

**RIGHTS OF REFUGEES IN HOST COUNTRIES: A CASE STUDY OF ZAMBIA,
CONGO AND ANGOLA**

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ABSTRACT

This article examines the protection of refugees' rights in Angola, the Democratic Republic of Congo (DRC), and Zambia, assessing the extent to which host governments, in collaboration with UNHCR and international partners, fulfil their humanitarian and legal obligations. While significant progress has been recorded in the provision of education, healthcare, water, sanitation, and legal assistance particularly in Zambia and parts of the DRC serious structural and political challenges persist. In Angola, documentation gaps, restrictions on movement, and reported expulsions undermine refugee protection despite humanitarian support in settlements such as Lóvua. In the DRC, although legal frameworks and remedial measures demonstrate formal commitment to human rights and refugee protection, persistent governance failures, electoral controversies, impunity for human rights violations, and ongoing armed conflict continue to generate displacement and weaken institutional protection mechanisms. Zambia presents a comparatively progressive legal regime, granting refugees access to courts, property ownership, employment, and pathways to citizenship, thereby promoting socio-economic integration. Drawing on social contract theory and democratic principles, the article interrogates whether "rule by the many" inherently prioritizes nationals over non-citizens, thereby limiting the universality of human rights in practice. It argues that political sovereignty often transforms universal human rights into citizenship-based entitlements, leaving refugees structurally vulnerable. The article concludes by recommending stronger domestication of regional and international refugee instruments, enhanced monitoring mechanisms, and improved accountability systems to ensure meaningful protection of refugees in host states.

Keywords: *Refugee Protection; Democracy; State Sovereignty; Human Rights*

INTRODUCTION

The Governments of the host countries, in partnership with the UNHCR and other non-governmental organisations such as the World Food Programme (WFP), World Vision, Plan International, Care International, International Organisation for Migration, Action Africa Help, Ajuda de Desenvolvimento de Povo para Povo (ADPP), work together for the provision of basic humanitarian needs for refugees in settlements and camps in the areas of education, healthcare, sanitation and employment. The obtaining conditions in host countries are as highlighted below.

Angola

The basic rights refugees receive are usually provided through international assistance from other NGO's. Following the new wave of refugees fleeing in from the Kasai region conflicts in DRC in 2017, a new refugee settlement, the Lóvua Settlement, was opened to accommodate over 35,000 refugees. The new settlement provides refugees with the basic needs and rights. For instance, the ADPP has provided education in the new settlement and surrounding communities by building 10 pre-schools for 1,107 children, 4 primary schools and an adult education center. The opening of these educational facilities has created work opportunities for refugees in the settlement as some individuals were recruited as to help run these projects.¹ In 2018 a new clinic was built by Lutheran World Federation (LWF) for refugees in the settlement to provide them with closer healthcare facilities whereas before refugees had had to travel about 24 km to access healthcare.² WASH services have also been provided in the camp by partners like LWF, Norwegian Church AID and UNICEF.³ A new community center opened in which at least 1,500 refugees and people from host communities partook in various classes intended to promote self-reliance amongst refugees.

Despite refugees having access to the basic rights from international organisations, there have been limitations. The scarcity of employment globally has negatively affected the refugees as where an opportunity arises preference is given to the locals before refugees are considered

Owing to the massive influx of refugees received in 2017, most refugees were brought into the country without registration as this was an emergency situation. Consequently, a number of refugees in the Lóvua Settlement and around the area of Dundo town center had no documentation and had not received refugee status in the country. The International Refugee Rights Initiative (IRRI) reported that many unregistered refugees had no rights to freedom of movement as they

¹ 'Quality Education for All in Lóvua' (ADPP) <<https://www.adpp-angola.org/en/?Itemid=305>> accessed 03 July 2021.

² 'LWF improves health care for refugees in Angola' (The Lutheran World Federation, 27 July 2018) <<https://www.lutheranworld.org/news/lwf-improves-health-care-refugees-angola>> accessed 01 July 2021.

³ 'Water and Sanitation for Kasai refugees in Angola' (The Lutheran World Federation, 27 July 2018) <<https://www.lutheranworld.org/news/water-and-sanitation-kasai-refugees-angola>> accessed 01 July 2021.

were not allowed to leave the camps to seek work or conduct any self-reliance business without facing undesirable treatment from national authorities.⁴

The 2018 February report by the UNHCR documented how many refugees had their documents confiscated by national authorities for no proper reasons. This incident led to many refugees fleeing their protection centers in fear of being deported.⁵

In the same year the Human Rights Watch reported on the massive expulsion of refugees and migrants in Angola by State Security forces. 400,000 people including refugees that had been forced flee and return back to their home countries. Angolan security forces had been accused of arbitrary detentions, harassment, sexual assaults, beatings, looting and burning down of homes by Congolese refugees that had forcibly crossed the border.⁶ This was not only an abuse of refugees' rights but also went against the rule of non-refoulement under the 1951 Convention and the OAU 1969 Convention.⁷

Despite refugees being granted the same access to legal services as Angolan nationals under Law No. 10/15, because most refugees are unregistered it inadvertently is difficult for them to access any legal services because they do not have the legal documents that recognize them as refugees in the country.⁸ Urban refugees have also been subjected to the risk of harassment, abuse, detention and discrimination by national authorities due to lack of proper documentation.⁹ The situation for refugees has been compounded with the Covid 19 pandemic. The Angolan Government has suspended all refugee and asylum seeker registration and documentation for Covid 19 reasons.

