

The principle of non-refoulement and the protection of refugees in international law: What prospect for application under Cameroonian refugee law

Nana Charles Nguindip¹, Kwei Haliday Nyingchia²

¹ Senior Lecturer, Department of English Law, Faculty of Law and Political Science, Law University of Dschang, Cameroon

² Associate Lecturer, Higher Technical Teacher Training College Kumba, University of Buea, Cameroon

Abstract

This article seeks to highlight the fact that the principle of non-refoulement articulated in the 1951 Convention on the Status of Refugees has given responsibilities to States in ensuring the effective protection of refugees' rights by averting their return or expulsion to countries where they will be persecuted. As seen in evolving international law policies, this principle is gradually gaining ground as a peremptory norm of International Law. This article also indicates that the application of this principle in International Law is supplemented by International Human Rights instruments. Cameroon has internationalized the 1951 Convention by enacting a law relating to the status of refugees in Cameroon. As such, this research holds that the exceptions to the principle of non-refoulement provided under Cameroonian law does not afford enough protection to refugees thus necessitating that the law should be reviewed.

Keywords: non-refoulement, protection, refugees, rights, return, international law

1. Introduction

Non-refoulement is the doctrine central to refugee protection which prohibits the return of an individual to a country wherein he or she may be persecuted ^[1]. The principle has taken a progressively fundamental atmosphere in International Law. Indeed, the concept of non-refoulement has achieved the status of what we referred to as customary international law or, as many have declared, and considered this principle as a jus cogens norm that is, a peremptory norm of international law ^[2] from which no derogation is permitted ^[3]. Articulated and well propounded in 1951 Convention on the Status of Refugees in its Section 33(1) underlying the rationale of this principle, and further sets forth in its Article 33(2) two potentially broad exceptions that the receiving state may exercise to protect the community or defend national security ^[4]. The exclusions have the prospective to innately non-refoulement and leave refugees vulnerable to the violations of underlying human rights. As such, the question that comes to mind is whether accepting as valid, the arguments that asserts the emergence of non-refoulement as an established recognized norm, what effect does this have on the Article 33(2) exceptions?

This research paper is of the opinion that if the principle of non-refoulement has emerged as a peremptory norm, in effect moving beyond refugee and human right law, then the exceptions to non-refoulement must be re-examined and austere limited. The atmosphere of recognizing and applying non-refoulement as a fundamental norm must be determined not only by beholding to the exceptions examined under the 1951 Convention, but also to customary international law, arguments of scholars, State practices, and comparable articulations of the norm in other areas of international law like International Humanitarian Law and Human Rights. If we admit the idea provided that non-refoulement is now considered as an international recognized principle, then we must see the norm as complete,

unconditional, and assuming a place in the hierarchy of international law above that of laws. The effects of this non-refoulement as an acceptable international norm can sometimes be combative and surprising as the presentation of non-refoulement as a peremptory norm prohibits a broad application of the Article 33(2) exceptions even though those exceptions represent state intent ^[5]. The explicit scope of Article 33(2) exceptions is a particularly pressed issue in light of the potential for States in relying heavily on these exceptions to enact strict applicable rules to the detriment of the refugee protection, and rights. The stringent application of Article 33(2) exceptions could pose a shattering effect by excluding legitimate refugees from protection, flagging the fundamentals in establishing a sound refugee law regime, and discouraging the legitimacy of this non-refoulement.

The first slice of this paper will examine the recent developments of the concept of non-refoulement through the establishment of a broad acceptance in the context of refugee law. The second segment examines Cameroon's internalization and application of the 1951 Convention.

2. Non-refoulement as a fundamental norm in international refugee law

The concept of non-refoulement in legal phrasing and inferences is measured as the corner stone or ultimate principle in the execution, and implementation of aspects relating to international refugee law. It has gained huge ground as a protruding legal perception for more than fifty years before being codified and acknowledged in relevant legal dispositions. Also, this principle of non-refoulement in the context of refugee protection has benefited from a wide acceptance although the exceptions provided in Article 33(2) ^[6] have not harvested comparable compromise. The principle and exceptions thereto is consecrated in Article 33 of the 1951 Convention Relating to the Status of Refugees which provides that:

1. *No Contracting State shall expel or return ('refouler') a*

refugee in any manner whatsoever to the frontiers of the territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.

