature review, research methodology and chapter synopsis

Chapter Two: International, regional and national legal framework on the right to work

This chapter will discuss the international, regional and national (Zimbabwean) legal mechanisms development on the right to work. How the law is couched, its scope and its limitation which can also go down to the Zimbabwean definition of the right to work. these legal mechanisms will include but not limited to the 1951 convention, OAU convention, Zimbabwean Constitution, the Labour Act, Refugees Act etc

Chapter Three: A case study on the analysis of the right to work for refugees in other jurisdictions

This chapter will through case studies to how other jurisdictions that have reserved the right to work have treated refugees within their jurisdictions. Which will include whether or not refugees are being afforded the right to work or not in other jurisdictions. If affirmative, how are these states managing this right to work and if no, why have they not granted such right to the refugees.

Chapter Four: The impact of Article 17 and its implication on Zimbabwe's legal framework

This Chapter will analyse Article 17 and implications and explore whether Zimbabwe's legal framework and policy implementation on the right to work for

²⁷ Daniel Nemukuyu "workers have constitutional right to strike without notice"- Harare Bureau, Chronicles 11 April 2022, accessed 20 May 2022, <https://www.chronicles.co.zw/workers-have-constitutional-right-to-strike-without-notice/>

refugees is consistent with the Constitution and international standards. In this chapter the writer will also look at what is the real Zimbabwean situation when it comes to the right to work for refugees.

Chapter Five: Conclusion and Recommendations

This chapter concludes the discussion and provides summary of findings, general and specific recommendations on reformation of legislative and policy decisions regarding the right to work for refugees in Zimbabwe.

1.7 CONCLUSION

Chapter one sought to give a background of the International Refugee Law i.e. what constitutes a refugee, the right to work in, the treaties to which Zimbabwe is party to for example the OAU Convention and the 1951 Refugee Convention, the legal frame work which protect the right to work for refugees in Zimbabwe and how the refugees have been treated. It also looked at the problem statement that led to choose of the research on the topic, the method of research that will be adopted by the researcher in achieving the expected research objectives, the structure and what to expect from the research and its significance. It also had a brief explore on what other scholars and researchers have was generally looked at concerning refugees through the literature review. But chapter two will basically look at some of applicable legal framework on the right to work from the international, regional and national level (Zimbabwe)

CHAPTER TWO: INTERNATIONAL, REGIONAL AND NATIONAL LEGAL FRAMEWORK ON THE RIGHT TO WORK

2.1 INTRODUCTION

This chapter will look at the applicable legal framework on the right to work from the international to regional and finally to the national level (Zimbabwe). The breakdown of this chapter seeks to look at how these various legal instruments have couched the right to work for refugees, its scope and limitations. The first part of chapter two will look into the United Nations Refugee Convention (1951) and its 1967 Protocol, Universal Declaration of Human Rights (1948), International Covenant on Economic, Social and Cultural Rights (1966), The Convention on the Rights of Persons with Disabilities (CRPD) and a rundown of the Anti- discrimination Treaties on the right to work. Then the second part of Chapter Two will focus on the regional instruments that support the right to work for refugees which include: Convention Governing the Specific Aspects of Refugees Problems in Africa (1974), African Charter on Human and Peoples' Rights (1981), European Convention on Human Rights (1949) and the Arab Charter on human Rights (2004). Final the writer will touch on the Zimbabwean national Constitution (2013) and legal framework which include the Refugees Act and the Labour Act.

In the previous chapter the main focus was to bring out the background on what constitutes a refugees, a brief run down on where the right to work of refugees is contained, why is there need for this research, mention of the methodology to be adopted by the writer, the structure of dissertation and so on. We learnt that the 1951 convention is the main convention that regulates states' conduct to refugees although now chapter 2 now goes deeper to expose the fact that there are other important international, regional and national instruments that regulate such conduct and with specific focus on the right to work of the refugees.

2.2 INTERNATIONAL TREATIES AND CONVENTIONS ON THE RIGHT TO WORK

These international conventions and treaties under this subtopic are open and were open to all states in general without a limit to region or continent and most of them are United Nations driven and have a flavour of the right to work which will be under discussion.

2.2.1. United Nations Refugee Convention 1951 and 1967 Protocol

The 1951 Refugees Convention was the first and main international convention that dealt with the most fundamental aspects of lives of refugees by spelling out basic human rights that refugees are supposed to enjoy and are at least equivalent to liberties enjoyed by foreign nationals living in that country and citizens of that

country.²⁸ It lays out the definition of who qualifies as a refugee, the legal protections that refugees are supposed to get, their social rights, and other assistance they can obtain from member states.²⁹ The Convention explains the obligations the refugees owe the host country and government, gives guidelines on who do not qualify to be a refugee, for example war criminals.³⁰ It recognizes the international scope of refugee crises and the necessity of international cooperation, including burden-sharing among states, in tackling the problem.³¹

The rights contained in the 1951 Refugee convention and the 1967 protocol together is called the 1951 convention 2 as was agreed upon by the 147 member states and these 147 member states have the responsibility to permit job opportunities/ self-employment to asylum seekers and refugees. The liberty to work is regarded as very important as compared to some rights that are given little significance. The refugees convention have detailed provisions relating to work including the right of association and to form trade unions (article 15), access to wage-earning employment (article 17), liberal professions (article 19), public relief (article 23), protection of labour legislation and social security (article 24) and the issuance of travel documents (article 28). In spite of this obligations, refugees and asylum seekers are denied the right to work despite the fact that this status can be for plus or minus 20 years for around 16 million refugees.³² Most of the refugees are getting physical security from the humanitarian aid which has proven to be inadequate as the support has to be wide-ranging and limited or amount to short term relief but is unable to sustain them (refugees) and enable them to be self-reliant.³³

A refugee in terms of the 1951 refugees Convention and the 1967 protocol is viewed as an independent person who is eligible to dignity and entitlements. Under chapter III of the same Convention, the right of refugees to work includes the right to participate in wage-earning employment and self-employment. The host countries are supposed to provide the right to work to refugees without reservation as agreed upon by 85% of the member states. This right is applicable to (1) all refugees refugee recognized by the UNHCR or by a state through a refugee determination process, (2) an asylum seeker who got the right to work for a fixed period, (3) all asylum seekers who failed to be determined as refugees, or the interim time their application is being processed or in circumstances where the refugee is awaiting resettlement, (4) in cases where the host country has

²⁸Frequently asked questions about the 1951 Refugee Convention-By UNHCR 01 June 2001, accessed 20 May 2022, <https://www.unhcr.org/news/stories/2001/6/3b4c06578/frequently-asked-questions-1951-refugee-convention.html>

²⁹ Refugees right to work and related labour regulations- iPleaders, accessed 25 May 2022 <https://blog.ipleaders.in/refugees-right-work-related-labour-regulations>

³⁰ ibid

³¹ n28 above

³² n29 above

³³ ibid

restrictions for foreigners, to be admitted into the labour market with that restriction not applying to refugees, (5) all refugees who are residing in that country for 3 or more years or their family member (spouse or child) resides in that country.³⁴

It is with emphasis that the terms and rights of self-employment should as favorable as possible.³⁵ The right to work is supposed to be accorded at the most ‘favourable foreigner standard’ which simply means that refugees who are permitted to work are supposed to have that same rights as nationals of any state who enjoy special rights under the bilateral or regional agreements.³⁶ All refugees should be exempt from the work permit requirement and permission to start a business if the reason for not being able to provide the required documentation is due to hardship that has led to forced movement.³⁷ But with Zimbabwe on the 25th of August 1981 entered a reservation with regard to article 17, paragraph 2 that it does not consider itself bound to grant a refugee who fulfills any of the conditions set out in subparagraphs (a) to (c) automatic exemption from the obligation to obtain a work permit and that in terms of article 17 as a whole, Zimbabwe does not undertake to grant to refugees rights of wage-earning employment more favourable than those granted to aliens. The right for refugees to work is recognized by several international human rights instruments that recognize that every individual has a right to earn his livelihood.

2.2.2. Universal Declaration of Human Rights (1948)

According to one Chilean drafter, Hernan Santa Cruz, most of the Articles in the Universal Declaration of Human Rights (UDHR) are grounded on the belief that “the interests of the individual come before those of the state and that the state should not be allowed to deprive the individual of his dignity and his basic rights”.³⁸ The drafters of the UDHR had in their minds the slaughters of millions and Nazi concentration camps which aimed to kill those they thought did have the correct mindset during the Hitler regime.

According to Article 1 human beings are born free, they have an equal right to live with dignity, they should act with each other in the spirit of brotherhood. Some scholars are of the view that dignity is the substance of all human rights hence human beings have rights and should be treated with greatest care because each

³⁴ iPleaders, n29 above

³⁵ Article 8 of the 1951 UN Refugees Convention

³⁶ Cathryn Costello & Colm O’Cinneide, *The Right to Work of Asylum and Refugees*, Global Asylum Governance and the European Union’s Role, 2021

³⁷ Article 1 & Article 18 of the 1951 UN Refugees Convention

³⁸ 30 Articles on the 30Articles. *The universal declaration of human rights at 70: still working to ensure freedom, equality and dignity for all*, accessed 25 May 2022, <https://www.standup4humanrights.org/layout/files/30on30/UDHR70-30on30-article3-eng.pdf>

one possesses intrinsic worth.³⁹ From the writer's assessment the Article 1 intends to bring out the point that everyone one is equal by virtue of being human despite one being a refugee, disabled, old or young. This article also points to the aspect of dignity which can be achieved by one having the right to work for one to be able to be have a decent lifestyle among other required rights. The spirit of brotherhood referred to in this article was meant to encourage unity and for everyone to see each other with the same regard, nothing more nothing less.

Article 2 states that everyone is entitled to all the rights and freedoms set forth in the universal declaration of human rights without discrimination. Article 2 sought to give everyone regardless of race, religion or other status (like being a refugee) the right to freedom, in other word the right to liberty without discrimination based on any criterion. Article 2 on the last two words "other status" sought to protect all groups that face persecution, even those not specifically covered by other international legal instruments.⁴⁰ Although the UDHR was drafted a long time ago, the prohibition on discrimination has been the foundation for getting rid of rights based on age, disability and other issues that had not been an issue during the drafting stage.⁴¹ The Chilean delegate Hernan Santa Cruz amplified that Article 2 is important as it forms the basic provisions of the United Nations Charter, which has principally founded the United Nations to combat discrimination in the world.⁴²

Article 3 states that everyone has the right to life, liberty and security of person. The right to security in Article 3 applies even to refugees by virtue of them being human. The right to life was accepted as a core right by many states when the United Nations was founded. Article 3 is more on the fundamental enjoyment of all other rights because essentially for one to enjoy all rights one has to be alive. In a general comment⁴³, the independent experts noted that the obligation to protect, respect and ensure the right to life covers many issues including modern technologies, climate change etc. that have serious threats to the ability of present and future generations to enjoy the right to life.⁴⁴ According to Antonio Cancado Trindade, when he was still the President of the Inter-American Court of Human Rights, "the arbitrary deprivation of life is not limited to the illicit act of homicide; it extends itself to the deprivation of the right to live with dignity".⁴⁵ In a nutshell the right to life is absolutely important and should be protected by all means. This right to life in relation to the main discussion on the right to work can

³⁹ 30 Articles on the 30Articles. The universal declaration of human rights at 70: still working to ensure freedom, equality and dignity for all, accessed 26 May 2022

<https://www.standup4humanrights.org/layout/files/30on30/UDHR70-30on30-article1-eng.pdf>

⁴⁰30 Articles on the 30Articles. The universal declaration of human rights at 70: still working to ensure freedom, equality and dignity for all, accessed 26 May 2022

,<https://www.standup4humanrights.org/layout/files/30on30/UDHR70-30on30-article2-eng-pdf>

⁴¹ n25 above

⁴² ibid

⁴³ General comment, October 2018, human rights committee.

⁴⁴ n24 above

⁴⁵ ibid

be affected if the refugees are deprived of the right to work and not given humanitarian assistance, which leads to starvation and eventually death. This would mean the right to life would be affected indirectly.

According to Article 14 everyone has the right to seek asylum from persecution. This article has been incorporated in several international treaties and constitutions. Despite its enshrinement migrants and refugees are still facing violent political attacks and several countries have built their border to shy away from the Article 14 responsibility.⁴⁶ For those refugees that make it through the border barriers they find themselves in refugee camps where there is little to no access to education, work, health etc. Human rights are intertwined therefore the right to asylum is worthless if other human rights of asylum seekers are not respected or taken into account.⁴⁷

To sum it all up the 4 Articles in the Universal Declaration of Human Rights are in support of the equal treatment of the refugees in general and in the host countries and not to face discrimination based on their status because they are human beings. This is also to say refugees must be accorded the same rights as nationals of the host country have which include the right to work and other rights in the bill of rights.