Democratic Republic of Congo

From the UNHCR 2020 statistics 20 education facilities had been constructed in the Democratic Republic of Congo. As a result of this 8,199 children enrolled into primary education and 1,797 secondary school for Burundian Refugees.¹⁰ From the 2019 End of Year Report it was documented

⁴ International Refugee Rights Initiative, Movement Restricted: Congolese Refugees in Angola (March 2018) 6 <<file:///C:/Users/me/Downloads/Angola-DRC-paper-final.pdf>> accessed 27 June 2021.

⁵ UNHCR, "Inter-agency operational update –DRC situation", 7 March 2018, <<https://data2.unhcr.org/en/documents/download/62468>> accessed on 12 June 2018).

⁶ Angola: Stop Abusive Expulsions of Migrants: serious abuses alleged in Diamond Mining Crackdown (Human Rights Watch, 15 November 2018) <<https://www.hrw.org/news/2018/11/15/angola-stop-abusive-expulsions-migrants>> accessed 30 June 2021.

⁷ Convention Relating to the Status of Refugees (n34) art 33; Convention Governing the Specific Aspects of Refugee Problems in Africa (n38) art 2(3).

⁸ Law on the Right of Asylum and the Refugee Status (n46) art 42.

⁹ UNHCR, Global Focus UNHCR Operations Worldwide: Angola, 2020 <<https://reporting.unhcr.org/node/10321?y=2020#year>> accessed 15 June 2021.

¹⁰ UNHCR, Global Focus UNHCR Operations Worldwide: Burundi Refugees in DRC 2020 <<https://reporting.unhcr.org/node/24664>> accessed 30 June 2021.

that South Sudanese refugees received 19 boreholes for water supply¹¹ whereas in 2020, shelters were constructed for vulnerable South Sudanese refugees. Rehabilitation of community infrastructures such as schools, roads and healthcare centers were done. The services provided also benefited host villages around the area. Due to Covid-19, 14 hangars had been constructed to help facilitate for individuals and families needing to quarantine at the general hospital.¹²

The DRC also guarantee refugees access to legal services.¹³ Biometric registration of refugees also begun and by 2020, 1,280 Central African refugees had been issued identity cards outside the North Ubangi camps. This has provided them with legal documentation as refugee cards. In Bondo territory at least 1,795 households had their biometric registration.¹⁴ Although this was a positive development, this is still problematic because, as mentioned earlier, refugee cards are not being recognized by government service providers and so their basic needs and rights are still being withheld.¹⁵

In addition to the Conventions on refugees, the DRC is a signatory and has ratified the UN Declaration on Human Rights, the African Charter on Human and People's Right. It is also a signatory to the Charter on Democracy, Elections and Governance though it has not ratified it yet.¹⁶ Its Constitution declares, in the Preamble, that it "is a State based on the rule of law, independent, sovereign, united and indivisible, social, democratic and secular."

Additionally, the Constitution reaffirms the country's adherence and attachment to the UN Declaration on Human Rights and the African Charter on Human and People's Rights.¹⁷ The drafting and passing of the constitution, followed by the country's very first elections in 2006 was a positive step for the country towards democracy and the promotion and protection of human rights for their nationals.

However, as highlighted earlier, the participation of a country in elections does not guarantee that the country is democratic in Africa. Most countries participate in routine elections but most of these countries are far from truly being democratic and the DRC is one of them. Since gaining its independence in 1960, the DRC has experienced some of the darkest times in Africa. Confronted

¹¹ UNHCR, Global Focus UNHCR Operations Worldwide: Democratic Republic of Congo, Water 2019 <<https://reporting.unhcr.org/node/28031>> accessed 30 June 2021.

¹² UNHCR, Global Focus UNHCR Operations Worldwide: Democratic Republic of Congo <<https://reporting.unhcr.org/node/32012>> accessed 30 June 2021.

¹³ Democratic Republic of Congo Country Refugee Response Plan (Reliefweb, January 2019 – December 2020) 6 <[Democratic Republic of the Congo Country Refugee Response Plan \(CRRP\) January 2019 - December 2020 - Democratic Republic of the Congo | ReliefWeb](#)> accessed 17 June 2021.

¹⁴ UNHCR, Global Focus UNHCR Operations Worldwide: Democratic Republic of Congo, Central African Refugees 2020 <<https://reporting.unhcr.org/node/24662>> accessed 30 June 2021.

¹⁵ The Status of Refugees in Democratic Republic of Congo (n51) art 27.

¹⁶ African Charter on Democracy, Elections and Governance (n26).