2. *The benefit of the present provision may not, however, be claimed by a refugee where there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country.*

This releasable principle of non-refoulement as articulated in Article 33 is broad in scope, offering sprawling protection to refugees^[7]. The content of this broad scope, especially in its wording of; “expel or return (‘refouler’) a refugee in any manner whatsoever” has been taken in implying that it is the responsibility of States who are parties to the established Refugee Convention in prohibiting any act of exclusion be it rejection, expulsion, deportation, and even return that would place the refugee at risk, regardless of the explanation ignited by the removing State in question. We all know that it is the responsibility of States in ensuring that nothing hinders the security of its territory, but it is also of acceptable placement that States practices should be in accordance to that of fundamental human right protection. The countenance provided by the 1951 Convention as to any manner whatsoever, signposts that the aspect of refoulement must be interpreted vociferously and without possible limitation, and as such includes no exceptions for States in regarding this as extradition. The expression provided in the spirit of the law as to “where his life or freedom would be threatened” should also be broadly understood to entail any well-founded fear of persecution as propounded by Article One of the 1951 Convention which will affect the fundamental right of the refugee in question. This area of the convention sets the base for what will amount to a refugee, that there are some conditions that someone who is considered as a refugee should fulfil before a state will accept such a person in having access to its territory. Once the said person proves these conditions provided by the Refugee Convention, then it is the responsibility of the State in question in ensuring that the fundamental right of this person should be guaranteed.

3. International Instruments Consolidating the Principle of Non-refoulement

The principle of non-refoulement in its application prohibits the transfer of persons from one State to another if such persons in question faces the risk of violation of certain fundamental rights^[8]. This principle is found with some variations as to the persons it protects and the risks it protects from refugee law, extradition treaties, international humanitarian law and international human rights law. For the sake of this research paper, we are going to limit our discussion to that of refugee, human rights and Customary International law.

3.1 The Refugee Convention as a Potential Instrument in consolidating Non-Refoulement

The word, ‘non-refoulement’ is highly connected with refugee law, since it is explicitly mentioned in Article 33 of the 1951 Refugee Convention. This provision excludes refoulement of refugees, that is, forcible return or expulsion

of a refugee ‘in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group and political opinion.’ The application of this principle does not neglect or exclude persons captured in armed conflicts^[9] or other situations of violence, these persons also falls into these categories and are entitled to protection under refugee law. From the phrasing provided in Article 33(1) of the 1951 Convention, it is faultless that the non-refoulement rule is applicable to any form of forcible removal which to an extent includes those of extradition, deportation or even expulsion. As a commonly apposite principle in a refugee protection, non-refoulement is recurrently regarded as a right which extends at all times, and applied to everyone considered as a refugee under the 1951 Refugee Convention as soon the person seeks asylum in the receiving country and throughout his or her stay in the country where he/she is seeking refuge^[10]. The International pamphlets pronouncing the 1951 Convention have established relevant and acceptable instruments in the implementation of a more and explicit definition of non-refoulement. Strengthening the Convention for effective implementation by States is the 1967 Protocol relating to the Status of Refugees^[11]. This Protocol ensures that states who are parties to the 1951 Convention should strictly implement the provisions provided in the convention, and in no circumstances should these provisions be violated by States. In extending a coherent understanding of the principle, regional instruments on their part have also seen the need in according protection to refugees; especially in the context of well-founded fear of persecution as the standard for determining protection from refoulement, have become a platform of basic necessity^[12]. The protection of refugees is so important in such a way that it has been considered by many international human rights instruments.

3.2 Complementary Standard of Application of Human Right Instruments

In the accomplishment of the application of the principle of non-refoulement, modern human rights treaties have also been established under international human rights law^[13] in complementing and addressing relevant aspect of the obligation of States in ensuring the complete application of the 1951 Convention in regard to non-refoulement. The general rule here is that States are bound not to transfer any individual to another country if such transfer would result in divulging him or her to serious human rights violations, notably arbitrary deprivation of life^[14], or torture^[15] or other cruel, inhuman or degrading treatment or punishment. An unambiguous non-refoulement endowment is establish in Article 3 of the 1984 Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishments, which prohibits the removal of a person to a country where there are considerable grounds for believing that he or she would be in danger of being subjected to torture^[16]. The said obligation stipulated is in conformity with the 1966 Covenant on Civil and Political Rights^[17], encompassing Member States to the Covenant not to extradite, deport, expel or otherwise remove a person from their territory, where there are substantial grounds for believing there is a real risk of irretrievable harm. Any State that contradicts the provision of Section 33(1) in sending back a refugee where he risks experiencing

