

## The Right to non-discrimination and the protection of refugee status under Cameroonian law

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### Abstract

International human rights law has clearly established that not all distinction in treatment constitute discrimination. This is summed by the axiom persons who are equal should be treated equally, those who are different should be treated equally, and those who are different should be treated differently. Although not all differences in treatment are discriminatory, international law establishes criteria for determining when a distinction amounts to discrimination. Concisely, as we will be examining in this article, the concept of non-discrimination of persons especially those pertaining to foreigners has been embraced by the Cameroonian government with lots of determination. This initiative of foreigners protection in safeguarding its non-discriminatory to those who enters its territory in the status of a foreigner are given minimum protection in the respect and protection of their fundamental human rights. This initiative has gone a long way through the enactment of relevant laws and institutional set up in ensuring that foreigners entering the territory of Cameroon should be free from any sort of discriminatory practices, even though such protection offered has raised lots of questioning, certainties and worries in the eyes of many, and even the international community at large. The question here is to entertain whether the various human rights and legal dispositions effected by the Cameroon legal machineries has really provided that minimum protected provided by the international community when dealing with human right issues especially those pertaining to non-discriminatory as far as treatment of refugees are concerned.

**Keywords:** right, nondiscrimination, protection, refugee, status, Cameroonian, law

### 1. Introduction

A useful definition of non-discrimination is contained in Article 1(1) of the International Labor Organization which provides that discrimination includes;

*Any distinction, exclusion or preference made on the basis of race, color, sex, religion, political opinion, national extraction, or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in the employment or occupation.*

The principle of equality and non-discrimination guarantees that those in equal circumstances are dealt with equality in law. A violation of the principle of non-discrimination arises if;

- a) Equal cases are treated in different manner;
- b) A difference in treatment does not have an objective and reasonable justification; or
- c) If there is no proportionality between the aim sought and the means employed.

International human rights supervisory bodies have expressly set out these requirements. This principle of equality otherwise known as non-discrimination has in many circumstance require states to take affirmative action in order to diminish or eliminate conditions that cause or help to perpetuate discrimination. This obligation of states in making sure that affirmative action's should be taken in ensuring effective protection of those considered as the society vulnerable and less privilege be given appropriate protection and security when protecting their rights. The Cameroon

government is one of those states which have put in commendable actions, laws and proper bodies in ensuring the effective protection of right of the vulnerable, especially those pertaining to refugees when it comes to discriminatory practices meted on these persons residing in its territory.

### 1.1 The Legal Basis in the Application of the Principle of Non-discrimination

The right to equality and non-discrimination is recognized in Article 2 of the Universal Declaration of Human Right and is a cross-cutting issue of concern in different UN Human rights instruments, such as Articles 2 and 26 of the ICCPR<sup>[1]</sup>, Article 2(2) ICESCR<sup>[2]</sup>, Article 2 CRC<sup>[3]</sup>, Article 7 CMW<sup>[4]</sup> and Article 5 CRPD. In addition, two of the major UN human rights treaties are established explicitly to prohibit discrimination, CERD<sup>[5]</sup> on the ground of race and CEDAW<sup>[6]</sup> on the ground of gender.

The principle of non-discrimination is also contained in regional instruments, such as Article 2 of the American Declaration of Human Right, Article 24 of the ACHR<sup>[7]</sup> and Articles 2 and 3 of the ACHPR<sup>[8]</sup>. Despite the fact that the

<sup>1</sup> International Covenant of Civil and Political Right 1966

<sup>2</sup> Herein referred to as the International Covenant on Economic, Social and Cultural Right 1966

<sup>3</sup> Convention on the Right to a Child 1989

<sup>4</sup> Convention on Migrant Workers Right and their Families 1990

<sup>5</sup> Convention on the Elimination of Discrimination

<sup>6</sup> Convention on the Elimination of all form of Discrimination against Women 1989

<sup>7</sup> American Charter of Human Right

<sup>8</sup> African Charter on Human and Peoples Right 1986

principle of non-discrimination is contained in all human rights instruments, only a few instruments expressly provide a definition of non-discrimination.

Human rights instruments prohibit discrimination on several grounds, Article 2 of the Universal Declaration of Human Right prohibits discrimination on the following 10 grounds; race, color, sex, language, religion, political or other opinion, national or social origin, property, birth and other status. The same prohibited grounds are included in Article 2 of the ICESCR and Article 2 ICCPR. It is important to note that the grounds enumerated in these provisions are merely illustrative and not exhaustive. Some human rights instruments, such as CERD and CEDAW, are aimed specifically at eliminating discrimination on specific grounds.

## 1.2 The Refugee Convention and its Position as to Non-discrimination

The 1951 Convention remains the foundation of international refugee law and its refugee definition is the principal basis for establishing a person's refugee status. As of 1<sup>st</sup> September 2016, 146 States had become Party to the 1951 Convention and/or its 1967 Protocol<sup>[9]</sup>. When determining whether an individual is a refugee, the said person must be bound by the eligibility criteria set out in the 1951 Convention. From the refugee's point of view, recognition as a refugee within the meaning of the 1951 Convention provides the most favorable status; not only is it a guarantee against *refoulement*, but it also confers a number of rights which are specifically provided for in the 1951 Convention and 1967 Protocol<sup>[10]</sup>. Article 1A (2) of the 1951 Convention defines a refugee as any person who,

*As a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his or her nationality and is unable, or owing to such fear, is unwilling to avail him or herself of the protection of that country; or who, not having a nationality and being outside the country of his or her former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it*<sup>[11]</sup>.

In addition to the 1<sup>st</sup> January 1951 deadline, the 1951 Convention also provided in its Article 1B regarding the situation of refugees taking up residence in Europe<sup>[12]</sup>. These restrictions to the scope of its refugee definition are no longer of major importance. The temporal limitations were formally removed by the 1967 Protocol, while the vast majority of States which are Party to the two instruments, give a universal dimension to the Convention's provisions and withdrew the geographical restriction. Article 1A(2) of the 1951 Convention contains the so called inclusion criteria of the refugee definition, that is, those elements which form the positive

basis for making a determination of refugee status and which must be met for an individual to be recognized as a refugee. In addition, the 1951 Convention refugee definition also contains exclusion provisions<sup>[13]</sup> and cessation clauses<sup>[14]</sup>.