¹⁷ The Constitution of the Democratic Republic of Congo (adopted 13 May 2005).

with civil wars and conflicts involving national and international forces, the Democratic Republic of Congo experienced the continents largest and widespread interstate conflict.¹⁸ This became known as the African War and is considered as being equivalent to World War I.¹⁹ The country's presidency and government, for many years, had only been succeeded through coup d'états, and run by strict authoritarian and one party regimes. It was only after four decades that the country held its very first elections in 2006 after a Constitution was adopted the year before. Elections have been held from then on but these have not gone without controversies. In 2016 at the end of Joseph Kabila's final presidential term, the Commission Electorale Nationale Indépendante (CENI) announced that they were unable to hold the presidential elections that were meant to take place in November that year. This resulted in another two years of Joseph Kabila sitting in Presidency.²⁰ This clearly depicts the seriousness of the interference to democracy experienced in the country. This resulted in an obvious violation of the political rights of the People of Congo and foreseeably, triggered a frustration and angry nation which resulted in the unfortunate death of 50 citizens, who were killed by the state officials whilst hundreds of others were arbitrarily arrested.²¹ The results of the elections which were finally held in December 2018, after a two year wait, further caused more controversies. Allegations of rigged elections arose after media houses received leaked information that the number of votes counted by the Catholic Church and those announced by CENI to the public had a huge difference.²² When majority of the former ruling party won majority of the parliamentary seats, this inevitably gave the former ruling political party the final say on who the countries Prime Minister would be. Noting that the Prime Minister is in charge of the Government's ministry and security agencies, Kabila's Political party has still maintained majority control over the countries decision in most of the countries ministerial departments.

It is, therefore, difficult to argue that this would generate much change in the country. Such actions render the whole election process and democratic process redundant and frustrates any development needed for the people of Congo regarding any protection of their human rights.

The countries participation in somewhat regular elections has not been genuine and the people of the country are not having their political rights respected. The holding of the election process,

¹⁸ Howard Wolpe, 'The Great Lakes crisis: an American view' (2000) 7 South African Journal of International Affairs 27.

¹⁹ André Mbata B Mangu, 'From war to peace: The Democratic Republic of Congo in transition' (2003) 10 South African Journal of International Affairs 159 – 160.

²⁰ Aaron Ross 'Congo Commission Expects Presidential Vote to Delay to Dec 2018' (Reuters, 1 October 2016) <<https://www.reuters.com/article/us-congo-prez-vote-idUSKCN1213BH>> accessed 23 June 2021.

²¹ Jason Burke, 'Clashes in Kinshasa Leave 50 dead, say DRC opposition groups' (The Guardian, 20 September 2016) <<https://www.theguardian.com/world/2016/sep/19/democratic-republic-congo-demonstrations-banned-police-killed-joseph-kabila-etienne-tshisekedi>> accessed 23 June 2021.

²² 'DR Congo presidential election: Church questions results' (BBC News, 10 January 2019) <<https://www.bbc.com/news/world-africa-46827760>> accessed 23 June 2021.

with the purpose of establishing an institutional organisation to carry out the will of the masses, did not solidify the existence of democracy within the country.

This form of democracy fails to meet any of the requirements provided for in Diamond, Ake or even Schumpeter's definitions on democracy. The violation and abuse of millions of individuals civil, political, economic, cultural and social rights and freedoms, mostly committed by state officials, have been the main focus of concern for the people of the DRC. Therefore, showing no state protection of individual or group liberties or any autonomous spheres.²³ Furthermore, the existence of corruption and greed from higher senior government officials has proved staggering economic and developmental outcomes for the country.²⁴ There are massive gaps between rich and poor in the country. The country's wealth circulates amongst the higher social classes, most of whom are politicians, through unconscionable arrangements amongst themselves. This inevitably slows down any economic development in the country. Even the institutional arrangement in which political decisions through the election of individuals who assemble to carry out the will and common good of the people does not exist or exists at an extremely faulty level as highlighted in the above paragraph.²⁵ Therefore, by definition the DRC cannot be said to be ruled by the many and thus not truly a democratic state.

a. Human rights violations and the displacement of citizens

The country has had numerous reports on the gruesome violation and abuse of the citizens' most fundamental human rights and freedoms that have resulted from kidnappings, forced disappearances, murders, sexual violations, extrajudicial executions, arbitrary detentions, threats, harassments and the oppression of journalists, media houses and human rights activists around the country. In 2020, Amnesty International reported on the killing of thousands of Congolese in the North and South Kivu Provinces, the Ituri Province in the East as well as in the Kasai region.²⁶ Most of the killings were reported to have been committed by non-government armed groups although state agents, like the Armed Forces of the Democratic Republic of Congo (Forces Armées de la République Démocratique du Congo (FARDC)) and the Congolese National Police (Police Nationale Congolaise (PNC)) have also been reported to take part in extrajudicial killings and summary executions in these conflict affected areas.

²³ Diamond (n25).

²⁴ Ake (n26).

²⁵ Schumpeter (n24).

²⁶ 'The Democratic Republic of the Congo 2020' (Amnesty International, 2020) <<https://www.amnesty.org/en/countries/africa/democratic-republic-of-the-congo/report-democratic-republic-of-the-congo/>> accessed 26 June 2021.