2.2.3 International Covenant on Economic, Social and Cultural Rights (1966)

The International Covenant on Economic, Social and Cultural Rights (ICESCR) is a multi-lateral treaty adopted by the United Nations General Assembly on December 16, 1966 and came into force in 1976, exactly 10 years after adoption⁴⁸. The ICESCR with around 171 parties binds member states to ensure that they provide the economic, social and cultural rights to Non-Self-Governing and Trust Territories and individuals, including labour right which are the main focus of this discussion and other rights like the right to health, right to education and the right to an adequate standard of living.⁴⁹ The ICESCR and its Optional Protocol is part of a number of other international legal instruments which include the International Bill of Human Rights, the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.⁵⁰

Article 6 (1) of the ICESCR “... recognizes the right to work which include the right to **everyone** to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right”. Article 6(2) of

⁴⁶ The right to seek and enjoy asylum, accessed 1 June 2022, <https://digitalfreedomfund.org/digital-rights-are-human-rights/article14-the-right-to-seek-and-enjoy-asylum/#>

⁴⁷ *ibid*

⁴⁸ International Covenant on Economic, Social and Cultural Rights, accessed on 1 June 2022 www.refworld.org

⁴⁹ International Covenant on Economic, Social and Cultural Rights, accessed 25 May 2022, https://en.wikipedia.org/wiki/International_Covenant_on_Economic,_Social_and_Cultural_Rights,

⁵⁰ *ibid*

the Covenant goes further to state that for full “realization of the right to work state parties shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and **full and productive employment** under conditions safeguarding fundamental political and economic freedoms to the individual”. The highlighted phrases “**everyone**” and “**full and productive employment**” are key in the two articles giving the impression that that the right to work must by all cost and guarantee an equal access to employment regardless of status and protect workers from being unfairly disadvantaged of employment. Put differently, the state parties must ensure access to work without discrimination for the disadvantaged⁵¹ (Refugees). The fact that work must be freely chosen or accepted means state parties must (peremptory or without fail) prohibit forced labour or child labour.⁵² It is however apparent from the foregoing Article 6 that the work that is being referred to must be decent work as clearly stated in CESCR General comment 18 at paragraph 7.

Decent work is defined as employment that “respects the fundamental rights of the human person as well as the rights of workers in terms of conditions of work safety and remuneration.... respect for the physical and mental integrity of the worker in the exercise of his/ her employment⁵³ and is well articulated in Article 7 of the Convention by recognizing the right to everyone to be “just and favourable”. The “just and favourable conditions” are defined as fair wages with equal pay for equal work, sufficient to provide a decent living for workers and their dependents; safe working conditions; equal opportunity in the workplace; and sufficient rest and leisure, including limited working hours and regular paid holidays.⁵⁴

Article 8 recognizes the right of workers to form or join trade union and protect the right to strike. However, Article 8 seem to suggest that these rights can be restricted for members of the armed forces, police, or Government administrators. Some state parties like China and Mexico among others have placed a reservation on this clause to enable them to be in line with their constitutions which is the supreme law of their countries and/or extend the restriction of union rights to groups like the fire fighters e.g. Japan.⁵⁵ Article 8 of the Covenant has similar sentiments to those in the Zimbabwean constitution and Labour Act which states

⁵¹ “CESCR General comment 18: The Right to Work”- UN Economic and Social Council, paragraph 31, accessed 28 May 2022, <https://www.ohchr.org/en/treaty-bodies/cescr/general-comments>

⁵² Ibid @paragraph 23

⁵³ “General Comment 18, 2006 United Nations Committee on Economic, Social and Cultural Rights- The Right to Work, General comment No.18, Adopted on 24 November 2005, Article 6 of the ICESCR, accessed 28 May 2022, <https://www.refworld.org/docid/4415453b4.html>

⁵⁴ International Covenant on Economic, Social and Cultural Rights, accessed 28 May 2022 https://en.wikipedia.org/wiki/International_Covenant_on_Economic,_Social_and_Cultural_Rights#Labour_rights

⁵⁵ UN treaty Collection: International Covenant on Economic, Social and Cultural Rights, accessed 1 June 2022, https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-3&chapter=4&clang=_en,

that armed forces of rather uniformed forces (police, soldiers and prison officer) do not possess the right to join trade unions. It is however possible that Zimbabwe borrowed some important aspects from the ICESCR and therefore managed to domesticate these issues.

The ICESCR provides for the right to work to everyone which includes the refugees, disabled, women etc. and hope to have all member states to adhere to the provisions of the convention so as to achieve the purpose of the convention. This is to state in a way that the right stipulated in the Convention applies to everyone in line with almost all human right treaties and conventions.

2.2.4. The Convention on the Rights of Persons with Disabilities (CRPD)⁵⁶

The Convention on the Rights of Persons with Disabilities and its Optional Protocol was adopted on 13 December 2006 at the United Nations headquarters and entered into force on 3 May 2008.⁵⁷ It is regarded as the first comprehensive human rights treaty in the 21st Century which came as a result of many years of work by the United Nations in trying to change the attitude and approach of the states and organizations toward people with disabilities.⁵⁸ The intention of the drafters of the Convention from the reading of the Convention, was to make it a convention with a clear aspect of social development which makes it relevant to this discussion.

There is an important articulation of the right to work in the United Nations Convention on the Rights of Persons with Disabilities which is very much relevant to refugees in Article 27. Article 27 of the CRPD beyond the contradictions that are between the civil and political rights, and economic, social and cultural rights as is evident from the construction of the provision. This provision is very significant in that EU was a key actor in drafting the Convention which means that it is substantial in the EU legal order with regards to its internal standards and binding source in its external action.⁵⁹

In concluding international instruments on the right of refugees, the above-mentioned international conventions and treaties are some but not exhaustive of the international treaties available that makes mention the right to work for refugees but the researcher just randomly picked them for analysis and point out that fact that the right do exist internationally. It is not disputed and actually clear from the forgoing international treaties, that the right to work is open to every human being as long as it does not amount to prohibited practices like child labour as an example among other examples.

⁵⁶ Cathryn Costello & Colm O’Cinneide, *The Right to Work of Asylum and Refugees*, Global Asylum Governance and the European Union’s Role,

⁵⁷ United Nations *Convention on the Right of Persons with Disabilities*, accessed on July 14, 2022 <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html>

⁵⁸ *ibid*

⁵⁹ Council Decision 2010/48/EC of 26 November 2009 concerning the conclusion, by the European Community, of the United Nations Convention on the Rights of Persons with Disability.

2.3 REGIONAL TREATIES AND CONVENTIONS ON THE RIGHT TO WORK

This section of Chapter Two will look at some of the regional Conventions that are available and that have made mention of the right to work. This part will start with the African regional instruments, then the European Convention, then the Inter- American Convention and the finally the Arab Charter on Human Rights to find out if there is any mention and protections of this right to work for refugees and in general and how it has been put across taking into cognizance of the fact that the level of economic development differ from region to region which have a bearing on the treatment of refugees therefore having effect on the couching of provisions on such rights as the right to work and its regulation. These regional instruments work in conjunction with the international conventions and treaties in trying to afford protections of rights to refugees.

2.3.1. Convention Governing the Specific Aspects of Refugees Problems in Africa (1974)

The organization of African unity's Convention Governing the Specific Aspects of Refugees Problems in Africa is also referred to as the OAU Refugee Convention came into force on the 20th of June 1974 and is a regional instrument that governs refugee's protection in Africa.⁶⁰ It was influenced by the 1951 refugee convention and its protocol and has in return motivated the establishment of the Cartagena Declaration and the 2009 Kampala Convention.⁶¹ The OAU convention came into being during the era when some countries were still colonized, facing apartheid as well as internal political and military uprising,⁶² that is why there is frequent mention of unity ,decolonization and why there were cross border movements(refugees) in a bid to be equipped to fight for independence or fear of persecution

Article 1 of this Convention adopted the definition of a refugee from the 1951 Refugees Convention while Article 2 puts an obligation on all OAU member states to do their best to put in place legislation that enables receipt of refugees and ensure resettlement for those who cannot or are unwilling to go back to their countries of origin or nationality. Articles 12 to Article 30 define rights that refugees are entitled to enjoy which include: (a) travel documents and identity papers which allow them to be identified and travel in and outside the host country (b) to be treated the same as national on aspects like religion and religious education, (c) basic education, (d)join trade unions, (e) join non-political non-

⁶⁰ *Convention Governing the Specific Aspects of Refugees*, Wikipedia.org, , accessed on July 14, 2022,https://en.m.wikipedia.org/wiki/Convention_Governing_the_Specific_Aspects_of_Refugee_Problems_in_Africa

⁶¹ *ibid*

⁶² *The 1969 OAU Convention and the continuing challenge for the African Union*, Forced Migration Review

profit organizations and join employment, self-employment.⁶³ An assessment of the foregoing shows that all member states are obligated to afford the refugees rights as much as they afford their nationals which include the right to work among others. Under this convention which Zimbabwe is a member state, Zimbabwe did not enter a reservation on the right to work meaning to say Zimbabwe has the responsibility to give the protection of that right.

2.3.2 African Charter on Human and Peoples' Rights (1981)

The African Charter on Human and Peoples' Rights (ACHPR) was adopted on the 27th of June 1981 and entered into force on the 21st October 1986. The African Charter on Human and Peoples' Rights is commonly also referred to as the Banjul Charter and is an international instrument regarding the human rights and freedoms of persons in the continent of Africa, and is considered to be the African counterpart to the European Convention on Human Rights and the Inter-American system on human rights. It provides that persons have fundamental civil, political, economic, social and cultural rights, and contains 68 articles in total.⁶⁴ The ACHPR created the African Commission on Human and Peoples' Rights which is located in Banjul, Gambia, whose task is to promote and interpret the contents of the Charter.

The African Charter on Human and Peoples' Rights significantly contain greater protections than its counterparts in some areas for example by containing provisions to do with the protection of group rights (also known as collective rights or Third Generation rights) alongside the protection of individual rights which include the right to the existence of a peaceful and appropriate environment in which to live and work, right to have peace and security, among other rights.⁶⁵ The foregoing is well articulated in the 6th and 7th preambular paragraphs which states that *"recognizing on the one hand, that fundamental human rights stem from the attributes of human being which justifies their national and international protection and on the other hand the reality and respect of peoples' rights should necessarily guarantee human rights"*⁶⁶ and *"considering that the enjoyment of rights and freedoms also implies the performance of duties on the part of everyone; convinced that it is henceforth essential to pay a particular attention to the right to development and that civil and political rights cannot be disassociated from economic, social and cultural rights in their conception as well as universality and that the satisfaction of economic, social and cultural rights is a guarantee for the enjoyment of civil and political rights"*⁶⁷ respectively.

⁶³ Refugees right to work and related labour regulations- iPleaders:-
<https://blog.ipleaders.in/refugees-right-work-related-labour-regulations/>

⁶⁴ African Charter on Human and Peoples' Rights, accessed 2 June 2022
www.lawteacher.net/acts/african-charter-human-rights-1981.php

⁶⁵ n54 above

⁶⁶ 6th preambular paragraph of the African Charter of the Human and Peoples' Rights

⁶⁷ 7th Preambular paragraph of the African Charter of the Human and Peoples' Rights

Then Article 1 makes it peremptory for all member states to provide for the rights, duties and freedoms in the African Charter on Human and Peoples' Rights and to domesticate the same for effective implementation. Whilst Article 2 of the African Charter on Human and Peoples' Rights which states that "every individual shall be entitled to the enjoyment of rights and freedoms recognized and guaranteed in the present charter without distinction of any kind such as race.... Or other status". This Article 2 and Article 3 demonstrates that all people are eligible to enjoy the rights stated in the ACHPR irrespective of any differences which includes the right to work which is of particular concern in this discussion as enunciated in Article 15 of the African Charter.

Article 15 of the African Charter on Human and Peoples' Rights is couched as follows "every individual shall have the right to work under equitable and satisfactory conditions, and shall receive equal pay for equal work". As already alluded to the right is not for a specific group of people or national but extends to everyone including to refugees, women, the disabled etc. The African Commission on Human and Peoples' Rights' (ACHPR) interpretation of the right to work, which is in line with Article 6 of the ICESCR (minimum core requirements), has underlined how it assures equal access to decent work for all, creating commitments on states to regulate the conduct of private employers as well as state organs.⁶⁸ The ACHPR has repeatedly affirmed the equal application of the Charter to nationals and non-nationals without discrimination although it has not dealt with particular focus on refugees and asylum seekers in detail.⁶⁹ In the case of *Rencontre Africaine pour la Defense des Droits de l'Homme v Zambia*⁷⁰ it established that states must secure the rights under the Charter to everyone within their jurisdiction including non-nationals.

Some scholars are of the view that this right remains a challenge in Africa mainly because of the constant economic fluxes, severe impact of globalization and uncomplimentary understanding between the countries of the north and global south⁷¹. It has also been highlighted that a deprivation of the right to work under this provision may entail a breach of the regional treaty.⁷²

⁶⁸ Rachel Murray, *The African Charter on Human and Peoples' Rights: A Commentary* (OUP 2019) 389-97

⁶⁹ Gina Bekker, 'The Protection of Asylum Seekers and Refugees within the African Regional Human Rights System' (2013) 13 African Human Rights Law Journal 1.