persecution and torture, violates the provision of Article 6 of the Covenant which disposes a fundamental element as to the right to life and Article 7 right to be freed from torture or other cruel, inhuman or degrading treatment or punishment by any country to which removal is to be effected or in any country to which the person may subsequently be removed^[18]. Prohibiting aspect of refoulement that poses a huge threat, and risk of serious human rights violations, torture, and other forms of ill-treatment is considered as detrimental when it comes to the legitimate application and protection of the rights attached to refugees^[19]. It is therefore a matter of justification that States when applying this principle of non-refoulement should not derogate no matter the circumstances in question, even if it is in the context of measures to combat terrorism^[20] and during times of armed conflicts^[21]. States owe that responsibility in ensuring that the fundamental human rights of all irrespective of the person in question should be respected at all times no matter the act or crime committed by the said person.

3.3 The Lack of Consensus in the Application of Exceptions to Non-Refoulement.

Although, non-refoulement has gained wide acceptance as a fundamental norm in International refugee law, the exceptions in its application by States has not harvested similar status. Exceptions to non-refoulement had long been subject to varying State practice proceeding to the norm of codification. Some limitations on return included narrow exceptions for public order or national security in the States hosting the refugee in the quest for preserving their territorial integrity. As collated in 1951 Refugee Convention, Article 33(2) has two exceptions: for public order and for national security. The situation of public order exception applies in situation where a refugee who, having been convicted of a particular serious crime, constitutes a danger to the community of the host country. Once the final conviction has been established by the States hosting the refugee, it thus calls for a determination that the individual poses a future threat to the community. It should be noted that this is also applicable where the offence was committed in the country of origin of the refugee. This danger in question must be to a community in the country of refuge, not to any other community^[22]. The question one may be tempted in posing is as to the issue of “community” which refers to the population in question, as opposed to that is provided by the national security exception, which refers to threats to the state as a whole. The national security exception contains reasonable grounds for regarding the refugee in question as a danger to the security of the country of refuge. This standard is less exacting than the public order exception, as it requires only reasonable grounds as opposed conviction, and imposes only a one-step test.

There is really serious limitation on the part of Article 33(2) as it fails in identifying the types of acts that could trigger the national security exception as it leaves that to the discretion of the states, allowing for the possibility of broad application. The failure of the Convention in providing which act will pose a threat to state security has become complex and worrisome, since most states use this in violating certain rights of the refugee in the context that the presence of such person constitutes a threat to national security. It should be noted that though these exceptions exist, international opinion and practice is gaining support to classify the principle of non-refoulement as a peremptory

norm of International Law.

3.4 An Acceptable Norm of Jus Cogens in International Law striving for Recognition

The norm of non-refoulement is at the heart of International protection of refugees yet there remains a lack of consensus as to its status. According to Articles 53^[23] and 64^[24] of the 1969 Vienna Convention on the Law of Treaties, a peremptory or imperative norm is what is accepted by the community of States as a norm from which no derogation is permitted. They are of high importance, as they are considered so essential for the International Law system that deviation or a breach could question the international legal system itself. It is of questionable character in determining whether non-refoulement in all its application and reputable euphoria has reached this level in acquiring an international recognized standard and importance. In epochs where there is mass migration and increase numbers of refugees, as well as frequent use of the national security exception in Article 33 (2) of the Refugee Convention occur, an acceptance of non-refoulement as jus cogens could have a strong influence. If we really want to accept non-refoulement as international custom, one must still investigate whether the state practice is also based on the belief that the states are bound by jus cogens to do so.

It is of high necessity that when applying the provision of Section 33(2) of the Refugee Convention, the prohibition of torture should be part of customary international law, which has attained the rank of a peremptory norm in the international law, or what we referred to as jus cogens^[25]. The notion of jus cogen should be considered by every State as a fundamental and inherent component in prohibiting refoulement when there is a risk of torture, inhuman and degrading treatment on the refugee in question. There is also an absolute ban of any form of forcible return to a danger of torture which is binding on all States, including those which have not become party to the relevant instruments^[26]. The prohibition of arbitrary deprivation of life entails an inherent obligation on States not to send any person to a country where there is a risk that such person may be exposed to inhumane treatment; this forms part of customary international law. States who are signatories and parties to human right conventions should recognized human life as sacred, and in no circumstance should anyone be treated inhumanly even when the security of the States is threatened. Even though when dealing with refugees, the Convention in its Section 33(2) has given States the right to sending back a refugee to his or her country of origin when there is proof that the security and sovereignty of this State is threatened^[27]. There is no doubt about this, that it is the responsibility of States in protecting its integrity and security^[28] and that they have the inherent right in ensuring this. Our main concern here is usually in the manner in which these States handle issues of this nature in sending back a refugee based on security and criminal threats. Most of the States does it in a manner that these refugees undergo violations on their fundamental human rights, notwithstanding the fact that these rights are internationally recognized by the International community as sacrosanct, which warrant protection, and the application of non-refoulement is not an exception. The international law commission in its sixth-ninth session of 2017 decided in changing the aspect of jus cogen to that of peremptory norm which will have a general recognition. The Commission