The United Nations Joint Human Rights Office (UNJHRO) in DRC also reported that over 225 civilians had been murdered at the hands of state agents with 33 being women and 18 children in the first half of the year 2020.²⁷ In addition, state agents have been reported to also commit sexual violence crimes against women and girls. The UNJHRO recorded 1,376 victims of conflict-related sexual violence of which 31 percent of the cases reported had been attributed to state officials. 80 percent of the cases were women and 19 percent were children. FARDC and the PNC have continued to be listed as primary perpetrators for conflict related sexual violence in Beni territory during ongoing operations against Allied Democratic Forces (ADF).²⁸

Additionally, human rights defenders, media reporters and journalists also face serious violations of their human rights under Articles 6, 9(2) and 11 against their rights to liberty, security of person, freedom from arbitrary detention and freedom of expression.²⁹ Reports documented included; death threats against Denis Mukwege, a Nobel Peace Prize Laureate, for his demands for accountability of human rights violations in the DRC;³⁰ Jean Claude Katende and Jean-Pierre Mutemba, human rights defenders, were threatened for their active posts demanding justice for the various charges held against the Presidential Senate;³¹ and Dismas Kitenge Senga, the Head of a human rights NGO that documents human rights violations in Kisangani, received threats from unknown sources in 2006 following his activities and radio interviews in which he denounced the violations of human rights in the country and the impunity enjoyed by senior military officers alleged to have committed serious human rights violations.³² In 2014, five community human rights defenders had been detained and faced charges for their criticism of an oil company that had violated its agreement with the community to provide health and education centers and water supply for the community in Tshopo Province in exchange for the exploitation of their land.³³

²⁷ Joint United Nations Office for Human Rights: OHCHR-MONUSCO, 'Violations of Human Rights and International Humanitarian Law committed by combatants of the Allied Democratic Forces (ADF) and members of the Congolese defense and security forces in the territories of Beni (North Kivu), Irumu and Mambasa (Ituri)' (2020) 11 <[DRC_Public_Report.pdf \(ohchr.org\)](#)> accessed 26 June 2021.

²⁸ UNGA, 'Report by UNHCHR on Human Rights Situation and the Activities of the United Nations Joint Human Rights Office on the Democratic Republic of the Congo' (14 September 2020) UN Doc A/HRC/45/49 5.

²⁹ African Charter on Human and People's Rights (adopted 27 June 1981) 21 ILM 58.

³⁰ 'Democratic Republic of Congo: Concrete actions must be taken to protect Denis Mukwege after death threats' (Amnesty International, 2020) <<https://www.amnesty.org/en/latest/news/2020/09/democratic-republic-of-congo-concrete-actions-must-be-taken-to-protect-denis-mukwege/>> accessed 27 June 2021.

³¹ 'International Federation for Human Rights, Death Threats – COD 003/0506/OBS 57 (04 May 2006) <<https://www.fidh.org/Menaces-de-mort-COD-003-0506-OBS-57>> accessed 27 June 2021.

³² 'New acts of Harassment against Mr. Disas Kitenge' (OMCT, 21 November 2006) <<https://www.omct.org/en/resources/urgent-interventions/new-acts-of-harassment-against-mr-dismas-kitenge>> accessed 27 June 2021.

³³ 'The Democratic Republic of the Congo 2020' (Amnesty International, 2020) <<https://www.amnesty.org/en/countries/africa/democratic-republic-of-the-congo/report-democratic-republic-of-the-congo/>> accessed 26 June 2021.

Most journalists and media workers have been heavily subjected to violent threats, intimidation, harassment, arbitrary arrests and detention and prosecution. Specific reports include journalists such as Dek'son Assani Kamango who was arrested and Christine Tshibuyi who had been threatened and physically assaulted by men in a vehicle commonly used by the Republican Guard.³⁴ In Mongala Province at least 6 journalists had their credentials revoked whilst authorities temporarily shut down four radio stations and suspended several broadcast programs that had a political nature to them.³⁵ Other human rights defenders have been murdered such as Floribert Chebeya and his Driver Fidèle Bazana and Pascal Kabungulu Kibembi.³⁶ These violations are committed by state officials and authorities who have been appointed to protect and regulate Congolese citizens' fundamental rights and freedoms. Such actions, however, institute grave violations of Congolese individuals' right to freedom of expression and constitutes oppression of the people by instilling fear in citizens against speaking up for their most fundamental human rights.

It is understandable that human rights are sometimes violated in most countries however the DRC government has failed to hold these perpetrators accountable for their human rights offences. Most senior state officers have been enjoying impunity for the violation of human rights in the state without any form of reprimand to hold them accountable. Most senior army officers have been under United states of America and European Sanctions for human rights violations for years but have remained in senior army positions whilst some even received promotions.³⁷

Gabriel Amisi was promoted after Felix Tshisekedi conducted a reshuffling of army positions in July 2020, despite being under European Union sanctions for human rights violations and obstructions of the electoral process in DRC.³⁸ Gabriel had replaced John Numbi who had held the army General position since 2017, who too, is under EU ad USA Sanctions for the murder of human rights defender Floribert Chebeya and his driver Fidèle Bazana. Numbi did not received

³⁴ 'Amnesty International Report 2020/2021: The State of the World's Human Rights' (Amnesty International, 2021) 141 <<https://www.amnesty.org/download/Documents/POL1032022021ENGLISH.PDF>> accessed 26 June 2021.

³⁵ 'DR Congo: Authorities Foundering on Rights: Crackdown on Media, Dissent, Protests' (Human Rights Watch, 22 July 2020) <<https://www.hrw.org/news/2020/07/22/dr-congo-authorities-foundering-rights>> accessed 26 June 2021.

³⁶ 'DR Congo: Prominent Human Rights Defender Killed: Joint Government and UN Inquiry Needed into Death of Floribert Chebeya Bahizire' (Huma Rights Watch, 3 June 2010) <<https://www.hrw.org/news/2010/06/03/dr-congo-prominent-human-rights-defender-killed>> accessed 26 June 2021.