## 1.3 The Legal Implications of the Principle of Non-Discrimination and its application under Cameroonian Law in the Protection of Refugee Status

A reality of this fundamental human right principle can be seen in the Cameroonian Constitution especially in its preamble that recognizes the concept of gender equality by providing that "*the human person, without distinction as to race, religion, sex, or belief, possesses inalienable and sacred rights (;*)" and that "all persons shall have equal rights and obligations." The State guarantees to all citizens of either sex the rights and freedoms enumerated in the preamble of the Constitution. Gender equality is also recognizing in the Civil Code<sup>[15]</sup> that men and women can have legal personality by providing that "a woman has full legal personality, whose exercise is limited only by the marriage contract and the law." Article 1 of the Cameroon Criminal Code lays down the principle of the equality of all before the law in the following terms: "*the Cameroon Criminal law applies to all without discrimination.*"

The above provisions regarding the concept of gender equality and its protection in well spelled out in relevant international instruments as well as national disposition. Cameroon on its part have also promoted and protected this principle by emphasizing it in relevant texts<sup>[16]</sup>. This concept of protecting gender equality continue to experienced violation in the country because there is no specific provision punishing Female Genital Mutilation, which is generally repressed as assault or aggravated assault, namely an offence against a person's physical integrity that the Criminal Code specifies and punishes. Women in the country<sup>[17]</sup> wail from this disgusting practice that have attracted the attention of the international community as well human right activist who considered such a practice a violation of human right.

## 2. Cameroon Legal Dispositions and the Protection of Refugee Status

In protecting refugee in the country, the government enacted Law No. 2005/006 of 27 July 2005 on the status of refugees in Cameroon demonstrates the struggle by the Government of Cameroon to combat discrimination affecting refugees. Under article 9 of the law, refugees enjoy certain fundamental rights, as Cameroonian citizens do. This equality of treatment is further contained in article 10, paragraph 1, of the law, according to which:

*as regards the exercise of an activity as an employed or self-*

<sup>13</sup> Articles 1D, 1E and 1F of the 1951 Refugee Convention.

<sup>14</sup> Ibid, Article 1C.

<sup>15</sup> Napoleonic Civil Code (Code Civil Napoléon) established by Prince Napoleon of France and lastly modified on 11 September 2014 at 20:14pm GMT. This Code in its article 1 provide for gender equality when dealing with matters relating to marriage contract.

<sup>16</sup> From the preamble of its Constitution to the Penal Code by providing sanction upon anyone who violates this sacred principle of gender equality

<sup>17</sup> Especially those from the northern and rural area who continue to fall prey from this uncalled practise of Female Genital Mutilation.

<sup>9</sup> 140 States are bound by both instruments; that is protocol I and II.

<sup>10</sup> For example, the right to obtain travel documents.

<sup>11</sup> Ibid, article 1 A (2) of the Refugee Convention 1951.

<sup>12</sup> For an optional geographical limitation to refugees as a result of events occurring in Europe.

*employed person, and without exemption from taxes and duties, as well as in regard to the social rights linked to the exercise of such activity, persons recognized as refugees shall be accorded the same treatment as nationals.*

According to paragraph 2, “*persons recognized as refugees, shall be accorded the same treatment as national, the right to become naturalized in relation to access to education, the right to enroll at school and university and the costs of student welfare services.*” This policy of treating refugees in the same way as Cameroonian nationals reflects the absolute determination of the Government of Cameroon to eliminate any form of discrimination based on nationality.

## 2.1 Legal Frameworks for the Protection of Refugees in Cameroon

The Republic of Cameroon is a middle-sized bilingual speaking country on the west coast of the Central African covering a total of 475440sq km<sup>[18]</sup>. The country has hosted large refugees such as those coming from Central African Republic, Gabon, Chad, Nigeria and a host of other nationals. In order to achieve this goal, the government of Cameroon has established mechanisms, laws, institutions to effectively protect status and rights of refugees residing and carrying out activities within the confines of the national territory. It should be understood that the mechanism of protection are used to protect both refugees and nationals but the truth is, refugees should not be given superior rights to those provided to nationals, though there are some peculiarities that exist in protecting refugees.

The main text being the 1996 constitution has specifically incorporated some fundamental rights and freedoms made mention by the Universal Declaration of Human Rights, the International Covenants on Civil and Political Rights, the United Nations Charter, the African Charter on Human and Peoples Rights as well as other known ratified conventions<sup>[19]</sup>.

As a result of this legal regime, the country recognizes that;

1. No one shall be persecuted, arrested or detained except in cases of and according to the manner determined by law,
2. The law shall ensure the right of every one person to a fair hearing before the court,
3. Every accused is presumed innocent until found guilty during hearings conducted in strict compliance with the law,
4. Every person has a right to life, to physical and moral integrity and to humane treatment in all circumstances. Under no circumstances shall any person be subjected to torture or to cruel inhumane or degrading treatment.

In this sphere, it will be necessary for us to have an inside of the country's legal climate with a view to ascertaining that refugees living in Cameroon are accorded legal protection. This analysis is to demonstrate that the country adhered to its binding international commitments and instruments in maintaining the standards of protecting foreigners among its citizens.

The legal regime or network for the protection of foreigners in

Cameroon is of fundamental importance for the general protection given to citizens. At the national level, there is an arsenal of legislation protecting civil, economic, and political rights of nationals and foreigners alike. The country's constitution of 1996 as amended in 2008<sup>[20]</sup> emphasizes state's obligation to respect and protect the human rights of all those persons residing in its territory. The provision in the preamble also reaffirms Cameroon's adherence to the Universal Declaration of Human and Peoples Rights, 1948, as well as other human rights Conventions to which Cameroon is a party.

### 2.1.1 Normative Frameworks

As all international instruments to which Cameroon has acceded, the Constitution is part of domestic law. Consequently, the Constitution is directly enforceable and may be relied upon before a court. The rights stipulated in the Constitution are part of human rights by virtue of the indivisibility of which their enjoyment is also guaranteed by other international and national instruments.

#### 2.1.1.1 International Normative Framework

Cameroon has made international commitments at the global, regional and sub- regional levels in offering protection to refugees living in its territory.