⁷⁰ *Rencontre Africaine pour la Defense des Droits de l'Homme v Zambia* (2000) AHRLR 321 (ACHPR 1996)

⁷¹ Eric Edi and Nyamien M. Nguessan, *SYNARES and the right to work in Cote D'Ivoire*, accessed on 3 June 2022, <https://www.pambazuka.org/democracy-governance/synares-and-right-work-cote-d'ivoire#>

⁷² Costello, n51 above

2.3.3 European Convention on Human Rights (1949)

The convention for the protection of human rights and fundamental freedoms is commonly referred to as the European convention on human rights, came into force in September 1953 and although it has been amended numerous times to add and supplement many right, it is regarded as the first legal instrument that adopted some of the rights that were inserted in the Universal Declaration of Human Rights and made them binding.⁷³ Under the novel system, there was the European Commission on human rights, the European Court of Human Rights and the Committee of Ministers of the Council of Europe which were accountable with implementation of the obligations that the states had undertaken to be bound to.⁷⁴

According to Article 1, “the high contracting parties shall secure to everyone within their jurisdiction the rights and freedoms defined in section 1 of this convention”. Article 1 makes it obligatory to respect all human rights. Section 1 referred to in article 1 on rights and freedoms include right to life, prohibition of torture, prohibition of slavery and forced labour just to mention a few. All human rights also include the right to work therefore the European Convention on Human Rights compels states within its jurisdiction to observe this right. The prohibition of slavery and forced labour denotes that labour rights or the right to work is respected without discrimination.

It is important to note that the European Court on Human Rights interprets civil and political rights by taking into account that effectiveness depends on access to work and other rights. In the case of *Niemietz v Germany*, the European Court of Human Rights (ECtHR) the court stated that Article 8 (the right to privacy) includes ‘the right to establish and develop relationships with other human beings’, including in working life as it is in the context that ‘the majority of people have a significant opportunity of developing relationships with the outside world’.⁷⁵ Article 8 works together with article 14 (non-discrimination) to mean that states are supposed to protect individuals against discriminatory barriers to employment. In *Sibradas v Luthuania*, the court held that ‘a far-reaching ban’ on taking up employment violated article 8 of the European Convention on Human Rights.⁷⁶

Article 3 of the ECHR connotes that restrictions on the right to work amounts to inhuman and degrading living standards, as the ECtHR recognized in the case of *MSS v Belgium and Greece*⁷⁷, the court took into account the de facto lack of access to work as part of its assessment of Greece’s violation of Article 3 of the European Convention.

⁷³ European Court of Human Rights, *European Convention on Human Rights*, accessed on 11 July 2022, <http://www.echr.coe.int/pages/home.aspx?p=basic&c=>

⁷⁴ *ibid*

⁷⁵ *Niemietz v Germany*, App No 13710/88 (ECtHR, 16 December 1992) @29

⁷⁶ *Sibradas v Luthuania* (2004) 42 EHRR 104

⁷⁷ *MSS v Belgium and Greece* (2011) 53 EHRR 2

2.3.4. Inter-American Convention on Human Rights (1969)

The Inter- American convention of human rights is also known as the Pact of San Jose and is a human rights instrument that was adopted on 22 November 1969.⁷⁸ There are two bodies which are responsible for monitoring compliance of the convention and are organs of the Organization of American States are: (1) the Inter-American Court of human rights and (2) the Inter-American Court of Human Rights. From the reading of the preamble it seems to suggest that the purpose of the Convention is to encourage personal liberty and social justice of all human being within its jurisdiction but does not make specific reference to the right to work. But out of the interpretation of the provisions on other rights like the right to life we can pin the right to work on it as already made reference as a basis for claiming the right to earn a living so as to survive e.t.c.

The Inter-American Convention works together with Charter of the Organization of American States , The American Declaration on the Rights and Duties of man, which states that all men are born free and equal, in dignity and in rights which includes the right to work to refugees and fair remuneration which is highlighted in Article XIV, The Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights also known as the protocol of San Salvador in Article 6 makes it clear that everyone has the right to work which includes an opportunity to secure a means of living which is decent and dignified whilst subsection 2 shows that states must ensure that measures are put in place to guarantee the enjoyment of the right to work.

The foregoing is to the effect that the inter-American system through its various human rights instruments upholds the right to work for **all** therefore the same right applied to the refugees and states in America are encouraged to also make sure that everyone has an opportunity to go through vocational guidance and development training

2.3.5. Arab Charter on Human Rights (2004)

Although not previously highlighted, there is the Arab Charter on Human Rights which is also a regional human rights instrument and the baby of the regional human rights blocs, which was adopted in 2004. The Arab Charter affirms the principles contained in the UN Charter, the Universal Declaration of Human Rights, the Covenant on Human Rights and the Cairo Declaration on Human Rights in Islam.⁷⁹ In its Article 34 the Charter makes mention of the right to work in subsection 1 to every citizen seeking employment citizen but subsection 5 highlighted that states parties should protect workers migrating to its territory in

⁷⁸ Basic Documents- American Convention, accessed 19 July 2022, www.cidh.oas.org/basicos/english/basic3%20c...,

⁷⁹ Arab charter on human rights, Wikipedia, accessed 19 July 2022, <https://en.m.wikipedia.org>

accordance with its laws. Article 34(5) is of particular interest because it gives migrating workers which include refugees to have the right to work only in accordance with their laws just like all other regional instruments.

To conclude on regional instruments, it is apparent that the right to work is covered in all the four regional instruments which extends the right to work to all including refugees and other groups which include women children, people living with disability etc. The writer in the preceding chapters will not dwell much on the inter-American and Arab human rights systems or conventions but will mainly compare the African context and the European context, reason being that the African context is relevant as Zimbabwe is in Africa then the European is the most developed human rights system where big lessons can be drawn.

2.4 NATIONAL LEGISLATION ON THE RIGHT TO WORK

2.4.1. The Constitution of Zimbabwe (2013)

The Zimbabwean Constitution just like many constitutions in the world is the supreme law of the land. The first Constitution of 1980 was as a result of Lancaster House Agreement but that Constitution has faced several amendments as Zimbabwe is now at the Constitution amendment number 20. Constitution of Zimbabwe 2013 enunciates labour rights as part of human rights and have features or essential elements that show or rather explains how labour rights in its bill of rights, must be asserted, enjoyed and claimed.⁸⁰

Firstly, the Preamble of the Constitution of Zimbabwe recognizes the need to entrench democracy in Zimbabwe as is evident in section 65 with the hope to foster the labour rights. Because Section 1 specifically mentioned that Zimbabwe is a unitary, democratic and sovereign republic therefore Zimbabwe is expected to recognize and implement what is contained in the supreme law of the land which includes the rights and freedoms without fail.

Secondly, our founding values and principles of democracy clearly affirm that Zimbabwe is founded on the respect for fundamental human rights and freedoms; recognition of the inherent dignity and worth of each human being; and due respect for vested rights.⁸¹ Therefore, employers are expected to uphold the values at the work place including public institutions and the government.

Thirdly the national objectives set out in Chapter 2 of the Constitution must be adhered to when it comes to issues to do with workers' rights in Zimbabwe.⁸² However, Section 11 reiterates or affirms the need to observe fundamental rights

⁸⁰ Sharon Hofisi, "*Worker's rights and the constitution*"- Legal Matters, The Herald -11 April 2022

⁸¹ n 35 above

⁸² ibid

and freedoms and gives the state an obligation to take all steps possible to protect the rights and freedoms in Chapter 4 of the Constitution. The Constitution puts an obligation on the state to promote the full realization and fulfilment of rights therefore there is need for the state and labour unions to work together to achieve the goal and most importantly the state to accept and know that it is the primary duty holder.

Fourthly, labour rights are justiciable through the bill of rights. Employees are holders of fundamental constitutional rights, this is important because the right is framed in a way that makes every person a beneficiary by virtue of being a human being, a right holder: women, **refugees**, permanent residents, expatriates, persons with disability, youths, the elderly etc.

Section 24 of the Constitution encourages the state and all institutions and agencies of the government at every level to adopt reasonable policies and measures, within the limits of the resources available to them, to provide **everyone** with an opportunity to work in a freely chosen activity, in order to secure a decent living for themselves and their families. Section 24(2) goes further to obligate the state endeavor to secure full employment; the removal of restrictions that unnecessarily inhibit or prevent people from working and otherwise engaging in gainful economic activities; vocational guidance and the development of vocational and training programmes, including those with disabilities; and the implementation of measures such as family care that enable women to enjoy a real opportunity to work.

Although the right to work is open to everyone, the Constitution of Zimbabwe is clear that a law may limit the enjoyment of labour rights for example the security forces who cannot strike and can be called for duty at any given time especially in cases of emergency while other state institutions and government departments are closed, for instance what happened when there was a total shut down due to the Covid 19 everyone else was at home but the security officers continued to carry out their duties including making sure that the general public obey the lockdown.⁸³

2.4.2. The Refugees Act (Chapter 4:03)

The preamble of the Refugees Act is to the effect that the Act makes provision for refugees; to enable effect to be given within Zimbabwe to the Convention Relating to the Status of Refugees done Geneva on the 28th July 1951, to the Protocol Relating to the Status of Refugees of the 31st January 1967 and the Convention Governing the Specific Aspects of Refugee Problems in Africa done at Addis Ababa on the 10th September 1969; and to provide for matters connected with or incidental to the foregoing. The foregoing shows that Zimbabwe as a member

⁸³ n 35 above

state to the above-mentioned conventions has domesticated the same and is supposed to protect the refugees as much as was or is stated in those conventions.

Section 2 of the Act defines “recognized refugees” as to mean a refugee who- (a) has been recognized as a refugee in terms of section seven (section 7(1) states that “ any person who is within Zimbabwe, whether he has entered Zimbabwe lawfully or otherwise, and who wishes to remain within Zimbabwe as a refugee in terms of this Act shall apply to an authorized officer for recognition of his status as a refugee) (b) is a member of a class of persons declared to be in terms of Subsection (2) of Section three (section 3 (2) is to the effect that “subject to subsection three, if the Minister considers that any class of persons are defined in paragraph a, b, c, d of subsection 1, he may declare such class of persons to be refugees, and may at any time amend or revoke such declaration). Commonly, a recognized refugee is an individual who will enjoy a special legal regime which means that that these refugees are supposed to be entitled to fundamental rights and benefits including the assistance and protection measure known as the “international refugee protections.⁸⁴ The writer is of the view that the Zimbabwean situation fits as well to the common definition of a recognized refugee and is therefore supposed to award the refugee the international refugee protection including the right to work although Zimbabwe entered a reservation of this right that seeks to restrict the same right.

Section 12 (1) that subject to this Act, every recognized refugee and every protected person within Zimbabwe-(a) shall be entitled to the right and be subject to the duties contained in- (i) the Articles of the Convention Relating to the Status of Refugees of the 28th July 1951, which are set in Part I of the Schedule; and (ii) the Articles of the Organization of African Unity Convention Governing the Specific Aspects of Refugees Problems in Africa of the 10th September 1969, which is set in Part II of the Schedule; (b) shall be subject to all laws in force within Zimbabwe. Section 2 and Section 12 are interrelated in the sense that section 2 defines recognized refugees while Section 12 makes mention of what the recognized refugees are entitled to which includes the right to work among other entitlements.

Section 12(3) states that “Subject to this Act, every recognized refugee and every protected person within Zimbabwe shall, in respect of wage-earning employment, be entitled to the same rights and be subject to the same restrictions, if any, as conferred or impose generally on persons who are not citizens of Zimbabwe: provided that no recognized refugee or protected person shall be subject to any restriction imposed for the protection of the national labour market if, on the 26th October 1981, he was exempted from such restriction. This section of the refugees

⁸⁴ Key messages: WHO IS A REFUGEE- UNHCR Protection Training Manual for European Boarder and Entry Officials, accessed 19 July 2022, <https://www.unhcr.org>

Act suggests that refugees are entitled to wage-earning employment which is the right to work although it has restrictions as set out in the Refugees 1951 Convention reservation. This is despite the fact that in the previous discussion above there refugees' entitlements were said not to have restrictions. This section also brings out an aspect of non- discrimination which is an issue in almost all human rights instrument including various constitutions around the world.

2.4.3. The Labour Act (Chapter 28:01)

In Zimbabwe the right to work or labour is regulated by the Labour Act (Chapter 28:01). The preamble states that the Act is to declare and define the fundamental rights of employees; to give effect to the international obligations of the Republic of Zimbabwe as a member state of the International Labour Organization and as a member of or party to any other international organization or agreement governing conditions of employment which Zimbabwe would have ratified; to define unfair labour practices; to regulate conditions of employment and other related matters; to provide for control of wages and salaries; to provide for the appointment and functions of workers committees; to provide for formation, registration and functions of the trade unions, employers organizations and employment councils; to regulate the negotiation, scope and enforcement of collective bargaining agreements; to provide for the establishment and functions of the labour court; to provide for the prevention of trade disputes and unfair labour practices; to regulate and control collective job action; to regulate and control employment agencies and to provide for matters connected with or incidental to the foregoing.⁸⁵ From the preamble it seems the Labour Act does not take away anything from the refugees as long as they fall within the definition of an employee but protects accordingly just like any other employee within Zimbabwe. The preamble also shows the dedication of Zimbabwe to fulfil its international obligations when it comes to labour law issues.

Section 2 of the Labour Act defines an employee as “any person who performs work or services for another person for remuneration or reward on such terms and conditions as agreed upon by the parties or as provided for in this Act, and includes a person performing work or services for another person-

- a) In circumstances where, even if the person performing the work or services supplies his own tools or works under flexible conditions of service, the hirer provides the substantial investment in or assumes the substantial risk of the undertaking; or
- b) In any other circumstances that more closely resemble the relationship between an employee and employer than that between an independent contractor and hirer of services”.