holds that once the International Community accepts and recognized a particular norm; such norm becomes applicable with no restriction. Regarding the aspect of non-refoulement in which states who have ratified the Refugee Convention indicates that the provisions of this convention should be respected by the States, shows that the responsibility in respecting this norm gives it an international recognition. Most States are signatory to human right instruments stipulating this fundamental right as to non-refoulement. The fact that efforts has been made so far in offering non-refoulement a preemptory standard to be recognized and applicable by States, it will go a long in ensuring the protection of refugee rights and status when residing in a particular State of their choice as a result of persecution faced.

4. Cameroon's Application of the Principle of non-refoulement

The greatest humanitarian and basic customary international law principle is the principle of non-refoulement that is the core basis of international refugee and human rights law. This principle is seen by many in International law arena, whether governments, NGOs or commentators, as fundamental to refugee law. As such its existence in the Refugee Convention of 1951 has played a key role in how States deal with refugees and asylum seekers ^[29]. The obligation to protect individuals from being sent to countries where they face a risk of persecution is also embedded in so many international and regional instruments with the main instrument being the 1951 Convention as we indicated above. Cameroon being a signatory to the said Convention and the OAU Convention on specific aspects of refugee problems in Africa has taken measures at the national level to internalize these instruments by enacting Law no. 2005/006 of 27 July 2005 on the protection of refugees in Cameroon. It should be noted that the Constitution of Cameroon in its Art 45 has taken cognizance of treaties and international agreements by asserting their supremacy over national law. In the case of *Omais* ^[30], the Supreme Court of Cameroon affirmed the supremacy of international treaties ratified by Cameroon over national laws. Thus, the signature and ratification of the 1951 Convention imposes obligations on Cameroon in the protection of refugees by respecting the principle of non-refoulement.

4.1 Cameroon's obligation under International Law

The fight against the Islamic sect Boko Haram in Nigeria and the conflict in the Central African Republic has led to the influx of refugees to Cameroon. According to United Nations High Commission for Refugees (UNHCR) and the government estimates, the country hosted 403,208 refugees and 9,435 asylum seekers as of 30th September 2018 ^[31]. Cases of refoulement have been reported though not within the framework of this research but the returnees could face the risk of being killed in the conflict since their return happened when the conflict is not yet over. Thus, on the 16 of January 2018, Cameroon forcefully returned 267 Nigerian refugees fleeing Boko Haram to northeast Nigeria ^[32]. This was seriously criticised by Human Rights Organisations who considered this as a violation of the 1951 Convention.

The principle of Non Refoulement is generally relevant to the protection of human rights, especially in relation with the freedom of torture or cruel, inhuman or degrading

treatment or punishment ^[33]. It is considered as the backbone of the whole frameworks of international protection for refugee and asylum seeker thus necessitating the respect of the obligations imposed by international refugee law. It must be noted that the obligation extends only to refugees and asylum seekers. As such, non-refoulement is often distinguished from expulsion or deportation imposed when a foreign resident is suspected of being against the interest of the host country or has committed an offence and escaped to the host country.

Law no. 2005/006 of 27 July 2005 on the protection of refugees in Cameroon which applies to all refugees and asylum seekers without discrimination in its Section 7 (1) reproduces the terms of Art 33 (1) by unequivocally stating that no one shall be forcefully returned to the borders or shall be subject to measures tending to constraint him to return or stay in a territory wherein his life, moral integrity or liberty shall be threatened or be persecuted by reason for his race, nationality or belonging to a particular group or political opinion. Thus, anyone seeking asylum in Cameroon has a maximum of 15 days upon arrival to present himself before the competent authority. The law does not indicate who the competent authority is in this context but appearing before an administrative authority or any law enforcement agency or authority will be enough. Cameroon's internationalization of the 1951 Convention to a greater extent ensures the protection of refugees and extends same to the family members of anyone who has been accorded the status of refugee in Cameroon. However, the practice on the field seems to be at variance with the law as cases of forceful returns of refugees fleeing conflicts have been reported.