#### i) Global Commitments of Cameroon

Cameroon as signatory to many international treaties and engagements has contributed immensely in the promotion and protection of refugees in its territory. Such situation can where in 1985 the country has to fight for the suppression of traffic on women of full age<sup>[21]</sup>. This international commitment was to help the international community in its way to suppress the traffic of women of full age considered a violation on the fundamental right of women. This commitment continues by the country at the level forced and compulsory labor carried out during employment contract<sup>[22]</sup>. The government makes sure it conforms to the objective stipulated by the International Labor Organization when it comes to employment contract signed between employers and employees be it nationals or foreigners. They state makes sure that no forms of force or compulsory labor are meted on a migrant worker working in an establishment in the country. This brings us to one of the characteristic of a labor contract, that it must a contract of free will by seeing that parties to employment contract decide whether to establish or enter into a contract or not. Parties should not sign or entered into any contract against their will, if not such a contract will be considered as illegal contract.

As for the protection of refugee, Cameroon has ratified the lone United Nation document protecting refugees in the world<sup>[23]</sup>. This commitment made by the Cameroon government is to ensure that refugees entering its territory should be accorded minimum protection just as those of other countries.

<sup>18</sup> CIA World fact book, 22<sup>nd</sup> August 2006.

<sup>19</sup> Article 43 of the constitution provide duly approved and ratified treaties and International Agreement shall following their publication override nationals laws, provided that the other party implements the said treaty or agreements.

<sup>20</sup> Law No. 2008/1 of 14<sup>th</sup> April 2008 to amend and supplement some provisions of Law No. 96 of 18<sup>th</sup> January 1996.

<sup>21</sup> International Convention of 11 October 1933 on the Suppression of the Traffic in Women of Full Age;

<sup>22</sup> ILO Convention No. 29 concerning Forced or Compulsory Labour, 1930;

<sup>23</sup> Convention of 28 July 1951 relating to the Status of Refugees ratification by succession of State on 23 June 1961

This state respects the fundamentals rights of refugees like those of asylum <sup>[24]</sup>, non-refoulement <sup>[25]</sup> and non-discrimination. The state offers protection to refugees found in their territory. This concept of protecting refugee by the Cameroon State as a signatory to the United Nations Convention on Refugee does not mean that the state will accept refugee to enter in their territory even at the detriment of the security of the state. It is always the responsibility of every state to ensure and protect its sovereignty through the elimination of those practices that can affect the security and peace of the country. Such protection cannot be offered by the state where admitting such a person will contravene the internal security of the country. This is therefore the reason why determining refugee status has been left in the hands of every contracting state of the convention.

Also, at the level of torture, the country has carried out enormous effort in fighting this ill by being a party to the International Convention to fight torture <sup>[26]</sup>. The government have contributed in its own way to fight against those embodiments that can cause pains and suffering on people. They considered this as violation on the fundamental right of all. The international community frowns at state who allowed unacceptable practices that are degrading and inhumane to be melted on human. They believe that it is the responsibility of state to ensure the strict application and implementation of prescribed principles established by Human Right law in which the country in question is a signatory. As signatory to a recognized international instrument prohibiting torture, inhumane and degrading treatment, the government ought to treat everyone equally and should not take the pretext of maintaining security in order to violate this sacred rights of people. They have to establish their national laws and legislation in this domain in conformity to those postulated by international law.

At the level of fighting discrimination especially racial <sup>[27]</sup>, the Cameroon government has collaborated with the international community in its own way to stop or fight against racial discrimination. To this, the state makes sure men and women of whatever status should be treated the same and equally <sup>[28]</sup> in all domain of applicability. This aspect of non-discrimination has been practice in several disciplines such as education, health, employment, property, business and among others.

#### **2.1.1.2 Regional and Sub-Regional Commitments of Cameroon**

Tremendous efforts have been exercised by Cameroon in the Regional and sub-regional levels to effectively protect the rights and status of refugees. This have portray through relevant instrument like that of the African level where we make mentioned of the African Charter on Human and

Peoples' Right <sup>[29]</sup>, a Charter promoting and protecting human rights within the continent. Cameroon as a signatory and member of this charter have ensured that its national dispositions on human right protection and implementation should in conformity with those provided for in the Charter. The same human rights protected and guaranteed by the Charter are the same postulated in the country relevant legal texts like that of Criminal matters <sup>[30]</sup>, human rights guarantor <sup>[31]</sup>, labor relations <sup>[32]</sup> and a compilations of others. These texts ensure that those vested with the competent and authority to implement and observance should do so without any trace of derogation, violation, and discrimination.

This procedure and model for human implementation is in reality, but the reality here is that are we satisfied with the rate and rampant increases in human right violation in the country. We do understand that there is some form of discrimination in the application and implementation of human right in the country among nationals or citizens in the country and the position of foreigners are even worst. Women in the country continue to face violation on their fundamental rights in the country, even expatriates, and migrants' workers in the country have reported cases of human right abuses melted on them by the public officers and authorities <sup>[33]</sup>. We received complains of public officers receiving bribes from foreigners, some even threatened them on deportation if they do not collaborate with them <sup>[34]</sup> and others refused access to court on the bases of nationality and discrimination.

The situation is not different with those of children. Cameroon has also signed and ratified the lone African document to protect children living in its territory <sup>[35]</sup>. This document of legal standing is out to promote and protect the right and welfare of the child in the continent. Rights such as that of education, parental guard, and health, and nutrition, conducive environment of living and among others are enumerated in this prestigious document. Cameroon on its part to see that the instrument is implemented has enacted a series of laws and legal texts to this effect. Refugee Law and others promote and encourage the rights and welfare of the child. To show its seriousness on these children rights, institutions such as the Ministries of Social Affairs and that of the family have been created to monitor the activities of these children.

Our main concerned here are those pertaining to refugee. What have the country done so far in ensuring that children of this category are offered the same protection and facilities as any other children. Are we saying that, when it comes to implementation phase, home children are treated same as those of foreigners or refugees, even with the available legal dispositions provided for to protect children rights? We can bear in mind that, no matter the seriousness and extent of application of the law, there will continue to be that concept of discrimination and abuse when it comes between home

<sup>24</sup> Section 31 of the 1951 Refugee Convention

<sup>25</sup> Ibid, section 33(1)

<sup>26</sup> Convention of 10 December 1984 against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment accession on December 19 1986;

<sup>27</sup> Convention of 18 December 1979 on the Elimination of All Forms of Discrimination against Women ratification on August 23 1994

<sup>28</sup> Texts such as the Constitution of 1996 in its preamble, the Penal Code of 1967 in its Section 1 and other relevant texts have provided for equality of all.