³⁷ 'DR Congo: EU, US Sanction Top Officials: UN, AU Should Expand Actions Against Rights Abusers, Press for Credible Elections' (Human Rights Watch, 1 June 2017) <<https://www.hrw.org/news/2017/06/01/dr-congo-eu-us-sanction-top-officials>> accessed 26 June 2021.

³⁸ 'Congo replaces Sanctioned Army Chief with Deputy also sanctioned for rights abuses' (Reuters, 17 July 2017) <<https://www.reuters.com/article/us-congo-army-idUSKCN24I2L9>> accessed 26 June 2021.

any punishment for these crimes other than being denounced as police chief at the time the crimes were committed.³⁹

It is clear that the DRC Government has repeatedly failed to hold human rights violators accountable for the crimes they commit against the nationals. Such inaction by the government is the primary reason and encouragement that human rights offenders use to continue committing crimes that violate the rights of the Congolese people.

Most conflict affected areas are largely invaded by armed rebel groups such as the ADF and others that cause the massive displacement of locals in the Ituri province, North and South Kivu Provinces, Tanganyika Provinces, and the Kasai Regions. However, blame cannot be place solely on these rebels groups as it has been shown on numerous occasions that state officials like FARDC and the PNC are also responsible. This is because the country has a heavy culture that lacks respect for human rights and enjoys impunity for the violations of these rights. Therefore, state operations against armed rebel groups in conflict affected areas are not likely to take into consideration any human rights laws and international humanitarian laws to protect the lives of locals in these conflict affected areas. Which is the reason that clashes in these areas result in massive violations of human rights resulting in severe casualties and displacement of locals. For example, Operations held by FARDC under Operation Sukola 1, army officials failed to take into consideration the recommendations made by the UNJHRO relating to the assessment of the risks of retaliations against isolated civilians in the area as well as implementing any mitigation measures. This resulted in a provoked wave of retaliation attacks by the armed ADF rebels, against civilian populations which resulted in severe casualties and massive displacement of these civilians.⁴⁰

It has been due to these violations that the DRC has become one of the biggest sources of displaced people in the continent with the largest number of Internally Displaced People (IDP). It has almost a million refugees and asylum seekers in other neighboring countries. Recently, in April 2021, over 75,000 people were forced to flee their homes following conflict between the Hutu and Tembo militia in Bubungu in South Kivu Province.⁴¹ It was recorded that an increase of deterioration of security and political situations had led to a declaration of State of Emergency. Over 3,000 protection reports were made regarding this situation with the highest total number of human rights violations that have ever been monitored in the Ituri area since the beginning of the UNHCR and

³⁹ 'Wait for fair Trial Continues, Ten Years After Murder of Floribert Chebeya and Fidèle Bazana' (OMCT, 02 June 2020) <<https://www.omct.org/en/resources/urgent-interventions/wait-for-fair-trial-continues-ten-years-after-murder-of-floribert-chebeya-and-fid%C3%A8le-bazana>> accessed 26 June 2021.

⁴⁰ Joint United Nations Office for Human Rights: OHCHR-MONUSCO (n68) 7.

⁴¹ UNHCR, 'Operational Update: Democratic Republic Of Congo' (April 2021) <[file:///C:/Users/me/Downloads/UNHCR%20DRC%20Operational%20update%20template_%20April2021_FINAL_2%20\(1\).pdf](file:///C:/Users/me/Downloads/UNHCR%20DRC%20Operational%20update%20template_%20April2021_FINAL_2%20(1).pdf)> accessed 26 June 2021.

INTESOS protection programmes. This situation led to over 45,000 Congolese attempting to flee into Uganda in mid May 2020.⁴² In 2018 UNICEF reported over 3.8 million Congolese affected by conflicts in the Kasai region in DRC.⁴³ An estimate of thousands of Congolese had fled to Angola and about 8,000 internally displaced due to intercommunal conflict between customary chiefs and the Government.⁴⁴ This was because a wide conflict involving armed security forces, militia groups and armed groups caused alarming human rights violations leading to millions in the Kasai region to flee their homes, losing access to health care, education, safe drinking water and sanitation. The most ghastly of the human rights violations reported included children being killed and kidnapped and forced to fight and kill, or being used as human shields.⁴⁵ By the end of May 2021 it was estimated that 948,815 refugees were being hosted in other countries which is over a 100,000 more than the estimated number reported in 2018.⁴⁶

b. Remedial measures taken

To address some of the aforementioned issues the DRC's Government and other international and national non-governmental organisations have taken steps to ensure and to better protect and promote the fundamental human rights of the nationals. For example, in a positive step towards respecting the freedom of expression and right to liberty, on March 13 2019, Félix Tshisekedi ordered the release of 700 people, many of whom had been arbitrarily detained for expressing their political views or participating in peaceful political protests.⁴⁷

Furthermore, to tackle the major issue of impunity in the country, the Courts have recently been holding human rights offenders accountable for their crimes. The UNHCHR reported, in August 2020, that during the period in which the report was made at least 148 members of the armed forces, 37 Congolese PNC officers and 48 members of armed groups had been arrested and convicted in the Congolese courts for the violation of citizens' human rights.⁴⁸ In July 2019, a Judicial Commission of Inquiry was established in Ituri Province to investigate the violence

⁴² 'Over 3,000 Congolese refugees arrive in Uganda in three days' (UNHCR, 07 July 2020) <<https://www.unhcr.org/news/briefing/2020/7/5f042a5a4/3000-congolese-refugees-arrive-uganda-three-days.html>> accessed 26 June 2021.