⁸⁵ The preamble of the Labour Act (Chapter 28:01)

As long as a refugee engages in any of the above-mentioned activities that are regarded as work or services then he or she is a recognized employee that deserves to be treated just like any other employee who is a Zimbabwean national. Put differently the refugees are employees just like nationals of Zimbabwe regardless of their status.

In terms of section 2A of the Labour Act, “the purpose of the Labour Act is to advance social justice and democracy in the workplace by-

- a) Giving effect to the fundamental rights of employees provided for under part II;
- b)
- c) Providing a legal framework within which employees and employers can bargain collectively for the improvement of conditions of employment;
- d) The promotion of fair labour standards;
- e) The promotion of the participation by employees in decision affecting their interests in the workplace
- f) Securing the just, effective and expeditious resolution of disputes and unfair labour practices.”

This section covers every employee without the exclusion of any employee based on status therefore refugees are entitled to (a) to (f) despite not being citizens of Zimbabwe.

Section 3(1) of the Labour Act states that the Act shall apply to all employers and employees except those whose conditions of employment are otherwise provided for the Constitution. Section 3(2) points out that “for the avoidance of doubt, the conditions of employment of members of public service shall be governed by the Public Services Act [Chapter 16:04]. Section 3 (3) states that this act shall not apply to or in respect of- (a) members of a disciplined force of the state; or (b)members of any disciplined force of a foreign state who are in Zimbabwe under any agreement concluded between the government and the government of that foreign state; or (c) such other employees of the state as the president may designate by statutory instrument. This section is not discriminatory in the sense that it limits conditions to a particular group of employees as per the constitution of Zimbabwe, this means that if it happens that a refugee falls in this category of employee the same conditions that apply to Zimbabwean nationals applies to those refugees. This does not take away any entitlement to the refugees because of their status.

2.5. Conclusion

In conclusion the international, regional and national instruments it seems to suggest that the drafters did don’t wish to take away any right including the right to work from the refugees but seem to advocate that they be treated with equality

for reason of being human. Under the international legal frame work it is evident and undisputed that the right to work is open to every human being as long as it does not amount to prohibited practices like child labour as an example among other examples. Whilst the regional instruments, all four of them do extend the right to work to all including refugees and other groups which include women children, people living with disability etc. drafters of the international and regional instruments were aware of the fact that restrictions on the right to work can be viewed as a contribution to violation of absolute rights for example the prohibition on inhuman and degrading treatment, of forced labour etc. It has been demonstrated that the right to work is emphasized therefore shows how important this right is to the refugees and the world in general.

Whereas the national legislation allows that the right to work be extended to everyone which include refugees, for example the Constitution, the Refugees Act and the Labour Act but also recognizes the right to work is open to everyone but is also clear that a law may limit the enjoyment of labour rights. The overview of the analyzed legal instruments was not exhaustive but was meant to bring out whether the right to work is enshrined in some of the most important instruments. Chapter three will look at how other specific countries (Iran and Kenya) have dealt with right to work for refugees when they have reserved the same right in the 1951 Refugees Convention.

CHAPTER 3: CASE STUDIES ON AN ANALYSIS OF THE RIGHT TO WORK FOR REFUGEES IN OTHER JURISDICTIONS

3.1. INTRODUCTION

In the previous chapter two we were discussing issues to do with how international regional and national instruments have to do with the right to work. But from the analysis of the 1951 Refugee Convention there are countries like Zimbabwe, Zambia, Ethiopia and Iran that entered reservations to the right to work contained in Article 17. But this Chapter 3 looks at how other specific countries have dealt with right to work for refugees. It will bring out how other jurisdiction who reserved the right to work have managed the situation when there is an ideal situation where they were expected to grant that right to refugees' (more of case study). Put differently the study will look at whether or not refugees are being afforded the right to work in other jurisdictions. If affirmative, how are these states managing this right to work and if no, why have they not granted such right to the refugees.

The case study will be done through a selection of (1) one European country which is Iran to cover the general international stance because most of the developed countries are in that continent (2) another African country which is the Zambia and closer home which has a fairly large number of refugees to cover the regional aspect. These chosen countries are party to the 1951 Refugee Convention and the 1967 Protocol and have entered reservations with particular reference to the right to work so as to have an effective comparative analysis of how other countries have been managing the reservation.

3.2 CASE STUDIES

3.2.1 The Islamic Republic of Iran⁸⁶

Iran is Party to the 1951 Convention relating to the Status of Refugees (but with reservations) and the 1967 Protocol. Iran is one of the world's top refugee-hosting countries with a populace of around 979,437 refugees and 42 asylum seekers totalling 979,479 which is about 1.23 percent of a total estimated population of 79 million. Most of the refugee population that originated from Afghanistan prior to 2001 were awarded refugee status on a prima facie basis whilst a smaller number of Iraqis were also registered in 2002 as prima facie refugees, subsequently refugees were and are now required to pass through a refugee determination process. Iran has one of the largest urban refugee populations in the world; with only 3% of Afghan refugees live in camps located in rural areas.⁸⁷

⁸⁶Roger Zetter, Héloïse Ruadel, *KNOMAD Study, Refugees' Right to Work and Access to Labor Markets - An Assessment, Part II: Country Cases (Preliminary)*, September 2016.

⁸⁷ Human Rights Watch (2013) "Unwelcome Guests, Iran's Violation of Afghan Refugee and Migrant Rights," www.hrw.org/sites/default/files/reports/iran1113_forUpload.pdf.

Iran's policies toward refugees, and Afghans in particular, have considerably shifted in that from refugees being automatically granted residency to not being automatically resident in Iran upon arrival but only provided with temporary residency permits based on seemingly arbitrary criteria which got stiffer and stiffer.

The Iranian National legislation which include the Iran's 1963 Regulations relating to Refugees necessitate those seeking asylum to avail themselves to "the first border guard station or competent government official upon entry into the Iranian territory" and provide that "refugees should not be forcibly returned to the country where their life and freedom is endangered for political, racial or religious reasons or for their membership in a particular group"⁸⁸ which is in compliance with the 1951 refugees Convention on the principle of non-refoulement. The 1979 Iranian Constitution also permits the government to grant persons political asylum, "unless they are regarded as traitors and saboteurs."⁸⁹ Although party to the 1951 Refugee Convention, Iran just like Zambia and Zimbabwe reserved the rights in relation to employment, public relief, labour legislation, social security, and freedom of movement.

The Bureau for Aliens and Foreign Immigrants' Affairs (BAFIA), that operates under the Ministry of Interior, has the overall responsibility for harmonizing refugee affairs together with other related ministries and is also responsible with processing refugee claims. Under the law, the Foreign Nationals Executive Coordination Council (FNECC), chaired by the Ministry of Interior, has overall responsibility for international relations and the "arrival, settlement, deportation, expulsion, training, employment, health, and medical treatment" of foreigners⁹⁰. The law provides for individual refugee status determination under the FNECC or a committee designated by the FNECC. Because the FNECC is the higher-level council mainly concerned with general policy development, in 2001 the Standing Committee on Foreign Nationals was set up to review claims for asylum. One of BAFIA's functions, as part of the Ministry of Interior, is to act as the secretariat of the FNECC and the Standing Committee on Foreign Nationals. According to existing laws and regulations, BAFIA is expected to process applications for asylum, which should be received by the police, and then presented to the Standing Committee on Foreign Nationals for decision making.⁹¹

⁸⁸ Articles 2 and 12 of the Regulations relating to Refugees (1963), accessed 20 June 2022, www.refworld.org/pdfid/3f4a23767.pdf

⁸⁹ Article 155 of the Islamic Republic of Iran's Constitution of 1979 (with Amendments through 1989), accessed 20 June 2022, www.constituteproject.org/constitution/Iran_1989.pdf

⁹⁰ Afghanistan Research and Evaluation Unit (2005) "Return To Afghanistan? A Study of Afghans Living in Mashhad, Islamic Republic of Iran," accessed 20 June 2022, www.unhcr.org/434f69e92.pdf

⁹¹ KNOMAD Study, Refugees' Right to Work and Access to Labor Markets - An Assessment, Part II: Country Cases (Preliminary), Roger Zetter, Héloïse Ruadel, September 2016.

Registered refugees in Iran are expected to apply for temporary work permits just like in Zimbabwe. Under Iran's Labour Code, work permits issued by the Ministry of Cooperatives, Labour and Social Welfare and are only valid for 12 months⁹² and can be extended and renewed, only with a written consent by the Ministries of Interior and Foreign Affairs. The 1963 Regulations recognize refugees' right to employment "in the fields authorised for foreign nationals and those deemed appropriate."⁹³ Just like Zambia and Zimbabwe, Iran has made reservations to Article 17 (right to engage in wage-earning employment) and to Article 24 (right to labour protections and social security on the same footing as nationals).⁹⁴ In Iran foreigners cannot engage in business without appropriate visas and work permits. To get a permit to engage in business the conditions are that; refugees must abandon their status as refugees and return to the country of origin to obtain a passport (if they did not have one already) and get an Iranian visa. Like other foreign nationals, refugees can own movable property, but are not allowed to own immovable property without specific recognised approvals.⁹⁵

During the 1980s most refugees were allowed to live and work all over Iran without restrictions but the government bit by bit introduced limitations on where non-nationals could legally live and work. Since beginning of 2001 the Ministry of Labour and Social Affairs, subsequent to the 2000 legislation on employment restrictions, subjected employers of foreign illegal workers to heavy fines and imprisonment and shut down many small businesses that employed refugees like those from Afghanistan, while also revoking some several refugees work permits⁹⁶ the government was sympathetic with the employers of Iraqi refugees.⁹⁷ Because most of the refugees do not have the required documents, they live in constant fear of being deported thereby being susceptible to abuse⁹⁸, most of them do not have written contracts which has led them to not having social protection or

⁹² Article 122, Islamic Republic of Iran Labour Code 1990, accessed 20 June 2022, www.ilo.org/dyn/natlex/docs/WBTEXT/21843/64830/E90IRN01.html

⁹³ Article 7 of the 1963 Regulations

⁹⁴ Asylum Access (2014) "The Global Refugee Work Rights Report," accessed 20 June 2022, http://asylumaccess.org/wpcontent/uploads/2014/09/FINAL_Global-Refugee-Work-Rights-Report-2014_Interactive.pdf

⁹⁵ KNOMAD Study, Refugees' Right to Work and Access to Labor Markets - An Assessment, Part II: Country Cases (Preliminary), Roger Zetter, Héloïse Ruadel, September 2016.

⁹⁶ Afghanistan Research and Evaluation Unit (2005) "Return To Afghanistan? A Study of Afghans Living in Mashhad, Islamic Republic of Iran," accessed 20 June 2022, www.unhcr.org/434f69e92.pdf

⁹⁷ United States Committee for Refugees and Immigrants (2009) "World Refugee Survey-Iran," accessed 20 June 2022, www.refworld.org/docid/4a40d2a84a.html

⁹⁸ Justice for Iran (2013) "Weapons of Mass Discrimination: The Islamic Republic Policies and the Economic, Social and Cultural Rights of Citizens in Iran, Briefing to the UN Committee on Economic, Social and Cultural Rights on the Occasion of the Review of Islamic Republic of Iran in the 50th Session of UN Committee on Economic, Social and Cultural Rights," accessed 20 June 2022 www2.ohchr.org/English/bodies/cescr/docs/ngos/JusticIran_Iran_CESCR50.pdf

benefits like sick leaves,⁹⁹ being paid less than the minimum wage, or non-payment of wages¹⁰⁰ etc. In 2010, Iran's Supreme National Security Council, an advisory body charged with safeguarding the national interest, sovereignty, and territorial integrity, passed a law called the Plan for Registering Afghan Nationals which law encouraged Afghans without documents to register and acquire a passport, an Iranian residency visa, and a work visa if they wish to work although it has proven to be an expensive and tiresome process for the Afghan refugees.¹⁰¹

Although registered refugees in Iran are permitted to work they are subjected to several limitations which include that (1) the work permits and taxes are expensive, (2) the choice of employment is limited by the place of residence (them being in designated areas) and freedom of movement¹⁰², (3) they are said to only engage in 16 specified categories of employment which include brick-making, digging¹⁰³ etc which is mainly manual in nature to ensure that the refugees do not take away jobs from Iranian citizens. Through the UNHCR there's an observation that in reality several refugees are working in categories that are not specified on their work permits including business activities they are not allowed.¹⁰⁴

There has been a marked improvement in guaranteeing that refugees have the education and skills to earn a living upon returning to their country of origin, while also enabling them to contribute to society during their stay in Iran.¹⁰⁵ This has led to the introduction of various livelihood and vocational training programs. For instance, in collaboration with the government and partners, the UNHCR just like in Zimbabwe, has executed diverse livelihood interventions in Iran, including technical and vocational training for more than 40 occupations (such as welding, plumbing, and tailoring), the establishment of home-based enterprises, access to revolving and micro-credit loans, and the provision of equipment for income-