<sup>29</sup> African Charter on Human and Peoples' Rights, adopted on 27 June 1981 ratified on 21 October 1986;

<sup>30</sup> The 1967 and 69 Cameroon Penal Code

<sup>31</sup> The preamble of the 1996 Constitution

<sup>32</sup> The 1992 Cameroon Labour Code

<sup>33</sup> 2012 Country Reports on Human Rights Practices

<sup>34</sup> Ibid, Country Human Right Report on arbitrariness and torture, 2012

<sup>35</sup> African Charter on the Rights and Welfare of the Child, adopted on 21 November 1989 ratified on 5 September 1997



children and foreign. There is continue discrimination and violation of the laws in the various levels of protection of children rights, especially in the domain of education, health, nutrition and other spheres of intervention.

At the sub-regional level, Cameroon signed on 19 July 2006 the Convention of 16 March 2006 on Cooperation and Mutual Legal Assistance between the Member States of the Economic Community of Central African States being cooperation to combat crimes and other illicit practices. This unit sees the need of States of the Central Africa to cooperate and unite so as to combat crimes waves in the sub-region. It brings to light the birth of the INTERPOL a unit to investigate and combat crimes such as those trafficking be it human, child or drug in the sub-region. This is a good initiative put in place by member states of the sub-region, because the proportions of crime waves in the sub-region have reduce drastically since the creation of this unit among member states. We have been seeing the success made so far by INTERPOL as far crimes are concerned in the sub-region. There is a problem that still exists with the unit and this problem has affected the effectiveness and extent of application of the text creating the unit. Problem such as State sovereignty and superiority among states have affected the extent of the application of this Convention. Most of the States in the Sub-region protects their sovereignty to the detriment of the unit and these have really affected the functioning of the unit. The problem is not just for states to come together and accept to form laws or Convention, the problem is at the level of implementing these laws in their respective territories. State finds it difficult to provide information that will facilitate or aid in the advancement and functioning of the unit, this aspect has really frustrated the mission and objective of the Cooperation. Notwithstanding, tremendous effort have been done be member states of this Unit to see that it move from height to height like the provision of financial and human assistance for the advancement of the Institution.

### 2.1.1.3 Domestic Normative Framework

The status and rights of refugees residing in Cameroon are broadly recognized within the framework of Cameroon's domestic legal system. They are explicitly stipulated in the country's Constitution, as in many other Member States of the United Nations and their elements are incorporated into numerous Acts.

The preamble <sup>[36]</sup> to the Constitution actually proclaims the Cameroonian people's commitment to the following universal values and principles such as that of life, movement, prohibition of arbitrary commands or orders, healthy environment, fair hearing before the courts, freedom of opinion, religious belief, conscience, and worship, the retrospective nature of the law, and among other rights.

The preamble of the Constitution guarantees to everyone including foreigners the right to move freely in the country. This provision specifically allows foreigners the right to elect residence or to leave one's country and to be granted asylum in another <sup>[37]</sup>. Furthermore, several national instruments

enacted in recent years have progressively strengthened and enhanced the rights and freedoms enjoyed by foreigners to elect residence in Cameroon <sup>[38]</sup>.

The foreigner reality nature of Cameroonian law is demonstrated by Law No. 68/LF/3 of 11<sup>th</sup> June 1968 <sup>[39]</sup> which allows any child found in Cameroon, without a nationality, to be granted Cameroonian nationality. Section 12 of this code grants Cameroonian nationality as of right to any child born in the country to any person who has no other nationality of origin. Besides, the law on refugees provides for the right to naturalization, for refugees under conditions determined under its dispensation.

Although law No. 97/09 of 10<sup>th</sup> January 1997 to lay down the conditions for entry, stay and exit of aliens and its enabling instruments, law No. 2000/286 of 12 October subjects the stay of foreigners in the country to the acquisition of a residence permit. This law contains liberal guarantees as well. It interestingly considers border drive, escorting back border and expulsion of illegal immigrants as administrative measures rather than criminal actions with accompanying repressive consequences.

Yet, in spite of the above, where there is conviction for infringement of immigration laws, the court may order the above measures without prejudice to other penalties <sup>[40]</sup>. It may be observed that law No. 90/54 of 19<sup>th</sup> December 1990 relating to the maintenance of law and order empowers administrative authorities to arrest and detain persons for 15 days could be applied to non-nationals.

In view of the increasing numbers of refugees, the Cameroonian government promulgated Law No. 2005/006 of 27<sup>th</sup> July 2005 relating to the status of refugees. Section 2 of the law adopts the definition of refugees contained in the Geneva Convention of 28<sup>th</sup> July 1951 on the status of refugees and the problems of refugees in Africa which was signed in Addis-Ababa on 10<sup>th</sup> September 1969. This broad based definition has in theory shown the country's foreigner friendly disposition.

By virtue of section 7(1) and 15 of the law, it is forbidden to extradite, turn back, or to take any measures whatsoever which force anyone, who is properly defined as a refugee, to return or remain in a country where his life, physical integrity or freedom could be threatened. If such a person is an illegal immigrant, no criminal sanction may be taken against him, but he shall present himself, without delay, to complement national authorities for regularization of his situation <sup>[41]</sup>. It should be noted however that a refugee on legal stay in Cameroon, may be expelled for reasons of national security and public order. A refugee shall enjoy economic and social

<sup>36</sup> Under article 65 of the Constitution, the preamble is an integral part of the Constitution.

<sup>37</sup> Article 15 of the Universal Declaration on Human Right (UDHR) 1948.