⁴³ 'Conflict in the Kasai, Democratic Republic of the Congo' (Unicef) <<https://www.unicef.org/child-alert/democratic-republic-of-congo>> accessed 27 June 2021.

⁴⁴ UNHCR, 'Supplementary Appeal: Congolese Situation, Responding to the needs of displaced Congolese and refugees' (January – December 2018) <<https://www.unhcr.org/5a8c27fb7.pdf>> accessed 27 June 2021.

⁴⁵ Conflict in the Kasai, Democratic Republic of the Congo (n84).

⁴⁶ UNHCR, Operational Data Portal: Refugee Situations, Democratic Republic of Congo, 2021 <<https://data2.unhcr.org/en/situations/drc>> accessed 27 June 2021.

⁴⁷ 'DRC: Release of prisoners of conscience first step towards restoring human rights' (Amnesty International, 14 March 2019) <<https://www.amnesty.org/en/latest/news/2019/03/drc-release-of-prisoners-of-conscience-first-step-towards-restoring-human-rights/>> accessed 2 August 2021.

⁴⁸ Human Rights Situation and the Activities of the United Nations Joint Human Rights Office on the Democratic Republic of the Congo (n69) 9.

committed in June 2019 in Dugu and Mahagi territories. And since it was established, more than 1,500 victims and witnesses were heard in the Courts and resulted in 187 suspects of human rights offences being detained and 128 defendants being referred to the Garrison Military Tribunal of Ituri. In addition to this, the Garrison Military Tribunal sentenced three combatants of the Force de Résistance Patriotique de l'Ituri (a rebel group) to 20 years' imprisonment for war crimes involving rape and looting and for participating in a rebel movement in Irumu territory in 2017.⁴⁹ The UNJHRO have also been involved and supported 10 joint investigation missions and 11 mobile court sessions throughout the country. The Office also organized 24 protection missions to provide protection and legal assistance to 1,044 victims and witnesses between June 2019 and May 2020.⁵⁰

Other bigger perpetrators such as Ntabo Nteberi Sheka of the Nduma Defence of Congo armed Group (NDC-Sheka),⁵¹ and Frédéric Masudi Alimasi, (Kokodikoko), the chief of the Mai-Mai Raia Mutomboki armed group were finally sentenced to life imprisonment, for their crimes against humanity including rape, sexual slavery, child recruitment and murder and executions.⁵² Takungomo Mukambwila (Le Pouce), the senior leader of the Mai-mai Raia Mutomboki Chalequine received 20 years for crimes against humanity including rape and sexual slavery.⁵³ In November 2019, an addendum to the 2013 Joint Communiqué between the Government of DRC and the UN on the fight against sexual violence in conflict was signed during a visit from the Special Representative of the Secretary General on Sexual Violence in Conflict.⁵⁴ At least 453 risk assessments were reported to have been carried out by the Secretariat responsible for human rights due diligence policy on UN support to non-UN security forces. As a result of risk mitigation measures, the policy led to significant progress in the fight against impunity. For instance, joint committees have been established to monitor cases of human rights violations by the members of the FARDC and NPC officers as well as to follow-up on remedial measures taken by the authorities

⁴⁹ Human Rights Situation and the Activities of the United Nations Joint Human Rights Office on the Democratic Republic of the Congo (n69) 9.

⁵⁰ Ibid 10.

⁵¹ Office of the Special Representative of the Secretary General for Children and Armed Conflict, United Nations Officials Welcome the Conviction of Ntabo Nteberi Sheka for War Crimes of Rape Sexual Slavery, Child Recruitment and Murder in Democratic Republic of Congo, (24 November 2020) <<https://childrenandarmedconflict.un.org/2020/11/united-nations-officials-welcome-the-conviction-of-ntabo-ntaberi-sheka-for-war-crimes-of-rape-sexual-slavery-child-recruitment-and-murder-in-democratic-republic-of-the-congo/>> accessed 2 November 2021.

⁵² Human Rights Situation and the Activities of the United Nations Joint Human Rights Office on the Democratic Republic of the Congo (n69) 7.

⁵³ UNSC, Overview of the Secretary General's Report (30 March 2021) UN Doc S/2021/312 12.

⁵⁴ The Democratic Republic of Congo Addendum to the Joint Communication on Conflict-Related Sexual Violence: Between the Democratic Republic of Congo and the United Nations Organisation (November 2019) <<http://www.un.org/sexualviolenceinconflict/wp-content/uploads/2019/12/joint-communication/addendum-au-communication-conjoint-sur-les-violences-sexuelles-liees-au-conflit-entre-la-republique-democratique-du-congo-et-lorganisation-des-nations-unies/RDC.pdf>> accessed 02 August 2021.

in such cases.⁵⁵ Furthermore, an action plan on sexual violence by the NPC was adopted in November 2019.⁵⁶