⁹⁹ Altai Consulting and ILO-UNHCR Cooperation Towards Solutions (2008) "Research Study on Afghan Deportees from Iran," accessed 21 June 2022, www.unhcr.org/49ba32772.pdf

¹⁰⁰ United Nations Economic and Social Council, Committee on Economic, Social and Cultural Rights, concluding observations on the second periodic report of the Islamic Republic of Iran, adopted by the Committee at its fiftieth session (29 April-17 May 2013), E/C.12/IRN/2, accessed 22 June 2022, http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2FC.12%2FIRN%2F2&Lang=en

¹⁰¹ Human Rights Watch (2013) "Unwelcome Guests, Iran's Violation of Afghan Refugee and Migrant Rights," accessed 22 June 2022, www.hrw.org/sites/default/files/reports/iran1113_forUpload.pdf,

¹⁰² Farzin, F., and S. Jadali (2014) "Freedom of Movement of Afghan Refugees in Iran," Forced Migration Review 44, accessed 22 June 2022, www.fmreview.org/en/detention/farzin-jadali.pdf,

¹⁰³ Human Rights Watch (2013) "Unwelcome Guests, Iran's Violation of Afghan Refugee and Migrant Rights," accessed 22 June 2022, www.hrw.org/sites/default/files/reports/iran1113_forUpload.pdf

¹⁰⁴ KNOMAD, study 1 part II, refugees right to work- an assessment.pdf

¹⁰⁵ ibid

generating activities while also looking into possible cross-border initiatives and interventions.¹⁰⁶

Just like many countries that have a large number of refugees, Iran faced a substantial economic and social burden, taking into consideration that the country has little aid from donor countries, the financial and economic sanctions for Iran's alleged nuclear weapons program have led to a shortage of foreign currency reserves; a steep devaluation of the Iranian rial; and rising living costs, inflation, and unemployment.¹⁰⁷ Human Rights Watch reported that in 2013 nearly half of Afghans(refugees) in Iran were living below the absolute poverty line and that the increasing cost of living became unsustainable for the majority of these low-income families.¹⁰⁸

Notwithstanding that refugees like the Afghans face a lot of difficulties in accessing jobs among other needs they still flock into Iran for a combination of political, personal, and economic reasons. The 2008 UNHCR and ILO assessment indicates that it is most unlikely that refugees would take jobs from nationals because they are mainly concentrated in unattractive subsectors. Nonetheless, Iranian workers believe that the refugees have a negative impact on the labour market as they have provided a flexible, cheap, and highly productive source of labour that is preferred by Iranian employers.¹⁰⁹

In 2010 Iran estimated that approximately 2 million documented and undocumented Afghans who were employed in the labour market¹¹⁰ whilst the 2008 UNHCR and ILO assessment found that nearly 75 percent of surveyed refugees and migrants work in the construction sector, mainly as daily laborers while fewer than 10 percent worked in agriculture, which is the main sector of employment before their departure from Afghanistan.¹¹¹ Child labour is prevalent amid the Afghan refugee and migrant population whilst undocumented unaccompanied minors are also engaged in the construction sector, agriculture, and carpet weaving.¹¹²

¹⁰⁶ UNHCR (2015) "Iran Factsheet," accessed 22 June 2022, <http://unhcr.org.ir/uploads/news/15-9-07%20Iran%20Factsheet%20-%20August%202015%20FINAL.pdf>,

¹⁰⁷ ibid

¹⁰⁸ Human Rights Watch (2013) "Unwelcome Guests, Iran's Violation of Afghan Refugee and Migrant Rights," accessed 23 June 2022, www.hrw.org/sites/default/files/reports/iran1113_forUpload.pdf

¹⁰⁹ Altai Consulting and ILO-UNHCR Cooperation Towards Solutions (2008) "Research Study on Afghan Deportees from Iran," accessed 23 June 2022, www.unhcr.org/49ba32772.pdf

¹¹⁰ ibid

¹¹¹ Altai n109

¹¹² ibid

3.2.2 Zambia¹¹³

Zambia is also a party to the 1951 Convention relating to the Status of Refugees (with reservations), the 1967 Protocol, and the Organization of African Unity Refugee Convention with around 26,447 refugees and 2,411 asylum seekers totalling 28,858 which is about 0.17 percent of a total estimated population of 16.2 million. The majority of refugees are in “refugee settlements”; with about more than 12,000 refugees and former refugees self-settled outside the refugee settlements in rural or urban areas.

Zambia has a long tradition of hosting refugees, starting with Polish refugees fleeing the Holocaust during World War II when there was still an open-door policy, without restrictions, although it has changed gradually shifted away from an open-door policy.¹¹⁴ In the period between 1960 and 1990 Zambia received several hundred thousand refugees, including “liberation fighters” from African countries seeking independence from colonialism and apartheid. In the 1990s and the decade that followed, Zambia received refugees fleeing conflicts in the Great Lakes region and the Horn of Africa, especially Rwanda, Burundi, the Democratic Republic of Congo (DRC), and Somalia and those fleeing the civil war in Angola. Subsequently, the total refugee population decreased gradually as many refugees repatriated to their countries of origin.¹¹⁵

A significant number of refugees in protracted displacement, however, resisted repatriation. A small percentage of the total refugee population has been resettled to third countries whilst some especially from Angola were locally integrated. Since 2013 the number of refugees fleeing from persecution, generalized violence and armed from the Democratic Republic of Congo has increased with the Burundians in 2015 arriving in Zambia as well to seek protection from the ongoing unrest in their country. Zambia has a Refugee (Control) Act of 1970 which regulates issues relating to asylum¹¹⁶ and reflects issues it reserved in the 1951 Refugees Convention on the right to work, education, freedom of movement and international travel documents.¹¹⁷ The Act has been criticized for lacking provisions that protect against refoulment and thus falling out of compliance with international standards. It however forbids deportation in cases in which refugees would be at risk of physical attack or punishment for an offence of a political

¹¹³ KNOMAD Study, Refugees’ Right to Work and Access to Labour Markets - An Assessment, Part II: Country Cases (Preliminary), Roger Zetter, Héloïse Ruauzel, September 2016.

¹¹⁴ Frischkorn, R. (2013) “We just aren’t free: Urban Refugees and Integration in Lusaka, Zambia,” American University, <http://aislandora.wrlc.org/islandora/object/thesesdesertations%3A434>.

¹¹⁵ UNHCR (2016) “projected Global Resettlement Needs,” accessed 23 June 2022 <http://www.unhcr.org/558019729.html>

¹¹⁶ Zambia: Refugee (Control) Act 1970, accessed 23 June 2022, www.refworld.org/docid/3ae6b4d6c.html

¹¹⁷ Article 17(2), 22(1), 26 and 28 of the 1951 Refugees Convention

character.¹¹⁸ A new refugee bill to replace the 1970 Act has provisions on non-refoulement but maintains provisions on the encampment policy and restrictions on freedom of movement, limitations on the refugees right to work, restrictions on refugees' freedom of association and expression and the requirement to submit an asylum application within seven days of entry into the country.¹¹⁹

In Zambia the Office of the Commissioner for Refugees (COR) is headed by the Commissioner for Refugees, in the Ministry of Home Affairs and responsible with the refugees affairs. In terms of Article 28 of the Bill of Rights,¹²⁰ the asylum seekers are expected to present themselves just like in Zimbabwe, to the authorities within seven days of arrival in the country so that they pass through a refugee determination process. As per the Refugee (Control) Act, all recognised refugees are issued with Identity Documents.

Like in Zimbabwe, Zambian refugees have the right to work in the country except that it entered a reservation to Article 17 of the 1951 Refugees Convention which is to the effect that refugee job seekers will not be granted privilege or exemption from conditions of and procedures applied to other foreign job seekers, and refugees like other foreigners require a work permits.¹²¹ The Immigration and Deportation Act 2010 prohibits all foreigners, including refugees and asylum seekers, from working, doing business, or studying in institutions without permits and doing so exposes them to arrest, detention and prosecution. It is a requirement in Zambia¹²² that a refugee must apply for a job, obtain a job offer from the employer before applying for a work permit which costs around USD230. The application is made to the Labour Department of the Office of Immigration with a letter from the Commissioner of Refugees. The Chief Immigration Officer issues the work permit provided the persons are already in Zambia and have the required qualifications and financial resources and that no Zambian is qualified enough for the offered job. The permits specify the period permitted to work, conditions regarding which areas the holder must work and what kind of work to be engaged in, as the CIO sees fit.¹²³

¹¹⁸United States Committee for Refugees and Immigrants (2009) "World Refugee Survey-Zambia," accessed 23 June 2022, <http://www.refworld.org/4a40d2b7c.html>

¹¹⁹ UNHCR (2012) Submission for the Office of the Commissioner for Human Rights' Compilation Report- Universal Periodic Review for Zambia, <http://www.refworld.org/docid/4f9660982.html>.

¹²⁰ Bill of Rights Act 2016, <http://ccmgzambia.org/wp-content/uploads/2016/06/Constitution-of-Zambia-Amendment-Bill-Bill-of-Rights.pdf>, accessed 23 June 2022

¹²¹ Reservations and Declarations to the 1951 Refugee Convention, <http://www.unhcr.org/cgi-bin/texis/vtx/search?page=search>, accessed 23 June 2022

¹²² Frischkorn, R. (2013) *"We just aren't free: Urban Refugees and Integration in Lusaka, Zambia,"* American University, <http://aislandora.wrlc.org/islandora/object/thesesdesertations%3A434>, accessed 23 June 2022

¹²³ Immigration and Deportation Act 2010

To apply for a self-employed permit, the equivalent of Article 18 of the 1951 Refugees Convention, to get an “investors permit”, refugees and asylum seekers just like foreign investors are required to invest a sum of USD 25,000 in Zambia, which most refugees do not have or cannot raise. Further to the above restriction refugees are only allowed to invest in manufacturing, tourism, agriculture, mining, but not in commerce. To top it all, there must be a support letter from the CIO, a certificate of registration of the business in Zambia or a certificate of incorporation for one to trade.

Employers more often than not reject job applications made by refugees because they believe that law forbids refugees from working in Zambia. Only a few refugees can meet the requirements expected by the administrative procedure to obtain a work permit except for doctors, nurses, teachers and lecturers these being professions in shortage in its labour market as a result of emigration and HIV/AIDS.¹²⁴

Because most refugees are in fact forbidden from accessing formal work in urban areas, they have resorted to joining the informal labour market and in economic activities that have very low returns or profits and result in households not generating enough proceeds to devote to more income generating activities. The UNHCR through its implementing partner Action Africa Help, provides subsistence allowances to a very limited number of vulnerable individuals with urban residency in Lusaka. The estimated 12,400 urban refugees, mostly from the DRC, and former refugees from Rwanda and Angola who are “self-settled” in Lusaka,¹²⁵ face impediments to employability in the formal sector resulting in them being more vulnerable to exploitative working conditions and abuse in the informal market, with many refugees reporting not being paid for their services.¹²⁶ Their uncertain legal position also puts refugees at risk of arrest and imprisonment if caught, so rather than forcing urban refugees back to settlements, the Government of Zambia enacted tougher urban residency policies in 2000 which proved to be ineffective because the policies caused the underreporting and marginalization of urban refugees.¹²⁷

Zambia has put in place procedures for recognition of foreign professional diplomas; refugees are granted access to such procedures on the same basis as other nationals, notwithstanding the lengthy delays that refugees may

¹²⁴ n122 supra

¹²⁵ Information obtained from the UNHCR website

¹²⁶ Chiasson, S. (2015) “*Refugee Freedom of Movement Restricted in Zambia*,” Rights in Exile, IRRI Refugee Legal Aid Newsletter, <http://rightsinexile.tumblr.com/post/132370262377/refugee-freedom-of-movement-restricted-in-zambia>, accessed 23 June 2022

¹²⁷ Frischkorn, n116 above

experience.¹²⁸ This practice also covers the vocational training qualifications under the supervision of the Zambia Qualifications Authority, which is a government institution that is mandated to deal with such issues.¹²⁹ Some refugees in Zambia have also had admission to training in sectors and on skills including agriculture, business management, carpentry, community mobilization, community school teaching, knitting, and sewing. The field evaluation conducted by the U.S. Department of State revealed that among former Angolan refugees interviewed, those most likely to have received training were those who arrived in the first wave (starting in 1966) of refugees and who were in the 30-50year age range. However, among those refugees trained, very few had the opportunity to use their skills for financial gain or employment. For example, refugees who had been trained in business management were not able to get credit facilities to start a business, and those who learned to sew have not had access to sewing machines; thus, they have not been able to apply the skills they gained through training.¹³⁰

Youth unemployment remains a key challenge in Zambia although most youth and women have resorted working in the informal sector,¹³¹ although the working conditions are worse in the informal sector, and wages are much lower. The government has justified employment restrictions for refugees by citing the need to protect the national labour market despite recognition in national development strategies of the potential productivity of refugees.¹³² Another related point is the rising xenophobia with verbal abuse, harassment, arbitrary detention, and physical violence towards the refugees despite the country's positive reputation for hosting them¹³³ the attacks still occasionally occur. Some of these attacks occurred against the backdrop of economic growth, rising inflation, and political tensions ahead of the August 2016 general elections.¹³⁴

¹²⁸ UNHCR (2007) "Analysis of the Gaps in Protection of Refugees: Zambia," <http://www.refworld.org/docid/472897100.html>, accessed 23June 2022

¹²⁹ Information obtained from the UNHCR website, accessed 23June 2022

¹³⁰ US Department of State (2014) "*Field Evaluation of Local Integration of Former Refugees in Zambia*," Field Visit Report, Evaluating the Effectiveness of Humanitarian Engagement and Programming in Promoting Local Integration of Refugees in Zambia, Tanzania, and Cameroon.