<sup>38</sup> These laws include; Law No. 97/012 of 10<sup>th</sup> January 1997 to lay down the condition for foreigners to enter, stay and exit in Cameroon, Law No. 2005/006 of 27<sup>th</sup> July 2005 relating to the status of Refugees in Cameroon, Law No. 2005/015 of 29<sup>th</sup> December 2005 relating to the fight against child trafficking and Law No.97/010 of 10<sup>th</sup> January 1997 to amend and supplement certain provisions on the law of extradition

<sup>39</sup> Law No. 68/LF/3 of 11<sup>th</sup> June 1968 to organize the system of requisitioning. It provide under section 13 for the possibility of requisitioning persons and properties. Decree No.68-DF-417 of 15<sup>th</sup> October 1968 fixes modalities for its application. In this regard, persons and properties can be taken and the possibility of obtaining compensations.

<sup>40</sup> Section 9 of the Nationality Code.

<sup>41</sup> Section 8 of the 2005 Cameroonian Refugee Law.

rights especially the right to naturalization.

### 2.1.2 Institutional Frameworks

The protection of refugees who are residing in Cameroon is part of the objectives of some institutions and ministers. It is as well a product of partnership agreement of the implementation of the policies aimed at ameliorating the hardship of refugees in Cameroon.

Institutionally, the framework comprises political, institution, an independent judiciary, a national commission on Human Rights, a Ministry of External Relations, Ministries of Social Affairs, Labour, Tourism, Basic education, The Secretary of State for Defence, the General Delegates of National Security, the Ministry of Women and Empowerment and the Family and the Cameroon Penitentiary Administration. It should be noted that the list provided above is not exhaustive and that other partnership agreements for the implementation of policies aimed at guaranteeing such protection exist.

#### 2.1.2.1 The National Commission on Human Rights and Freedom

To enhance the work of the National Commission on Human Rights and Freedoms in Cameroon and to align its activities with the provisions of the Paris Principle, the National Human Right Commission was setup by Decree No. 90/1459 of 8<sup>th</sup> November 1990. This commission was transformed to the National Commission on Human Rights and Freedom by Law No. 2004/16 of 22<sup>nd</sup> July 2004. This commission has done so much in implementing the economic, social, and cultural rights of citizens and even that of foreigners.

In its general comment No. 10 on the role of national human rights institutions in the protection of economic, social, and cultural rights, the Committee noted that such institutions have a potentially crucial role to play in promoting and ensuring the indivisibility and interdependence of all human rights. Unfortunately, this role has too often either not been accorded to the institution or been neglected or given a low priority by it. It is therefore essential that full attention be paid to economic, social and cultural rights in all of the relevant activities of these institutions.

Moreover, according to the Maastricht Guidelines on Violations of Economic, Social and Cultural Rights, promotional and monitoring bodies, such as national ombudsman institutions and human rights commissions, should address violations of economic, social and cultural rights as vigorously as they address violations of civil and political rights. In that context, the Paris Principles emphasize that the functions of a human rights institution include investigating alleged violations of human rights and advising the government on activities relating to human rights issues.

In line with such international standards, the National Committee on Human Rights and Freedoms, set up by Decree No. 90/1459 of 8 November 1990, has been converted into the National Commission on Human Rights and Freedoms (NCHRF), established by Act No. 2004/016 of 22 July 2004. This conversion aims at enhancing the capacities of the national body responsible for the promotion and protection of human rights. Accordingly, the Commission is an independent body for consultation, monitoring, evaluation, dialogue, cooperation, promotion and protection with regard to human

rights and freedoms.

This commission in the need to meet refugees' rights in Cameroon has contributed tremendously to see that refugees living and staying in the country are accorded protection through the respect of their fundamental human right. They have to work in collaboration with the United Nations Refugee Agency base in Yaoundé and other part of the country in seeing that the rights of the refugees are being guarantee. They see to that those who violate refugees rights are been punished accordingly. Apart from the Refugee Agency, they also work in collaboration with the International Labor Organization in protecting the right of refugees in the country. They see that employers should violate foreigners' rights during the formation, execution and termination of the employment contract. As if that is not enough, they work with the government in transverse its various agencies to make sure that fundamental human rights are respected during enforcement.

The mission of the Commission is very interesting in the promotion and protection of human right cases in the country. This commission has its own lapses that have in one or the other affected the extent of human right application in the country. There fact that it does not have an executory force makes it more to that of window dressing. The essence in human right is not the monitoring or promotion, but rather that of implementation. This Commission cannot effectively handled cases of human right when operating within the confine of the State, lack the available financial and human resources, this will frustrate the mission of the Commission. We continue to experience cases of human right violation everyday even among foreigners whereas the country has a Commission supervising and observing the human right situation of the country. Due to the increase and the rampant existence of human right abuse in the country, there is a need of other institutions to see that human right protection becomes a reality.

#### 2.1.2.2 Human Rights and International Cooperation Directorate within the Ministry of Justice

The Human Rights and International Cooperation Directorate was created by Decree No. 2005/122 of 15 April 2005 on the organization of the Ministry of Justice. The Directorate has the following responsibilities, inter alia:

- Monitoring human rights issues generally.
- Monitoring the implementation of international treaties related to human rights.
- Informing judicial and penitentiary system staff about human rights protection rules and raising their awareness of such standards.

Among other activities undertaken since its creation, the Directorate has prepared three reports on human rights in Cameroon in 2010, 2011 and 2012, respectively. Through the Directorate, Cameroon specifically cooperates with Human Rights Council special *rapporteurs* on torture in order to strengthen international cooperation.

Yearly, the Ministry of Justice seeks to present a balance sheet of Government's measures, court decisions and actions by national associations for the defence of human rights through annual reports drawn up with contributions from ministries and some actors of the civil society directly concerned with

human rights issues and helps greatly in promoting and providing information on the Covenants and other Conventions aimed at promoting and protecting the rights of foreigners among others. This institution within the Ministry of Justice has contributed tremendously in portraying the situation of human right practices in the country every year through it yearly reports on the human practices in the country<sup>[42]</sup>. According to this report, the human right situation especially that of foreigner is not a good one. The law makes provision for something, but something else is being practice. There is continuous violation and abuses of human right cases reported daily in respect to foreigners coming, staying, and even leaving the country. Most of these foreigners are molested, torture, harassed, and even discriminated upon by the law enforcement officers of the country<sup>[43]</sup>.