Lastly, with regards to the prevention of displacement of Congolese, the country has addressed some of the problem areas of the conflict happening in the country. The UNJHRO reported in 2021, that since the appointment of a new commander as head of Operation Sukola, there have been some positive outcomes in which ADF and other armed rebel groups' bases had been ceased and state authority have been restored in these areas. This was done whilst following and respecting human rights and international humanitarian law.⁵⁷ Furthermore, early warning and rapid reaction mechanisms have been reinforced and are being improved to ensure that civilian populations work with the security forces to prevent and deal with armed attacks in the area. Telephone operators have also been involved in these operations to increase coverage areas affected by the presence of armed groups.⁵⁸

Zambia

In Zambia, refugee settlement camps and surrounding host communities have received sufficient assistance in the provision of water and sanitation. In 2020 the Mantapala refugee settlement was provided with 51 boreholes and 400 household latrines were drilled and constructed, respectively, with the support of Kfw Development Bank of Germany, the European Union through Unicef, World Vision and the New Apostolic Church Relief Organisation. Refugees are now being provided with an improved 31 litres of water per day, which is 11 litres above the standard requirement for refugees in settlements.

Refugees are provided with food through the assistance of the WFP and the Action Africa Help International Zambia.⁵⁹ A new referral hospital has recently been built in the capital city of Lusaka to facilitate health care services for urban refugees and act as a referral hospital for refugees in settlements. The facility also provides mental health care services for refugees. The UNHCR in conjunction with other international NGO's have sustained 11 health care facilities in proximity to the three settlements in order to provide quality services and healthcare for refugees. 100 percent of the people of concern to the UNHCR had access to and received primary healthcare.⁶⁰ Refugees

⁵⁵ Human Rights Situation and the Activities of the United Nations Joint Human Rights Office on the Democratic Republic of the Congo (n69) 6.

⁵⁶ Ibid 8.

⁵⁷ Joint United Nations Office for Human Rights: OHCHR-MONUSCO (n68) 13.

⁵⁸ Ibid 14.

⁵⁹ UNHCR, Factsheet: Zambia (August 2020) 3

<file:///C:/Users/me/Downloads/UNHCR%20Fact%20Sheet%20Zambia%20August%202020%20final_RBSAxxfinal.pdf> accessed 20 June 2021.

⁶⁰ UNHCR, Global Focus UNHCR Operations Worldwide: Democratic Republic of Congo 2020

<<https://reporting.unhcr.org/node/10322?y=2020#year>> accessed 7 June 2021.

have also been granted free access to the courts under Section 40(1) of Zambia's Refugee Act, 2017 and they enjoy the same treatment as a citizen in matters pertaining to access to the court, including legal aid and exemption from the payment of security for costs.⁶¹ For example in 2015, two former Rwandan refugees, Mr. Innocent Habumugisha and Mr. Egide Rwasibo, were able to start legal proceedings against the Minister of Home Affairs for wrongful deportation back to Rwanda on grounds that they were spies for the Rwandan Government. The Zambian High Court Ruled against the Minister of Home Affairs and stated that the deportation was "unconscionable and unreasonable" because this put the two men at risk of being persecuted back in Rwanda since they had been welcomed into Zambia as Refugees.⁶²

Apart from providing basic food, health, education and sanitation needs for refugees in settlement camps, the Zambian government through the enacted Refugee Act has enshrined legal rights and protections for refugees similar to those of its citizens. It has also included provisions for social and economic integration of refugees in Zambia. For instance, refugees above the age of 16 and their dependents have been granted permission for residency in the country through the prescription of an identity card under section 45(1)(a) and (b) as well as the right to be granted citizenship for those that have met the national requirements to acquire Zambian citizenship under section 49(2).

Prior to the new Act, in 2011, through the integration programme, over 10,000 Angolan Refugees who had lived in Zambia from 1966 to 1986 were granted citizenship by the Zambian Government. By 2015 the integration criteria allowed over 15,000 Angolan registered refugees and about 4,000 Rwandan registered refugees to gain citizenship in Zambia.

The Refugee Act also grants registered refugees the rights to ownership of movable and immovable property under section 39. It also gives the refugee the right to acquire a work and study permit under section 45. Through this statutory provision, the refugee is able to seek employment and enroll for studies in the county under section 41(1).⁶³ Refugees are also allowed to own and establish commercial and industrial companies under Section 42 of the Refugee Act 2017⁶⁴ as read together with the Immigration and Deportation Act of 2010.⁶⁵

1. Rule by the Many as against Rights of Refugees in Host Countries.

⁶¹ The Refugees Act No. 1 (n44) section 40 (2).

⁶² Ivan Mugisha, 'Deported from Zambia, Former Rwanda refugees choose to stay' (Reliefweb, 16 September 2018) <[Deported from Zambia, former Rwandan refugees choose to stay - Zambia | ReliefWeb](#)> accessed 7 June 2021.

⁶³ The Refugees Act No. 1 (n44).

⁶⁴ Ibid Section 42.

⁶⁵ National Assembly of Zambia, Immigration and Deportation Act No.18 of 2010 section 29(1).

If the aforementioned definition of democracy is applied, then the question that follows is who are the many and how do they rule? Firstly, rule by the many or the demos would be by selected representation elected through free, fair and transparent elections. Otherwise this would not be democracy but rather, would fall into some other form of absolutism. Secondly, the demos would be the individuals that make up the state; the nationals.