It is therefore, glaring that each country after being committed to respect the principle of non-refoulement by joining the 1951 Convention and key human Right Conventions, its content is not established in International Law which is indeterminate ^[34]. As such it has been held that since no common definition exist, in practice, international and national bodies have exclusive powers of discretion to give content to the terms' persecution, torture, degrading or cruel treatment ^[35]. The prohibition of refoulement to a danger of persecution under international refugee law is applicable to any form of forcible removal, including deportation, expulsion, extradition, informal transfer and non-admission at the border ^[36]. The circumstances aimed at averting the dangers of persecution are enumerated in Sections 2 and 7 of the 2005 Law. It is clearly stated under the 2005 law that only those who have been granted the status of refugee can benefit from the provisions of the said law.

The Cameroonian law does not indicate whether those at the borders or in ships at sea will benefit from the status of refugee. This debate has remained constant in the application of the principle whether a refugee must be within the State for the right to accrue to them. Through the activities of the UN High Commissioner on Refugees (UNHCR), and common State practice, it has been acknowledged that Article 33 applies to all refugees, whether or not they fit the set definition ^[37]. Cameroonian authorities must therefore be ready to grant the refugee status to those caught in such a situation to conform to its obligation under the 1951 Convention. It is worth noting that the principle of non-refoulement as provided for in Article 33(1) of the 1951 Convention does not as such,

entail a right of the individual to be granted asylum in particular State^[38]. It does mean however, that where States are not prepared to grant asylum or refugee status to persons who are seeking international protection on their territory, they must adopt a course that does not result in their removal directly or indirectly to a place where their lives or freedom would be in danger on account of their race, religion, nationality, membership of a particular social group or political opinion^[39]. Individuals seeking asylum or refugee status may be automatically disqualified on reasons of national security and public policy when they apply to be received by host countries as is the case in Cameroon^[40]. The principle of non-refoulement is not absolute as it is subject to exceptions thus, allowing States to expulse those who have been granted the refugee status.

4.2 Exceptions to the Principle Under Cameroonian Law

Although, the principle of non-refoulement is being considered as a peremptory norm in International Law, its application in the protection of refugees is not absolute. Thus, exceptions are provided to this principle by Art 33 (2) of the 1951 Convention and national legislations have set the additional basis for such exceptions thereby strongly undermining the protection of refugees. States has always raised security concerns to expulse refugees or persons found in their territories. We must point out that it is generally accepted that, given the humanitarian character of the prohibition of refoulement and the serious consequences on a refugee of being returned to a country where she/he may be in danger, the exceptions must be interpreted restrictively and in strict compliance with due process of law^[41].

Section 14 of the 2005 Law in enunciating exceptions to non-refoulement provides that any refugee found regularly in the territory of the Republic of Cameroon shall be expelled only on reasons of national security and public order. This is an exception to the rule set in Section 7 of the 2005 Law though the law does not indicate what degree of national security threats or public order breached shall be considered before expulsing a refugee from Cameroon. Furthermore, public order is a notion without a concise definition and national authorities may always use flimsy reasons on account of public order to expulse refugees from its territory.

Cameroon has come under serious criticisms for sending back some Nigerian refugees. Reports have emerged that the Cameroonian government has been forcefully returning people to Nigeria with the objective of removing them from the country and dissuading further arrivals and as per the UNHCR regional representative in Nigeria (Liz Ahua). In response, the Cameroonian government has claimed that Nigerian refugees constitute a security and economic threat^[42]. A 2017 report by Human Rights Watch claimed that over 100 000 Nigerians have been summarily deported, including at least 4 402 documented returns in the first seven months of 2017. Human Rights Watch also claimed that evidence showed soldiers had used physical violence, including beatings with sticks and metal poleis to force people to comply^[43]. This refoulement seem not to have taken place within the conditions provided by the 2005 Law and the obligations provided under the 1951 Convention. As such, a lot of abuses take place when it comes to the respect of the principle of non-refoulement, especially in countries that do not belong to blocs with strong jurisdictional organs

as is the case with the European Union where the Human Rights Court can hold charter members responsible for violating Human Rights.