¹³¹ Ministry of Labour and Social Security and ILO (2013) "*Zambia Decent Work Country Programme (2013-2016)*," <http://www.ilo.org/public/english/bureau/program/dwcp/download/zambia.pdf>, accessed 23June 2022

¹³² n128 above

¹³³ Darwin, C. (2005) "Report on the Situation of Refugees in Zambia," AMERA, http://www.matrixlaw.co.uk/wpcontent/uploads/2016/03/20_10_2014_09_30_27_Report-Refugees-Zambia.pdf, accessed 23June 2022

¹³⁴ Mail & Guardian Africa (2016) "Refugees in Fear as Anti-Foreigner Riot Tarnish Zambia's Image as Haven," <http://mgafrica.com/article/2016-04-22-refugees-in-fear-as-anti-foreigner-riots-tarnish-zambias-image-as-haven>

3.3 CONCLUSION

Generally, it has been observed that developing States that have limited resources to no resources at all to provide the right or to give access to the right work but are however permitted to gradually provide access to employment opportunities for refugees. The UNCHR has proposed that States need to take deliberate, concrete and targeted steps to stimulate economic growth and development, raise standards of living and overcome both unemployment and underemployment to facilitate access to decent work. States also need to pursue full and productive employment while safeguarding fundamental political and economic freedoms and reducing the informal economy which most refugees fall in. It is also important that refugees contribute to and make use of social security benefits, as well as have access to effective remedies to enforce their right to access decent work opportunities.¹³⁵

In Iran refugees have found it very tough to retain their refugee status, and it is more problematic for newly arriving refugees. Iran limits the freedom of movement and encampment impair their access to livelihoods among other restrictions previously mentioned including implementation of Article 48 and annex of the Iranian Five-Year Development plan of 2000 which has led to deteriorating conditions for refugees by causing premature termination of work permit and forced release from jobs. Although there are employment opportunities that are opened for refugees the opening has not been able to fully cover the gaps that exist to date as some refugees are still regarded as impoverished and not being able to meet their needs

Although Zambia welcomes refugees its national refugee legislation sets out refugees' rights to work upon obtaining a work permit, and the country's encampment policy restricts freedom of movement thereby limiting possibilities for refugees' self-reliance. While refugees with work permits are allowed to work or to be self-employed, in reality the government has allowed the right to work to be restricted by work permits that take time to be processed, complex, arbitrary, and expensive, thus prohibiting many refugees from participating in the formal economy and labour market. Despite creativities to promote self-reliance and the inclusion of refugees into communities, Zambia lacks a comprehensive study of the economic and social impact of refugees and asylum-seekers on local communities that could provide guidance on the potential economic contributions of refugees to their economy which Zimbabwe can then follow if successfully implemented.¹³⁶

¹³⁵ 2019 - 2023 Global Strategy Concept Note: Refugee Livelihoods and Economic Inclusion-
<https://www.unhcr.org/publication/operations/5bc07ca94/>

¹³⁶ n113 above

To cap it all of the European and African mode of operation from the case studies illustrate that they are the same by not allowing refugees to have full access to the labour markets despite the differences in level of development and differences in continents. One of the differences that can be plucked out of the study is the responsible ministries that deal with refugees issues and who to approach for work permits. From the study it is very clear that the laws are there to support access to the labour market but they are coupled with restrictions which amount to an obliteration of the right leaving to date approximately 70% of refugees live in countries with restricted to no right to work at all. Vocational training and other skills are offered to the refugees but they are not given a chance to use the skills because of the restrictions. Which bring the writer to the conclusion that there is need to withdraw the reservations, lift the restriction for the right to work to be embraced and implemented together with having more national and international actors sharing the responsibility to deliver decent work, labour market policies and engaging in trainings to support livelihood.

CHAPTER 4: THE IMPACT OF ARTICLE 17 AND ITS IMPLICATION ON ZIMBABWE'S REFUGEE LEGAL FRAMEWORK

4.1 INTRODUCTION

In the previous Chapter 3 the writer looked at case studies of Iran and Zambia to find out how they have coped with the right to work having reserved Article 17 on the right to work. In short, the study revealed that this right is problematic and has to be dealt with urgently as it is an infringement of several rights that are linked to the right to work. This chapter 4 will analyse Article 17 and implications and explore whether Zimbabwe's legal framework and policy implementation on the right to work for refugees is consistent with the Constitution and international standards. In this chapter the writer will also look at what is the real Zimbabwean situation of the implementation of the right to work for refugees, if any.

4.2 THE ZIMBABWEAN SITUATION

As already been highlighted in chapter one, briefly, Zimbabwe acceded to the 1951 Convention relating to the Status of Refugees and its 1967 Protocol in 1981 with reservations to Article 17 (wage-earning employment), Article 23 (public relief), Article 24(social security) and Article 26(freedom of movement). Zimbabwe is also a member to the 1969 OAU Convention Governing the Specific Aspects of Refugees in Africa. Refugee protection in Zimbabwe is governed by the Refugees Act which is a fusion of the above-mentioned conventions (the 1951 and 1969 conventions).¹³⁷ Some of the other legal statutes that govern refugee protection in Zimbabwe include the United Nations Convention on the Right of the Child, the 1948 United Nations Universal Declaration of Human Rights, the African Charter on the Welfare and rights of Children, the Convention relating to stateless Persons 1954, the Zimbabwean Immigration Act (Chapter 4:03) and the Zimbabwean Children's Act.

By the end of 2015 Zimbabwe was hosting around 6950 refugees with the greater chunk being from the Democratic Republic of Congo (DRC) fleeing from conflict, sexual harassment and indiscriminate attacks then the rest of the refugees originating from Burundi, Rwanda, Malawi, Mozambique etc.¹³⁸ Zimbabwe has an encampment refugee policy which restricts refugees and asylum seekers from staying outside the Tongogara refugee camp which is located 550km away from Harare.¹³⁹ The Zimbabwean refugee policy is guided by the non-refoulment principle, which is part of the UN Refugee Convention of 1951, which is call to all member states to protect asylum seekers as long as their country of origin is

¹³⁷ UNHCR: OHCHR report, Universal Periodic Review: 2nd cycle, 26th session, Zimbabwe

¹³⁸ *ibid*

¹³⁹ UNHCR-WFP Joint Assessment Report 2014

experiencing violence or conflict that is likely to be a concern to their lives.¹⁴⁰ The refugee protection regime is guided by the principle of shared responsibility i.e. while the Ministry of Public Service, Labour and Social Welfare is overall overseer of the welfare of the refugees there are other governmental departments (state security, immigration, foreign affairs, defence and home affairs etc) and non-governmental organizations (Christian Care, GOAL, the Jesuit Relief Services, Red Cross etc) that also assist. The foregoing show where we are in terms of compliance to conventions.

4.2.1 WAGE-EARNING EMPLOYMENT

Moving on to the issue of wage earning employment, besides the International Labour Organization Convention, Zimbabwe has also ratified the United Nations Universal Declaration of Human Rights (1948), African Charter on Human and Peoples Rights (1981), ICESCR (1966), ICCPR (1966), Covenant on the Rights of the Child (1990) and the Convention on the Elimination of all Forms of Discrimination against Women (1991) which instruments have directly or indirectly dealt with the right to work, some of which have already been mentioned but are relevant at this juncture to show Zimbabwe's commitment to reach international standards.

From the long title of the Labour Act, Zimbabwe must meet its obligations under international law, in particular the ILO. In essence in the event that there are grey areas in the Labour Act or wherever relevant, the courts must use as a guide the principles of law developed under the ILO Conventions and Recommendations and other international treaties to which Zimbabwe is party to, especially in interpreting constitutional provisions.¹⁴¹

It is important to note that the main sources of employment law in Zimbabwe are the Labour Act (Chapter 28:01) and its various regulations, Collective Bargaining Agreements, the Constitution of Zimbabwe 2013, the common law, judicial precedent and authoritative texts.¹⁴² Essentially, all types of employees including refugees are protected by the employment law, which include the fixed-term and casual contract employees. Members of the disciplined forces, members of the public service and employees whose conditions are regulated by the Constitution are not regulated by the Labour Act but through the Defence Forces Act(Chapter 11:02), Police Act(Chapter 11:10) and Prisons Services Act (Chapter 07:10) for the disciplined forces, Public Service Act for members of the public service.¹⁴³

¹⁴⁰ J. Mhlanga & R. M. Zengeya, "Social work with refugees in Zimbabwe", *AJSW*, Vol 6, Number 1, 2016, accessed 25 June 2022

https://www.academia.edu/33257664/SOCIAL_WORK_WITH_REFUGEES_IN_ZIMBABWE

¹⁴¹ Capital Radio (Pvt) Ltd V Broadcasting Authority of Zimbabwe & Ors, S-128-2002

¹⁴² Employment & Labour Laws and Regulations Zimbabwe, accessed 25 June 2022, <https://iclg.com/practice-areas/employment-and-labour-laws-and-regulations/zimbabwe>

¹⁴³ Munyaradzi Gwisai, *Labour and Employment Law in Zimbabwe: Relations of Work under Neo-colonial Capitalism*.

In Zimbabwe besides the Constitution, the Labour Act is the chief legislation that applies to all employees and employers including those in parastatals and local authorities with the exception of the previously mentioned, to the extent that the Act takes precedent over any other source where there is conflict.¹⁴⁴ Under the national objectives in the Constitution of Zimbabwe which guide the state and all its institutions and agencies of the government in formulating and implementing laws and policy decisions that will lead to the establishment, enhancement and promotion of a sustainable, just, free and democratic society in which people enjoy prosperous, happy and fulfilling lives,¹⁴⁵ this section did not take away any right from any person but seek to make sure there is enjoyment of rights. Section 14(1) of the Constitution encourages facilitation and measures to empower all marginalised persons, groups and communities, from the writers interpretation refugees can fall under the marginalised or groups which can be used to empower them or afford them a wage earning employment although this will have an impact on the Article 17 of the 1951 Convention. While some can then argue that the word “measure” can be used to put restrictions that are spelt out in the reservation to article 17 and therefore would mean that Zimbabwe is in line with its reservation.

Section 24(1) of the Constitution also encourages that **everyone** be afforded an opportunity to working order to secure a decent living for themselves and their families¹⁴⁶, everyone is interpreted by the writer to mean everyone within the borders of Zimbabwe which includes the refugees and foreigners because they are also entitled to a decent life just like the Zimbabwean nationals, the difference is that they found themselves in the borders of Zimbabwe. Section 24(2)(b) of the Constitution seems to suggest that restrictions must be removed to enable everyone to work and engage in gainful economic activities this also can be suggesting that if there are restrictions on foreigners and refugees those restrictions must be removed. The writer keeps on making reference to foreigners because the reservation to article 17 suggests that refugees must be given more favourable treatment to that of the foreigners so in other words if foreigners have no restrictions so does the refugees.

In terms of Section 46 of the Constitution, interpretation of the rights and freedoms must take into account international law and all treaties and conventions which Zimbabwe is party to¹⁴⁷ and pay due regard to all provisions of this constitution, in particular the principles and objectives set out in Chapter 2. The preceding national objective are in line with section 65 of the Constitution on labour rights especially on subsection 1,¹⁴⁸ “every person has the right to fair and safe labour practices and standards and to be paid a fair and reasonable wage” “every person” and “

¹⁴⁴ Section 2A (3) of the Labour Act

¹⁴⁵ Section 8(1) of the Constitution of Zimbabwe (2013)

¹⁴⁶ Section 24(1) of the Constitution of Zimbabwe (2013)

¹⁴⁷ Section 46(1)(c) of the constitution of Zimbabwe (2013)

¹⁴⁸ Section 65(1) of the Constitution of Zimbabwe (2013)

everyone” seem to be dominant and it can be taken as emphasis that every human being must enjoy this right.

4.3 ANALYSIS OF ARTICLE 17 OF THE 1951 REFUGEES CONVENTION

Going to the issue of Article 17 of the 1951 Refugees Convention which reads as follows “(1) *The contracting states parties shall accord to refugees lawfully staying in their territory the most favourable treatment accorded to nationals of a foreign country in the same circumstances, as regards the right to engage in wage-earning employment. (2) in any case, restrictive measures imposed on aliens for the protection of the national labour market shall not be applied to a refugee who has already exempt from them to the date of entry into force of this convention for the contracting state concerned, or who fulfils one of the following conditions: (a) he has completed three years’ residence in the country; (b) he has a spouse possessing the nationality of the country of the country of residence. A refugee may not invoke the benefit of this provision if he has abandoned his spouse; (c) he has one or more children possessing the nationality of the country of residence (3) the contracting states shall give sympathetic consideration to assimilating the rights of all refugees with regard to wage-earning employment to those of nationals, and in particular of those refugees who have entered their territory pursuant to programmes of labour recruitment or under immigration schemes.*”¹⁴⁹ Article 17 is one of the very important and contested article as quite a number of states especially the African states reserved this article.