According to Thomas Hobbes, organised states were formed by way of mutual agreements known as social contracts, by individuals, in an effort to escape the “state of nature,” which Hobbes believed was the horrific state of humanity before social contracts were formed.⁶⁶ The basic idea of Hobbes’ theory is that individuals, in order to escape the “*poor, nasty, brutish and short*” life of the state of nature, are willing to compromise on some of their rights in exchange for security of their other rights such as peace and protection in order to live peacefully.⁶⁷ However, if states truly are formed in this manner, then this begs the question; what happens to those who come into the state from outside? Not by their own choice, but because owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, or those owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of their country of origin or nationality, are compelled to leave their place of habitual residence in order to seek refuge in another place outside their country of origin, the refugees.⁶⁸

Only two solutions materialise for refugees in these circumstances. The first, is for refugees to create their own social contracts and the second is for them to merely join the host state’s social contract. The former solution is unrealistic and close to impossible. The latter, means that refugees who are coming from diverse backgrounds, politically, socially, culturally and religiously, would be forced to give up these rights in order to join the host countries social contract. Situations in which refugees enter a state and want to create their own social contract with the state is highly unwelcomed as most host countries are not willing to compromise on their legal rights – the mutual agreement made with the state in a social contract.⁶⁹ Consequently, because the selected representatives of a state are chosen and get their power to rule from the demos, whom they rest their sovereign powers in, the state will be set to protect the rights of the nationals. In the process of doing so, anyone who falls outside their borders, such as refugees, are excluded. As a result, the popular conception of the universality of human rights is challenged and rights become citizen’s rights by way of political sovereignty.

⁶⁶ Thomas Hobbes, *Leviathan*, Introduction and Notes by J. C. A Gaskin, (OUP 1998)

⁶⁷ *Ibid.*

⁶⁸ Convention Governing the Specific Aspects of Refugee Problems in Africa (n38) art 1.

⁶⁹ Ammar Younas, ‘Examining the Social Contract Theory: A case of refugee crisis’ (SSRN Electronic Journal, 2017)

CONCLUSION AND RECOMMENDATIONS

It is recommended that the regional and international treaties should be enhanced in terms of domestic application of the principles and protection of rights of refugees in host countries. This approach will promote uniformity in application of the law and enhanced protection of refugees. Evidently, despite accession or ratification of the treaties or protocols, the protection of the rights of the refugees still remain a huge challenge in most host countries. There is need for enhanced reporting and monitoring mechanisms for host countries.

REFERENCES

Constitutions

The Constitution of the Democratic Republic of Congo (adopted 13 May 2005).

Statutes (Domestic Legislation)

Law on the Right of Asylum and the Refugee Status (n46) art 42.

National Assembly of Zambia, Immigration and Deportation Act No 18 of 2010, s 29(1).

The Refugees Act No 1 (n44).

The Refugees Act No 1 (n44) s 40(2).

The Status of Refugees in Democratic Republic of Congo (n51) art 27.

International Legal Instruments

African Charter on Democracy, Elections and Governance (n26).

African Charter on Human and Peoples' Rights (adopted 27 June 1981) 21 ILM 58.

Convention Governing the Specific Aspects of Refugee Problems in Africa (n38) art 1.

Convention Relating to the Status of Refugees (n34) art 33.

Convention Governing the Specific Aspects of Refugee Problems in Africa (n38) art 2(3).

United Nations Documents

Joint United Nations Office for Human Rights (OHCHR-MONUSCO), 'Violations of Human Rights and International Humanitarian Law...' (2020) 11.

Office of the Special Representative of the Secretary-General for Children and Armed Conflict (24 November 2020).

UNGA, 'Report by UNHCHR on Human Rights Situation and the Activities of the United Nations Joint Human Rights Office on the Democratic Republic of the Congo' (14 September 2020) UN Doc A/HRC/45/49.

UNSC, 'Overview of the Secretary-General's Report' (30 March 2021) UN Doc S/2021/312.

Reports and Institutional Publications

Amnesty International, *Amnesty International Report 2020/2021: The State of the World's Human Rights* (2021).

Amnesty International, *The Democratic Republic of the Congo 2020* (2020).

Democratic Republic of Congo Country Refugee Response Plan (Reliefweb, January 2019 – December 2020).

Human Rights Watch reports (2010–2020).

International Refugee Rights Initiative, *Movement Restricted: Congolese Refugees in Angola* (March 2018).

UNHCR Operational Updates, Factsheets, Global Focus Reports (2018–2021).

Newspaper Articles

Aaron Ross, 'Congo Commission Expects Presidential Vote to Delay to Dec 2018' (Reuters, 1 October 2016).

BBC News, 'DR Congo Presidential Election: Church Questions Results' (10 January 2019).

Jason Burke, 'Clashes in Kinshasa Leave 50 Dead' (The Guardian, 20 September 2016).

Reuters, 'Congo Replaces Sanctioned Army Chief...' (17 July 2017).

Books

Thomas Hobbes, *Leviathan* (OUP 1998).

Journal Articles

André Mbata B Mangu, 'From War to Peace: The Democratic Republic of Congo in Transition' (2003) 10 SAJIA 159.

Howard Wolpe, 'The Great Lakes Crisis: An American View' (2000) 7 SAJIA 27.

Ammar Younas, 'Examining the Social Contract Theory: A Case of Refugee Crisis' (2017) SSRN Electronic Journal.