4.3 Remedies aimed at averting refoulement under Cameroonian Law

The 2005 Law provides in Art 14 that refoulement can only take place in execution of a decision delivered in conformity with the procedure provided by law. To ensure that the rights of refugees and asylum seekers are protected, Decree no. 2011/389 of 28 November 2011 on the organization and functioning of organs of management of refugees status in Cameroon in Article 1 has created the Commission for the eligibility of Refugee Status and the Commission for the Petitions of Refugees. These commissions are lodged at the Ministry of External Relations with the UNHCR being a member of the said Commissions^[44]. As a per Article 8 of the afore cited Decree, no measure of refoulement to the borders can be executed when the Commission for Eligibility has not decided except the measures are taken on grounds of national security, public order or in the execution of a decision delivered in conformity with the law. The Commission for Petitions decides at a last resort on issues relating to the grant of refugee status and these decisions are subject to appeal within 30 days from the date of notification of the said decision. Art 15 (3) of the 2011 Decree does not indicate the competent court to entertain appeals but it is obvious that it is the Administrative Bench of the Supreme Court. This procedure may be respected when it concerns individual cases, especially those seeking asylum but becomes extremely difficult when it concerns a group of refugees or when security concerns are raised.

Most countries avoid due process procedures especially when national security concerns are raised and since there is no mechanism to compel charter members to the 1951 Convention, countries use informal procedures to forcefully return asylum seekers and refugees likely to be persecuted by the receiving country. In January 2018 Nigerian special forces arrested Sisiku Ayuk Tabe and 46 others (Anglophone separatists) in a hotel in Abuja, Nigeria, and forcibly deported them to Cameroon in spite of the fact that some had applied for asylum^[45]. All attempts before the Military Tribunal in Cameroon to demonstrate that the 1951 Convention was violated proved futile. An action was filed before the Federal High Court in Abuja by Lawyers of Sisiku Ayuk Tabe and 11 others wherein the Court held that their arrest in Abuja on January 7, 2018 by agents of the Abuja Armed Agents without a warrant of arrest was illegal, unconstitutional and against the African Charter on Human and People's Rights^[46]. This case merely portrays how the obligations under the 1951 Convention are breached by uncivilized nations without the victims of such abuses having any possibility to seek redress, especially in countries without an independent judiciary. It becomes aggravated when it comes to fighting terrorism whereby due process is hardly respected. It should be noted that the 2005 Law does not provide for diplomatic assurance which is an instrument (though not very efficient) used in some countries to ensure that those forcefully returned will be treated fairly.

5. Conclusion

The paper concludes that even though the right to non-refoulement is a principle generally recognized in relevant

human right instruments and the 1951 Convention, it's application and implementation has been considered important especially within the context of Article 33(1) of the 1951 Refugee Convention dealing with non-refoulement. With it's international recognition and States responsibilities in respecting the principle, many evaluates it as peremptory norm of international recognition, even though to an extent it's application by States has been questionable and controversial on the grounds of national security and public order concerns. The 1951 Refugee Convention believes that the application of the content of Article 33(2) dealing with the exception of non-refoulement, should rely on State discretion. The State of Cameroon being one of those States that have ratified the Convention has contributed enormously in ensuring the smooth application of this principle in traverse of it's relevant national dispositions. Even though the 1951 Refugee Convention has provided for exceptions to the principle of non-refoulement, Cameroon in applying this provision must do so in an awfully limited manner; she must not rely on these provisions in establishing strict policies in the application of this principle. As such, she must clearly define what national security threats and public order concerns are to avert forceful returns in groups as discussed above.

The exceptions available in the application of the principle of non-refoulement have created diverse interpretations in its application thereby, constantly resulting to blatant violations. The national security concerns raised by Cameroon and most nations are vague and are most often interpreted to suit the host country amounting to refoulement not subject to procedural reviews. Even the complementary application of Human Rights instruments are not helping the situation. A revision of the 2005 Law and the inclusion of criminal sanctions for the violation of due process will greatly enhance the protection of refugees. The competence of the commission for the review of petitions should be transferred to the Court of First Instance to facilitate access to justice by refugees and asylum seekers, especially as this commission is only located in the capital Yaounde and has no independence.