After the first world war refugees were generally subjected to the same restrictions as foreign nationals because they were viewed as threats to national manpower, the committee of Russian and Armenian legal experts recommended restrictive measures applicable to foreign nationals should be more favourable to refugees , which recommendation was adopted as recommendation 6 of the 1928 arrangement then later incorporated as Article 7(1) of the 1933 convention although it was said to be unsatisfactory taking into consideration the economic depression of the time. The foregoing shaped the formulation of article 17 which still faces the problems that its predecessor provisions faced. The provision is considered to be universally accepted with regard to the refugees’ right to wage-earning employment.¹⁵⁰

It is clear that refugees are not expected to be treated as nationals when being considered for employment but in several countries in the world foreigners and refugees are expected obtain a work permit before assumption of employment. In some instances refugees can be excluded from seeking employment for example Tanzania imposed a ban on the employment of refugees in a bid to prevent

¹⁴⁹ Convention relating to the status of refugees- <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-relating-status-refugees>, accessed 25 June 2022

¹⁵⁰ Article 17 (1) 1951 Refugees Convention

integration of Hutu refugees from Burundi.¹⁵¹ Refugees may be exempted from the requirement of obtaining a work permit or may be granted the work permit after meeting all requirements¹⁵² by contracting states.

In the same vein refugees may be allowed to work on the same terms and restrictions imposed on foreigners for example in Zimbabwe domestic laws provides that refugees 'shall, in respect of wage-earning employment, be entitled to the same rights and subject to the same restrictions, if any, as are imposed generally on persons who are not citizens of Zimbabwe'.¹⁵³ The exemption applies to restrictions that were put in place to protect the labour market, therefore refugees are not expected to be exempt from restrictions imposed on foreigners for the purpose of safeguarding national security and public order,¹⁵⁴ for example in South African foreigners are prohibited from the security and defence industry.¹⁵⁵

Article 17-19 under chapter III of the 1951 Refugees Convention is on the gainful employment of refugees, but Article 18 and 19 are obligations that Zimbabwe agreed to by not reserving them but reserved Article 17. The purpose of Article 17 is to allow refugees to work to earn stable income and in line with the national objectives of the Constitution of Zimbabwe, so that they are not totally dependent on donors and the UNHCR for their means of support. According to the UNHCR, the advancement and enablement of refugees' access to employment and socio-economic right is as a result of its unemployment problem and this calls for stakeholders to join hands in developing a conducive environment for more employment opportunities. Drafters of Article 17 intended to promote the right to work strictly on account that member states ought to do better without sacrificing the national interests.¹⁵⁶ This is to say if employing refugees will cause a threat to the security of the states they cannot be awarded the right to work or favourable conditions.

Article 17 reservation in general and to Zimbabwe is to the effect that refugee job seekers will not be granted privilege or exemption from conditions of and procedures applied to other foreign job seekers, and refugees like other foreigners require a work permit¹⁵⁷. Before the reservation or without the reservation the ideal situation is that refugees granted the right to work should have almost the same rights as the nationals of foreign states that are party to the convention hence the 'most

¹⁵¹ Astill, J., "UN Refugee work in crisis as world ignores Burundi", The Guardian, 14 February 2001

¹⁵² Article 17(2) 1951 Refugee Convention

¹⁵³ Section 12 (3) of the Zimbabwe Refugees Act

¹⁵⁴ Right to employment: Protecting Eritrean refugees' access to basic human rights in Ethiopia: an analysis of Ethiopian refugee law

¹⁵⁵ Union of refugee women and Others v Director, Private Security Industry Regulatory Authority and Others, CCT42

¹⁵⁶n154 above

¹⁵⁷ Reservations and Declarations to the 1951 Refugee Convention, accessed 26 June 2022, <http://www.unhcr.org/cgi-bin/texis/vtx/search?page=search>

favourable foreigner’ standard¹⁵⁸. Edwards noted that most of the reservations to the right to work under the Convention was meant to exclude refugees the standard that ought to be applied (the ideal situation) as ‘most favourable’ (that under the regional and other preferential agreements) or clarify that Article 17 does not preclude requiring refugees to get work permits.¹⁵⁹

4.3.1 PERMIT REQUIREMENTS

The requirements that are mandatory for a foreigner to be able or to be admitted to work in Zimbabwe (or to get a temporary work permit) are as follows; (1) fully completed residence permit application form (IF5), (b) Temporary employment Permit (TEP) application form (c) Application letter to the Chief Director of Immigration requesting for permit, (d) two passport sized photos (e) curriculum vitae (f) contract of employment (g) contract of employment (h) copies of academic and professional certificates (i) passport bio-data (j) chest X-ray certificate (k) advert in a local newspaper (l) curriculum vitae for two shortlisted candidates including their contact details (m) police clearance from country of residence (not less than 6 Months), (n) curriculum vitae for person identified to do understudy (o) professionals to be cleared by relevant authorities e.g. lawyers to be cleared by the law society of Zimbabwe (p) private voluntary organization certificate from social welfare for applicants under NGOs (q) support letter from line ministry of government supported projects or where companies were granted national project status (r) support letter from relevant regulatory authority/ministry (s) company profile, certificate of incorporation, memorandum and articles of association, CR6 which is our now CR5 and CR14 which is our now CR6 (t) valid Zimbabwe Investment Authority (ZIA) Licence (u) Zimbabwe Revenue Authority (ZIMRA) Tax clearance certificate (v) site map and directions from the nearest town (w) mining companies to submit impact assessment certificates from Environmental management agency (EMA) and claim certificate from ministry of mines (x) current lists of all expatriates and local employees (include National Social Security (NSSA) numbers, ID Numbers and contact numbers) and (y) statutory fee of USD500 and USD300 per family dependant, all non-refundable.¹⁶⁰

The application must be in duplicate, copies of all documents must be sufficiently authenticated with those from outside Zimbabwe to be notarized in the prescribed manner whilst within Zimbabwe may be certified by commissioners of oaths, all translations to be in English and copies of originals to be tendered, translations to

¹⁵⁸ Article 6 of the Refugees Convention

¹⁵⁹ Alice Edwards, ‘part 4 Gainful Employment’ in Andreas Zimmermann Et al, The 1951 Convention Relating to the Status of Refugees and its 1967 Protocol: A Commentary (OUP 2011); University of Michigan law school, The Michigan Guidelines on the Right To Work’, accessed 26 June 2022, <https://www.refworld.org/docid/4bbaf1242.html>.

¹⁶⁰ Zimbabwe Immigration: Temporary Employment Permit, <http://www.zimimmigratio.gov.zw/index.php/typography/104-temporary-employment-permit>, accessed 26 June 2022

be done by reputable institution (preferably government entities), all extensions to be done three (3) months prior to expiry of current permit.¹⁶¹ The Zimbabwean immigration system combines the application for a temporary employment permit and for a residence permit.¹⁶²

It is the writer's humble view that the requirements are too many and unrealistic to be met by foreigners which even worse for the refugees taking into cognisance the fact that most refugees leave of flee from their countries of origin as a result of conflict and without any chance to gather their particulars, to the extent that they not be able to take with them their documents including the required qualifications to obtain a work permit. It is a more complicated process to want to retrieve these documents from their countries of origin so that they meet the requirements to be formally and legally employed. In other words, their failure to produce the required documents means they will not be able to enjoy the right to work, therefore the restrictions amount to a denial of the same right.

4.3.2 OTHER RESTRICTIONS/ PROBLEMS FACED BY REFUGEES

Restrictions imposed on employment places for example some refugees are not allowed to work in urban areas which makes it a difficult because they are not given an alternative way of seeking for employment or a means of subsistence for example in Zimbabwe the Tongogara Refugee Camp (TRC) is in a remote area which is not close to town or big cities neither is it close to industrial sites where there is high likelihood to get a job. In other words, these restrictions also have negative impact especially to those who stay in camps and designated areas in that they will not be able to access income-generating opportunities.

There are also other concerns which may include access to health care, resettlement or security for refugees that remain in camps without the option of residency in urban areas. This has led to some refugees engaging in employment illegally thereby placing themselves in risks like detention, deportation and exploitative working conditions.¹⁶³ Many refugees in order to supplement their needs they are assisted with by the donors and UNHCR whilst some have resorted to casual agriculture and construction work in exchange for foodstuffs and other basic needs.¹⁶⁴

Some scholars in the field of refugees have noted with concern that permitting refugees' unrestricted access to the country's labour market may result in reduction of wages at the expense of its citizens, which can lead xenophobia and increased

¹⁶¹Work visa Requirements in Zimbabwe -Globalization Partners: <https://www.globalization-partners.com>, accessed 26 June 2022

¹⁶² ibid

¹⁶³ Kuhlman, T., 'Organized versus Spontaneous Settlement of Refugees in Africa' (1994) in H and Sorenson, J., *African Refugees: Development Aid and Repatriation*, eds, 117.

¹⁶⁴ ibid

hostility between refugees and the nationals like what South Africa usually experience almost yearly. The foregoing might be one of the reasons why or what Zimbabwe might have considered when it made a decision to enter a reservation to Article 17. The UNHCR noted that the sudden flow of a large sum of refugees even when its temporary puts pressure on the host country's limited resources, and that usually occur in very poor communities of the host country where the ability to absorb the new arrivals is curtailed by the poor living conditions, high levels of unemployment, inadequate shelter and land. Usually tension arise between the international community and the host countries on the question of who is responsible for managing the situation. This has resulted in most host countries to be in favour towards their nationals over the foreigners and refugees when it comes to issues to do with employment.¹⁶⁵

Several scholars in international refugees law who include Joly, Craven and Hathaway believe that refugees are facing discrimination when seeking employment, they are of the view that there is no global guarantee of a right to work but only a right to freely look for jobs which has led to developing countries, like Zimbabwe in deciding to what extent they will guarantee the right to work to non-nationals and it is alleged that they are of the view that Article 17 is more categorical and does not impose a wage and conditions of employment.¹⁶⁶

The view that some less developed countries are of the view that Article 17 applies to self-employment and professional practice is wrong, Article is supposed to be understood in its broadest sense to include all kinds of employments therefore the requirement of a work permit for refugees to work as casual workers is a breach of Article 17 of the 1951 Convention on the Status of Refugees.

According to the Universal Periodic Review (UPR)referred to above¹⁶⁷, the reality of refugees that are in Zimbabwe like in almost 70% of the countries in the world, do not have formal access to the labour market which has led to most refugees resorting to the informal sector. It is believed that in the informal sector refugees work under duress, there are jobs presenting special hazards and risks. In order for a refugee to reside in urban areas in, the refugees are supposed to demonstrate that they have the means to fend for themselves, yet they are restricted from formal wage-earning employment. Nonetheless, refugees with resources to run private businesses are authorized to do so in compliance with Article 18 of the 1951 Refugees Convention, and those who are qualified in professions with limited human resources, such as health services, may be allowed to work (in terms of Article 19 of the 1951 Refugees Convention).

¹⁶⁵Christopher Kapangalwendo Mubanga, *Right to employment: Protecting Eritrean refugees' access to basic human rights in Ethiopia: an analysis of Ethiopian refugee law*

¹⁶⁶ Mubanga, *ibid*

¹⁶⁷ UNHCR: OHCHR report, Universal Periodic Review: 2nd cycle, 26th session, Zimbabwe

In terms of a newspaper article,¹⁶⁸the Zimbabwean situation is that Zimbabwe has a strict encampment policy that requires that all refugees to be in camps i.e. the Tongogara Refugee Camp which is near Chipinge with a carrying capacity of 15000. But around 850 have moved to the two major cities, Bulawayo and Harare. Employment opportunities seem to be non-existent as such the UNHCR and other partners have taken the responsibility to employ some camp residents into banana farming, livestock production and soap production. Although there are hardships in Zimbabwe, some refugees have refused to be repatriated although they are aware that resettlement is impossible in Zimbabwe.

It is also important to note that Zimbabwe, Zambia and other surrounding countries reserved Article 17, and from the writer's analysis it is apparent that Zimbabwe has a framework of the right to work and is party to several international instruments which guard the same right but the problem is how the right can be said to be observed when the reservation is still standing as it will suppresses what other instruments say about the same right. The restrictions seem to be severe to those without qualifications professions within limited human resource and those without other means or capital to gain urban residence. The reason why there were reservations to this convention was to encourage participation of states which had potential of rejecting the convention for reason of unacceptable aspects contained therein.¹⁶⁹

4.4 Conclusion

In concluding this chapter it seems evident that the Zimbabwean legal frame work on the right to work is in line with the ideal situation required or in line with the international standards but the reservation to Article 17 seems to bring a distortion or rather confusion as to how refugees are supposed to be treated in Zimbabwe and the world as a whole. If one is to interpret the legal framework there seems to be protection of the right to work for every human being within the borders of Zimbabwe but if one goes to the reservation to Article 17 in the 1951 refugees Convention the confusion starts as it seeks to take away the right though imposing restrictions that are placed on foreigners.