### **2.1.2.3 The Attachment of Penitentiary Administration to the Minister of Justice**

By Decree No. 2004/320 of 8<sup>th</sup> December 2004 organizing the government of Cameroon, Penitentiary Administration was transferred from the Ministry of Territorial Administration to the Ministry of Justice. The reform resulted from the recommendation of the committee against torture approved by the head of state. It is salutary as it enhances the smooth follow up of the criminal process. A secretary of state assists the minister in charge of Justice in managing the administration of justice<sup>[44]</sup>. Any penitentiary staff found guilty of torturing or maltreating detainees is punished in accordance with the provision of Order No.080 of 16<sup>th</sup> May 1983 to lay down the disciplinary system in force. Sanctions range from detention to delay in promotion, without prejudice to criminal proceeding. All these information are existing, but what we are interested in is at the level of practice. What have the Sector done so far in ensuring that foreign detainees in Cameroonian prisons are treated with absolute protection and the respect of their rights. The same human report provided for by the Ministry of Justice spelled out the living condition of prisoners in our Cameroon prison. The congested nature of the prison, hygienic condition, nutrition, and even health are horrible. Most of the foreign detainees are being torture upon and other staying under unbearable living conditions in these prisons. The law have made provision for sanction melted out on those who violate foreign prisoners' rights, but the situation here is the contrary. There is a great difference between theory and practice or deductive and inductive in the enforcement of human right laws.

## **2.2 Aspect of Non-Discrimination of Refugees**

The concept of discrimination have been considered as one of the vices that affect the effective protection of human right practice and enforcement in any state encouraging and promoting human right protection and safety. The government of Cameroon has taken the initiatives in curbing and eradicating discriminatory practice especially those melted on refugees' taking up residence in their respective territories.

### **2.2.1 Cameroon Actions as to Non-Discrimination**

In Cameroon, gender is irrelevant to the acquisition of legal personality. The status of legal persons resulting from the acquisition of legal personality implies that men and women have the same possibility to enjoy and exercise their rights. The concept of equality, on which the human rights enshrined in the Constitution are based, underlies the recognition of the rights of a legal person.

In practice, however, various discriminatory acts and situations occur in Cameroonian. This infringement of the equality recognized to all legal persons is a consequence of the phallogocentric pattern of a traditional society still robust in Cameroon, a sexist attitude attributing to women and girls an inferior place. Because of their numerical superiority, however, women contribute decisively to society's development efforts and to nation building. Under article 3 of the International Covenant on Economic, Social, and Cultural Rights, the State must restore the precedence of law over sociological impediments, which justifies the adoption of measures against gender-based discrimination, the promotion of the gender approach and the debate on enshrining gender parity in the Constitution.

Such measures aim at reducing the gender gap in the enjoyment and exercise of rights necessitates the development of policies and programs, the adoption of legal instruments and the creation of institutions addressing issues related to women's rights, and the development of projects for the promotion of such rights. This task falls within the competence of the Ministry of Employment and Vocational Training<sup>[45]</sup>, responsible for the development and implementation of measures related to the respect for women's rights in society, the elimination of all forms discrimination against women, the reinforcement of equality safeguards in the political, economic, social, and cultural areas, and the implementation of a national policy on the family.

Article 1 of the Universal Declaration of Human Rights affirms the principle of equality as follows: "All human beings are born free and equal in dignity and rights." Cameroon ratified the Convention on the Elimination of all Forms of Discrimination against Women on 23 August 1994 and acceded to its Optional Protocol of 6 October 1999 on 1 November 2004. At the domestic level, the preamble of the Constitution lays down the principle of gender equality by stating that, "the human person, without distinction as to race, religion, sex or belief, possesses inalienable and sacred rights;" and provides that "all persons shall have equal rights and obligations." The State guarantees to all citizens of either sex the rights and freedoms enumerated in the preamble of the Constitution. Regarding the Civil Code, legal personality is attributed to men and women. Under article 16 of the Civil Code, "a woman has full legal personality, whose exercise is limited only by the marriage contract and the law."

Article 1 of the Cameroon Penal Code lays down the principle of equality of all before the law in the following terms: "the Cameroon Criminal law shall apply to all without exception." There is no specific provision punishing Female Genital Mutilation, which is generally repressed as assault or aggravated assault, namely an offence against a person's

<sup>42</sup> Cameroon Human Right Report

<sup>43</sup> Ibid, 2012 Country Reports on Human Rights Practices in Cameroon

<sup>44</sup> Report of the minister of Justice on the State of Human Rights in Cameroon 2003.

<sup>45</sup> Ministry of Employment and Professional Training.

physical integrity that the Criminal Code specifies and punishes.

To fill that gap, a draft Act on the repression of gender-based violence and discrimination has been prepared, with specific provisions against Female Genital Mutilation and marital violence. At the social level, the Labor Code and other social security texts contain a number of provisions aimed at women's well-being and protection. For instance, article 84 (1) of the Labor Code allows a pregnant woman to break her employment contract without notice or the concomitant obligation to pay compensation, while the employer may not break such a contract on the grounds of the worker's pregnancy.

Under article 84 (2) of the Labor Code, a pregnant woman is entitled to a 14-week maternity leave, which may be extended by six weeks in the event of a duly diagnosed disease resulting from the pregnancy or the childbirth. Article 61 of the Labor Code lays down the principle of equal pay for work of equal value, regardless of sex, age or status.

The entry into force of Law No. 2005/006 of 27 July 2005 on the status of refugees in Cameroon demonstrates the resolve of the Government of Cameroon to combat even more determinedly discrimination affecting refugees. Under article 9 of the law, Cameroon's legislature accords refugees the exercise of the following fundamental rights, within the limits of the rights accorded to citizens of Cameroon<sup>[46]</sup>.

This equivalence of treatment is further contained in article 10, paragraph 1, of the law, according to which: As regards the exercise of an activity as an employed or self-employed person, and without exemption from taxes and duties, as well as in regard to the social rights linked to the exercise of such activity, persons recognized as refugees shall be accorded the same treatment as nationals.

According to paragraph 2, "persons recognized as refugees, shall be accorded the same treatment as national, the right to become naturalized in relation to access to education, the right to enroll at school and university and the costs of student welfare services." This policy of treating refugees in the same way as Cameroonian nationals reflects the absolute determination of the Government of Cameroon to eliminate any form of discrimination based on nationality.