References

1. Non-refoulement is a concept which prohibits States from returning a refugee or asylum-seeker to territories where there is a risk that his or her life or freedom would be threatened on account of race, religion, and nationality, membership of a particular social group or political opinion. Article 33(1) of the Refugee Convention, 1951.
2. The fundamental humanitarian principle of non-refoulement has found expression in various international instruments adopted at the universal and regional levels and is generally accepted by States. Example of these include the United Nation Convention on the Protection of Refugees 1951, The International Covenant on Civil and Political Right 1966, the International Covenant on Economic, Social and Cultural Right 1966, The Convention Against Torture 1984. At the Regional Level, we have the Cartagena Declaration 1984 in Latin America, The OAU Specific Problems on Refugee 1969, and even the African Charter on Human and People's Rights, 1981.
3. The Vienna Convention on the Law of Treaties May 23rd 1969, which entered into force on 27th January, 1980.
4. Convention relating to the Status of Refugees, adopted on July 28, 1951.
5. Erika Feller, Asylum, Migration and Refugee Protection: Realities, Myths and the Promise of Things to Come, 18 INT'L J. REFUGEE L, 2006, 509:511.
6. Stephen H Legomsky. The Ethnic and Religious Profiling of Non-Citizens: National Security and International Human Rights, 25 B.C. THIRD WORLD L. J, 2005; 161:162-177.
7. David Weissbrodt, Isabel Hortreiter. The Principle of Non-Refoulement: Article 3 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in Comparison with the Non-Refoulement Provisions of Other International Human Rights Treaties, 5 BUFF. HUM. RTS. L. REV, 1999; 1:18.
8. Goodwin-Gill GS, McAdam J. The Refugee in International Law. New York: Oxford University Press, 2007.
9. International Humanitarian law in its Geneva Convention IV, has recognize this aspect of non-refoulement. In its article 45(4) it precludes that State holding persons in detention from repatriating a Prisoner of War or transferring a civilian expressing to other country. The Convention continues in its article 49 that in an occupied territory any transfer of protected person is prohibited, 1949.
10. Jean-Francois Durieux & Jane McAdam, Non-Refoulement through Time: The Case for a Derogation Clause to the Refugee Convention in Mass Influx Emergencies, 16(1) INT'L J. REFUGEE L.4, 2004, 13. SS
11. Protocol Relating to the Status of Refugees comes in to complement the 1951 Convention on the Protection of Refugee. The Protocol in its article 1 emphasises that States who are parties to the Convention must respect the definition provided under article 1(2) (A) of the 1951 Refugee Convention which provide the definition of who can be considered as a Refugee in International Law, 1967.
12. OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, defines a refugee in its article 2 as; "The term 'refugee' shall mean every person who, 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 nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country". The American Convention on Human Rights in its article 22 (8) also contain similar provisions. For matters of emphasis, the Organization of American States, Cartagena Declaration referred by many as the Cartagena Declaration also adopt the terminology established in the Convention and Protocol referred to in the foregoing paragraph the 1951 Convention and the 1967 Protocol relating to the Status of Refugees with a view to distinguishing refugees from other categories of migrants".
13. Gorlick B. "Human Rights and Refugees: Enhancing Protection through International Human Rights Law" 69 No.2 Nordic Journal of International Law, 2000,