It has been observed from the analysis of Article 17 that its problematic because most of the countries whether with a reservation to article 17 or not there seems to not embrace the right to work for many reasons which include the fear of distortion of the labour markets, security reasons among others. Most of the countries have found it not necessary to withdraw the reservation but simply

¹⁶⁸ Bulawayo 24 news, "Zimbabwe deports DRC refugees who allegedly looted food at refugee camp", 19 April 2022, accessed 26 June 2022 , <https://www.news24.com/news24/africa/news/zimbabwe-deports-drc-refugees-who-allegedly-looted-food-at-refugee-camp-2022>

¹⁶⁹ S.K.N Blay & B. M Tsamenyi, Reservations and Decelerations under the 1951 Convention and 1967 protocol relating to the status of Refugees, International Journal for Refugees , Volume 2, Issue 4, 1990, accessed 21 July 2022, <http://doi/10.1093/reflaw/2.4.527>

imposed restriction even for countries that had not reserved the right to work for refugees have and are imposing some restrictions citing security as one of the reasons. Countries like south, Sudan and Kenya for example did not reserve the right to work but have restrictions like requiring work permit from refugees, restrict movement, have discriminatory administrative processes etc. most of the countries have low levels of income although the UNHCR and other agencies have tried to assist states to honour their obligations to the 1951 refugees convention and for countries like Zimbabwe to progressively allow refugees to work although they reserved the right by facilitating vocational trainings carpentry, sewing) among other measures.

For Zimbabwe to have an open policy for refugees to work freely and fend for themselves by withdrawing the reservation and amending its legislation to remove restrictions, sounds like a great idea but from the writers view it need a functional economy that would not only need assistance from the UNHCR but be able to support the Nationals in the event that they are left without employment by refugees by either offering grants or some subsidise. The next and final chapter is chapter 5 which will wrap up the discussion by giving the summary of findings from chapter two to chapter four, give recommendations and conclusion

CHAPTER 5: CONCLUSION AND RECOMMENDATIONS.

5.1 INTRODUCTION

In this chapter the writer is wrapping up all the findings and conclusions that the writer has come across or conclusions that have been made throughout the research in chapter two, three and four . In this chapter the discussion will start with the summaries of findings, then work on the recommendations then finally conclude the discussion.

5.2 SUMMARY OF FINDINGS

5.2.1 Chapter Two: Summary of Findings

In **Chapter Two** the writer found out that the international, regional and national instruments seem to suggest that the drafters of the legal instruments did don't wish to take away any right including the right to work from the refugees but seem to advocate that they be treated with equality for reason of being human. Under the international legal frame work it is evident and undisputed that the right to work is open to every human being as long as it does not amount to prohibited practices like child labour as an example among other examples. Whilst the regional instruments, all four of them do extend the right to work to all including refugees and other groups which include women children, people living with disability etc. drafters of the international and regional instruments were aware of the fact that restrictions on the right to work can be viewed as a contribution to violation of absolute rights for example the prohibition on inhuman and degrading treatment, of forced labour etc. It has been demonstrated that the right to work is emphasized therefore shows how important this right is to the refugees and the world in general.

Whereas the national legislation allows that the right to work be extended to everyone which include refugees, for example the Constitution, the Refugees Act and the Labour Act but also recognizes the right to work is open to everyone but is also clear that a law may limit the enjoyment of labour rights. The overview of the analyzed legal instruments was not exhaustive but was meant to bring out whether the right to work is enshrined in some of the most important instruments. Chapter three will look at how other specific countries (Iran and Kenya) have dealt with right to work for refugees when they have reserved the same right in the 1951 Refugees Convention.

5.2.2 Chapter Three: Summary of Findings

From the analysis of **Chapter Three** it can be concluded that generally that developing States that have limited resources to no resources at all to provide the

right or to give access to the right work but are however permitted to gradually provide access to employment opportunities for refugees. The UNCHR has proposed that States need to take deliberate, concrete and targeted steps to stimulate economic growth and development, raise standards of living and overcome both unemployment and underemployment to facilitate access to decent work. States also need to pursue full and productive employment while safeguarding fundamental political and economic freedoms and reducing the informal economy which most refugees fall in. It is also important that refugees contribute to and make use of social security benefits, as well as have access to effective remedies to enforce their right to access decent work opportunities.

In Iran refugees have found it very tough to retain their refugee status, and it is more problematic for newly arriving refugees. Iran limits the freedom of movement and encampment impair their access to livelihoods among other restrictions previously mentioned including implementation of Article 48 and annex of the Iranian Five-Year Development plan of 2000 which has led to deteriorating conditions for refugees by causing premature termination of work permit and forced release from jobs. Although there are employment opportunities that are opened for refugees the opening has not been able to fully cover the gaps that exist to date as some refugees are still regarded as impoverished and not being able to meet their needs

Although Zambia welcomes refugees its national refugee legislation sets out refugees' rights to work upon obtaining a work permit, and the country's encampment policy restricts freedom of movement thereby limiting possibilities for refugees' self-reliance. While refugees with work permits are allowed to work or to be self-employed, in reality the government has allowed the right to work to be restricted by work permits that take time to be processed, complex, arbitrary, and expensive, thus prohibiting many refugees from participating in the formal economy and labour market. Despite creativities to promote self-reliance and the inclusion of refugees into communities, Zambia lacks a comprehensive study of the economic and social impact of refugees and asylum-seekers on local communities that could provide guidance on the potential economic contributions of refugees to their economy which Zimbabwe can then follow if successfully implemented.

To cap it all of the European and African mode of operation from the case studies illustrate that they are the same by not allowing refugees to have full access to the labour markets despite the differences in level of development and differences in continents. One of the differences that can be plucked out of the study is the responsible ministries that deal with refugees issues and who to approach for work permits. From the study it is very clear that the laws are there to support access to the labour market but they are coupled with restrictions which amount to an

obliteration of the right leaving to date approximately 70% of refugees live in countries with restricted to no right to work at all. Vocational training and other skills are offered to the refugees but they are not given a chance to use the skills because of the restrictions. Which bring the writer to the conclusion that there is need to withdraw the reservations, lift the restriction for the right to work to be embraced and implemented together with having more national and international actors sharing the responsibility to deliver decent work, labour market policies and engaging in trainings to support livelihood.

5.2.3 Chapter Four: Summary of Findings

In **Chapter Four** it seems evident that the Zimbabwean legal frame work on the right to work is in line with the ideal situation required or in line with the international standards but the reservation to Article 17 seems to bring a distortion or rather confusion as to how refugees are supposed to be treated in Zimbabwe and the world as a whole. If one is to interpret the legal framework there seems to be protection of the right to work for every human being within the borders of Zimbabwe but if one goes to the reservation to Article 17 in the 1951 refugees Convention the confusion starts as it seeks to take away the right though imposing restrictions that are placed on foreigners.

It has been observed from the analysis of Article 17 that it is problematic because most of the countries whether with a reservation to article 17 or not there seems to not embrace the right to work for many reasons which include the fear of distortion of the labour markets, security reasons among others. Most of the countries have found it not necessary to withdraw the reservation but simply imposed restriction even for countries that had not reserved the right to work for refugees have and are imposing some restrictions citing security as one of the reasons. Countries like south, Sudan and Kenya for example did not reserve the right to work but have restrictions like requiring work permit from refugees, restrict movement, have discriminatory administrative processes etc. most of the countries have low levels of income although the UNHCR and other agencies have tried to assist states to honour their obligations to the 1951 refugees convention and for countries like Zimbabwe to progressively allow refugees to work although they reserved the right by facilitating vocational trainings carpentry, sewing) among other measures.

For Zimbabwe to have an open policy for refugees to work freely and fend for themselves by withdrawing the reservation and amending its legislation to remove restrictions, sounds like a great idea but from the writers view it need a functional economy that would not only need assistance from the UNHCR but be able to support the Nationals in the event that they are left without employment by refugees by either offering grants or some subsidise. The next and final chapter is

chapter 5 which will wrap up the discussion by giving the summary of findings from chapter two to chapter four, give recommendations and conclusion

5.3 RECOMMENDATIONS

1. Withdrawal of the reservation: To make a difference from other countries Zimbabwe has to remove restrictions on refugees right to work, by firstly recommending that the Government of Zimbabwe through the Ministry of Foreign Affairs and International Trade to withdraw the reservation Article 17 (wage-earning employment) of the 1951 Convention relating to the status of Refugees, then amend the Refugees Act By removing the restriction in section..... This would allow refugees access to the labour market which can later prove to be economically wise to both the state and the refugees as there will be less burden on the fiscus and less dependence on donor aid. The ministry must ensure that the recommendations are implemented as soon as possible preferably within the next six months taking into consideration that an amendment might take time but the withdrawal of the reservation take a few months. The writer in that same vein also recommend that there be implementation of educational awareness programmes on the right to work for all including refugees especially when the government has managed to withdraw the reservation, so that the effects of the withdrawal will be acknowledged.
2. As a recommendation Government of Zimbabwe through the Ministry of Public Service, Labour And Social Welfare can choose to allow refugees to formally work then reduce the welfare entitlements, for example Zimbabwe can follow what some EU member states have implemented, where the waiting period to gain access into the labour market has been reduced (notwithstanding the strict sector restrictions), the authorities have adopted a stance that those asylum seekers without jobs as 'wilfully unemployed' and deny them welfare benefits.
3. The reason why refugees were or are unable to gain access to employment and socio-economic rights is as a result of the unemployment problem which is being caused by several factors. Formal Labour Market Access: According to some scholars, it has been noted that refugees can be massive economic contributors to the host communities which they settle. To enable intensification of refugee involvement and for them to achieve their well-being and self-reliance, refugees need to be admitted into the formal labour market/have formal labour market access. Most developed countries have adopted this stance by granting refugees and asylum seekers access to the formal labour market unlike in developing countries it has remained a problematic area. Therefore, the writer recommend that the Ministry of Public Service, Labour and Social Welfare calls for stakeholders to work together to come up with a favourable environment which allows for more employment

opportunities for refugees and be up to the international standards. The writer commend that the stakeholders meeting held as soon as practicably possible to allow refugees to access the labour market by January 2023.

4. Encourage the Ministry of Public Service, Labour and Social Welfare to permit small incoming generating programs e.g. dishwashing and toilet disinfectants production, small scale horticulture, chicken production etc to be commenced within the camps to reduce donor dependency and seeking illegal employment which has proven to be putting refugees at risks of unfair labour practices and prone to abuse. This can be implemented as soon as today because most of the refugees were already trained through UNHCR and its partners but what was left for some was the space to implement their acquired knowledge and the go ahead by the Social Work department responsible for their day to day activities and welfare.
5. Lifting of Restrictions/ Barriers: Like in Zimbabwe and other developing countries, the laws that allow refugees to gain access to formal employment are there but there are administrative and practical barriers that limit the access. So, there is need for government through the ministry of..... to revisit the administrative and practice that are acting as barrier to enable full access of refugees into the labour market for example the need of several requirements to get a permit or removal of the need for the permit itself because it is very expensive and a tiresome process etc, by amending its regulations and reviewing its requirements to absorb as much refugees as possible. This recommendation can only effectively give access to to the right to work if Zimbabwe's economy is fully functional, currently the economy is struggling and therefore the writer can not give a timeline as to when but end at as soon as practically possible and in the interest of the country and the public in general.
6. Removal of travel restrictions: There is need for refugees to have access to the labour market or start a business with some degree of freedom of movement. The ministry of Must Allow refugees to travel freely because it is a very important aspect that reveals the substantial probable contributions of refugees who are already present in a country.¹⁷⁰ This will also mean that there is also need of removal of the camp policy that requires refugees in Zimbabwe to be located in the Tongogara Refugee Camp but allow them to settle anywhere they can choose to secure a job. Although this raises issues of security but the government should at least try to strike a balance for the betterment of all parties.

¹⁷⁰ Michael Clemence, n171 above

7. Enforcement of the right through the courts: Since the greater protection of rights also lays in the court on the basis of cases brought before it, taking action based on the views of the Constitution and empowered to do so by the Constitution. It is therefore necessary for the legislature, Civil Society Organizations and the public to compel the courts to embrace the above responsibility to initiate change of attitude towards the refugees.¹⁷¹ The CSOs and NGOs can also assist (financially, or secure legal practitioners to help etc) refugees who feel that their labour rights are not being observed to contest in court and get a ruling that can set the record straight on Zimbabwe's commitment on the right to work for refugees. This can be initiated as soon as the recognize the need to assist the refugees.

5.4 CONCLUSION

This is the last and conclusion of this research. The right to work is entrenched in the Zimbabwean law but with restrictions that have been a barrier to the enjoyment of such right. Partly to blame for the deficit on implementation of the right is the reservation to Article 17 which Zimbabwe entered, this leaves the right hanging in that Zimbabwe has not withdrawn the reservation although the legal framework on the right to work in Zimbabwe seem to suggest that the reservation has been overtaken. On the other hand, this is a loophole because the Government of Zimbabwe can choose to relay on the reservation when it feel that it does not want to protect this right when sued in the international and regional courts and seek to raise that it is within the international standards when reporting citing that its framework is in touch. Based on the recommendations and observations stated above it is prudent in the interest of human rights and international refugee law to award refugees the right to work by withdrawal of the reservation and make it known (awareness) to the nationals of host countries that this right is fundamental to everyone regardless of status.

¹⁷¹TG Kasuso & T Madebwe, *The protection of individual labour rights in Zimbabwe*, African Human Rights Law Journal, 2021

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