This effort by the Cameroon government in eliminating and curbing discriminatory practices has gone a long way in providing safety and protection to its citizens and even to refugees. Refugees will not be comfortable in taking up residence in any given state where discriminatory practices will be melted on them. To this the provisions of several legal texts giving room for non-discriminatory practices and ensuring their implementation and enforcement is a perfect ground to show how the country go a long way in protecting those residing in their territory be it nationals or foreigners. There is a great difference between the enactment of laws and its implementation. The country continues to witness sporadic increase in the rate of human right violation and discriminated

practice on its citizens and even on the migrants residing in the country<sup>[47]</sup>. This practice have greatly affected the human right situation and those refugees' coming or staying in country.

### 2.2.3 Basic Needs and Services

UNHCR assumed the task of directly providing health care to urban refugees. Health services were provided to refugees from the Central African Republic in 51 integrated health centers, eight district hospitals and seven therapeutic feeding centres. Three new integrated health centres were built and equipped by UNHCR. Forty-seven health units were rehabilitated and provided with essential generic drugs, 2,000 impregnated mosquito nets distributed and 15 medical-waste incinerators constructed. Some 60 per cent of CAR refugees had access to primary health care and skilled personnel attended 25 per cent of live births. All refugees in Langui camp had access to basic primary, secondary and tertiary health care. UNHCR provided educational support at primary level to approximately 92 per cent of refugee children. Four hundred secondary school pupils at the lower secondary academic level were assisted, and 85 refugees received university scholarships.

More than 53 per cent of CAR refugee children of school-going age were enrolled in primary schools with UNHCR's assistance, and 81 per cent of these children passed the primary school examinations. More than 360 cooking classes were conducted during nutrition education sessions. Some 680 breast-feeding mothers and 420 pregnant women participated in sensitization campaigns designed to reduce moderate malnutrition at the community level. In Langui camp, 38 cases of moderate malnutrition were detected during three screening sessions, and those affected were enrolled in the weekly supplementary feeding program. All pregnant women and nursing mothers in the camp received nutritional supplements, bringing the rate to less than 1.1 per cent by the end of the year. Business management training were given to 18 youths who were provided with start-up kits, while seven small business projects received seed money. More than 180 administrative and traditional authorities lobbied to facilitate access to land for agriculture. The more than 2,100 hectares of land thus provided allowed some 67 per cent of refugee households to engage in farming. Some 170 refugee women received farming grants and 2,300 persons received agricultural tools. Some 700 refugee women were trained in poultry farming and provided with chicks and poultry feed. All refugees who wished to engage in agricultural activities had access to farm land, while 121 persons benefited from micro-credits and 33 women received training in business skills. Some 50 local water technicians were given training and hand-pump repair tool kits, and 13 water points and 19 boreholes were rehabilitated. More than 100 water management committees were reactivated and trained and 17 new ones created, while 1,500 committee members were made aware of water and sanitation issues. The construction of water points has increased the availability of potable water for CAR refugees from 10 to 14 litres per person per day in

<sup>46</sup> These rights include that as to non-discrimination, freedom of religious practice, right to property, the right of association, the right to be a party to legal proceedings, the right to work, the right to education, housing, social welfare and public assistance, free movement, to obtain identity documents and travel documents and the right to transfer of assets.

<sup>47</sup> The Country Report on the Human Right Practice, Amnesty International Human Right Report, 2012.



targeted areas. Refugees living in Langui camp had more than 20 litres of water per person per day.

### 3.1 National Institutions' Enforcement

Apart from the international Institutions which have contributed enormously in protecting and promoting refugees' status in Cameroon, national organs and institutions have also been created by the Cameroon government in ensuring that the status and rights of refugees residing in their territories are respected and protected to the latter. Among these institutions is the National Commission on Human Rights and Freedom (NCHRF) which has been a great achievement initiated by the African Commission on Human Right for the effective protection and enforcement of human rights. It emphasized that member countries should create national human rights commissions to monitor and supervise the state of human right respect and protection in their respective territories. The NCHRF<sup>[48]</sup> has contributed tremendously in the enhancement of human rights especially that of foreigners. They make sure that member states respect international standard set for the protection of human rights, assist those vulnerable group of the society such as women, children involved in trafficking and forced labor, provide judicial assistance to those foreigners who are unable to have access to justice and even intervene in case of violation of refugees rights. This institution even though conferred with responsibility in monitoring and promoting human rights have witnessed difficulties in term of finance, personnel and other facilities making it impossible for them to assume a complete achievement of objectives. The impediments of the said institution will be examined in the subsequent chapter.

The NCHRF is not the only national institution protecting and safeguarding the rights and condition of foreigners living in these countries. We also witness other institutions such as the police, court and other human rights activist that have contributed in their own way to ensure that foreigners living in these countries are offered protection.

### 3.2 Xenophobia, Violence, Discrimination and Racism

As noted in previous paragraphs, refugees are often subjected to discrimination because of their color and race, or their actual or perceived religion, or a combination of these, and they may be the target of unfavorable treatment simply because of their migrant status<sup>[49]</sup>. Women migrant workers,

who make up half the total, can be doubly penalized. The plight of migrant workers is a growing concern, since foreign-born workers represent significantly a rising proportion of the workforce in many countries. Estimated at 4 million, migrant persons in these countries and some 32 million in other developing regions, the movement of men and women seeking better job opportunities in these countries are likely to increase in the coming years<sup>[50]</sup>. Ten per cent of the Cameroon are currently made up of migrants, while in a number of Asian or American countries percentages are higher, representing over 50 per cent of the workforce in some Gulf States. One manifestation of discrimination against migrants is their concentration, often regardless of their skill levels in "3D" jobs<sup>[51]</sup> where protection is often inadequate or absent in law or in practice<sup>[52]</sup>.

Although these member States tend to grant documented migrant *de jure* equality of treatment with nationals as regards remuneration, hours of work, holidays with pay, and minimum age, they face a variety of employment restrictions<sup>[53]</sup>. The incidence and extent of differential treatment may vary depending on whether foreigners are permanent or temporal and whether they are high skilled or low skilled. National migration policies are more inclined to provide for equal opportunities and treatment between nationals and migrant workers in high-skilled positions than those in unskilled and low-status jobs. High-skilled migrants are usually offered more guarantees to shift towards permanent settlement than the low skilled. Such preferences are doubly hard on low-skilled workers, who are already particularly vulnerable to exploitation and violations of their rights. If low skills are the result of denied equal opportunities in education or at work in their countries of origin because of their sex or religion or race, inferior treatment of low-skilled migrant workers in destination countries further aggravates discrimination. Resistance towards providing equal treatment with nationals is much stronger in respect of social security rights, employment mobility, and access to employment and vocational training. The provision of alternative employment, relief work, and re-training often depends on whether the migrants are temporal or permanent settlers, which is contrary to the provisions of ILO standards, including the Migrant Workers Convention, 1975. This is an important issue, especially in the light of the steady increase in temporary workers' programs that often bind migrant workers to the same employer or may require them to leave the country immediately after termination of the contract, and to return only after a certain period of time. These temporary schemes discourage settlement of migrant workers in the country, which in practice often has the effect

<sup>48</sup> Herein referred to as the National Commission on Human Rights and Freedom.

<sup>49</sup> This is the case of Ms. Marie Loubaky who experienced many difficulties since she became a refugee. She no longer had a permanent job with a steady income to support her family. She and her family had lost their former high social standing and, as Congolese refugees, became a marginalized and discriminated part of Gabonese society. As a refugee she was subjected to verbal abuse and sexual insinuations from the Gabonese police. Marie was used to take care of her children by herself but, as a refugee, the absence of a spouse made her and her family even more vulnerable to physical and mental abuse. Moreover, her affiliation with the former government of Congo-Brazzaville and her work as a journalist put her at risk politically in Gabon. As such, around the time of the Gabonese presidential elections of autumn 2005, Marie's situation became extremely precarious. The unease and the fear for forcible removals increased among the Congolese refugee community and Ms. Loubaky felt threatened. It was clear that Marie's safety could no longer be guaranteed and that she needed to leave Gabon for a safe country of asylum.

<sup>50</sup> "Towards a fair deal for migrant workers in the global economy", Report VI, International Labour Conference, 92nd Session, Geneva, 2004; OSCE; IOM; ILO: Handbook on establishing effective labour migration policies in countries of origin and destination (Vienna, 2006).

<sup>51</sup> Dirty, dangerous and degrading.

<sup>52</sup> Ibid, "Towards a fair deal for migrant workers in the global economy", P. 150–165 (agriculture), 173–178 (sweatshops), 181–194 (care economy, domestic work) and, to some extent, 166–172 (construction).

<sup>53</sup> Such persons cannot hold high posts of responsibilities in the said countries due to the fact that they are considered as foreigners with little or no aspect of recognition meant to perform only particular functions of less importance.

of excluding them from equal treatment rights<sup>[54]</sup>.

Regional integration schemes grant some nationalities privileges over others, with member States extending equality of opportunity and treatment to migrant workers from countries within the same regional integration<sup>[55]</sup>, but not to persons who are not citizens of a Member State. However, there have been some encouraging developments in the form of Cameroon regulations granting equal treatment to third-country nationals legally residing in the country<sup>[56]</sup>. Moreover, despite the fact that these Countries do not support permanent immigration, there seems to be a growing recognition that in some sectors it may be desirable.

The circumstances of migrant workers in an irregular situation are of special concern. In the event of breach of national law by employers, they may find it difficult to claim the rights they do have or to seek redress in the courts, as these countries do not provide for such a possibility or for the right of these workers to have access to legal proceedings in a language they understand. Moreover, in these countries an undocumented migrant worker who is seized by the competent authorities does not have the opportunity or time to request payment of wages and benefits due or to lodge an appeal. The protection of the fundamental rights of migrants in an irregular situation, including protection against racial, ethnic or sex discrimination, is illusory if they do not have access to legal procedures.

On a positive note, trade unions around these countries have increasingly taken steps to address the plight of migrants. For instance, there has been an increase in bilateral or multilateral agreements concluded by unions from origin and destination countries<sup>[57]</sup> to assist migrant workers and combat their exploitation, one example being the agreement signed by Cameroon and the Chinese government in 2010. Another interesting initiative is the "CEMAC Passport" launched among the CEMAC Member countries, which, since 2005, allows a migrant worker who is already a member of a union in his or her country of origin to be hosted by another member union in the host country.

#### 4. Conclusion

Cameroon have a series of proliferated laws, legal provisions, and institutions having overlapping mandates in various documents regarding the protection and promotion of refugees' rights residing in their respective territories. Despite the available laws, international law remains the main instrument that regulates refugee' treatment within the States.

<sup>54</sup> OSCE; IOM; ILO: *Meeting the Challenges of Migrants Workers in Central Africa* P. 134–144.

<sup>55</sup> This is the case of Cameroon, Equatorial Guinea, and Gabon considered as the giants of the CEMAC Sub-Regional Integration Communities.

<sup>56</sup> Council Directive 2003/109/CEMAC of 25 November 2003 concerning the status of third-country nationals who are long-term residents, Official Journal IL O 16, 23 Jan. 2004, P. 0044–0053. Under the Directive, Member States will recognize long-term resident status after five years' continuous legal residence. They would be guaranteed equal treatment with CEMAC nationals with respect to most socio-economic rights.

<sup>57</sup> This done mostly by the countries having embassy in the said country who usually hold talks with the host countries of the migrants to discuss the way forward and possible ways in which the conditions of foreigners in the in these countries especially those seeking employment and working in the said countries.

Since the initiation of the Universal Declaration of Human Right 1948, regarded as the bible of human right protection, member States especially Cameroon has established credible policies in protecting foreigners likewise refugees living within their respective territories in aspect of fundamental right protection especially those dealing with discriminatory practices. Even though with the establishment of laws, these laws, for a long period, have become obscure and obsolete. Foreigners especially refugees continue to experience aspects of violence, discrimination, and expulsion regardless of the status they occupy. The Cameroon State on its part, suffer especially when these refugees who indulge in fraudulent activities that affect the security and sovereignty of the state. These problems faced by refugees despite the availability of local laws on refugees' protection have instigated the posing of questions in order to ascertain the adequacy of the lawful protection of refugees in Cameroon.

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