- 117-119.
14. Article 6 of the International Covenant on Civil and Political Right (herein referred after to as ICCPR) with strict compliance. The same recognition is found in Article 2 of the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms, Article 4 of the American Charter on Human Right; and even Article 4 of the African Charter on Human and People's Rights, 1986.
 15. The right to be free from torture is guaranteed under Article 1 of the 1984 Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment and Article 2 of the Inter-American Convention to Prevent and Punish Torture. Article 16 of the Convention Against Torture prohibits other cruel, inhuman or degrading treatment or punishment. A prohibition of torture and other cruel, inhuman or degrading treatment or punishment is guaranteed under Article 7 of the ICCPR and provisions in regional human rights treaties, such as Article 3 of the European Convention on Human Right; Article 5(2) of the American Charter on Human Right; or Article 5 of the African Charter, 1985.
 16. Duffy A. "Expulsion to Face Torture? Non-Refoulement in International Law" 20 International Journal of Refugee Law, 2008, 373-374.
 17. International Covenant on Civil and Political Right which entered into force on the 23th of March 1976 and ratified by Cameroon on the 27th of January 1984 and entered into force on April 27th, 1984.
 18. In respect of the scope of application, States have obligations under Article 7 of the ICCPR that States should prohibit of torture, or other cruel, inhuman or degrading treatment or punishment.
 19. Article 3 of the European Court on Human Right provide that in cases where there is a real risk of exposure to torture, inhuman or degrading treatment or punishment, including, in particular, with the decision of the Court's in *Soering v. United Kingdom*, Application No. 14038/88, 1989.
 20. Committee Against Torture, *Agiza v. Sweden*, U.N. Doc. CAT/C/34/D/233/2003, 20 May 2005; *Alzery v. Sweden*, U.N. Doc. CCPR/C/88/D/1416/2005, 10 November; Inter-American Commission on Human Right, 2006.
 21. International human rights law does not cease to apply in case of armed conflict, except where a State has derogated from its obligations in accordance with the relevant provisions of the applicable international human rights treaty (for example, Article 4 ICCPR). In determining what constitutes a violation of human rights, regard must be had to international humanitarian law, which operates as *lex specialis* to international human rights law during time of armed conflict.
 22. James C Hathaway, Anne K Cusick Refugee Rights are Not Negotiable, 14 GEORGETOWN. Immigration Law Journal, 2000, 481-537.
 23. Article 53 of the Vienna Convention on Treaties of 1969 is to the effect that when a treaty conflict with peremptory norms of General International Law, the treaty will be considered as void. A treaty is void if at the time of its conclusion, it conflicts with peremptory norms of general international law.
 24. This article is to the effect that where a new peremptory norm of general international law emerges, any existing treaty which is in conflict with that norm becomes void and terminated.
 25. Article 4 of Human Rights Committee, General Comment No. 29 on Derogations during a State of Emergency, U.N. Doc. CCPR/C/21/Rev.1/Add.11, 31 August, proclaims that certain provisions of the Covenant are considered as non-derogatory in nature. In its sub-section 2, is to be seen partly as recognition of the peremptory nature of some fundamental rights ensured in treaty form in the Covenant like that of articles 6 and 7, 2001.
 26. Lambert H. "Protection against Refoulement from Europe: Human Rights Law Comes to the Rescue" 48 No.3 International and Comparatively Law Quarterly 515, 1999.
 27. Christian J Tams. Enforcing Obligations Erga Omnes in International Law 141, 2005.
 28. Gerald L Neuman. Import, Export, and Regional Consent in the Inter-American Court of Human Rights, 19 European Journal of International Law, 2008, 101-102.
 29. Arif Ahmed. Individual Protection versus National Security: A Balancing Test Concerning the Principle of Non-refoulement, IOSR Journal of Humanities and Social Science (IOSR-JHSS). 2016; 21(5)30-40.
 30. Judgment no. 21/CIV CS of 13, 2010.
 31. United States Department of State. Country Reports on Human Rights Practices for 2019 in Cameroon, Bureau of Democracy, Human Rights and Labour, p. 23. The refugee population included 291,803 CAR nationals, 108,335 Nigerians, and 1,599 Chadian, 2019.
 32. Ibid
 33. Sigit Riyanto. The Refoulement Principle and Its Relevance in the International Legal System, Indonesian Journal of International, Volume 7 Number 4 July 2010, 2010, 731-756.
 34. Yannick Ghelen. Eroding the absolute character of the principle of non-refoulement? A comparative study of the use of diplomatic assurances against torture, HR MA-Long Thesis, Central European University, Hungary, 2013, p.26.
 35. Ibid
 36. UNHCR. Advisory opinion on the extraterritorial application of non-refoulement obligations under the 1951 Convention relating to the status of refugees and its 1967 protocol, Geneva, UNHCR, 2007, p.3.
 37. Sigit Riyanto. op. cit, 2010, pp. 731-756.
 38. UNHCR. op. cit, 2007, p. 12.
 39. Ibid
 40. Art 3 of the Law stipulates that the law does apply to those who for serious reasons are believed to have committed an offence against peace or humanity, has committed a serious non-political offence out of the receiving country before being admitted as a refugee. It does not also apply to those who have committed acts contrary to the objectives and principles of the AU and UN, 2005.
 41. Emanuela-Chiara Gillard. There's no place like home: states' obligations in relation to transfers of persons, International Review of the Red Cross, Volume 90 Number 871, 2008, 703-750.

42. Institute for Security Studies Cameroon's forceful repatriation of Nigerian Refugees, Policy Brief, 2017; 110:4.
43. Ibid, p. 5.
44. The Commission for Eligibility is in charge of examining petitions for the grant or withdrawal of refugee status while the Commission in charge of petition entertains appeals at last resort against the decisions of the Commission for Eligibility.
45. United States Department of State, op. cit, 2019, p. 12.
46. Sisiku Ayuk Tabe and 11 other Vs National Security Adviser and Attorney General of the Federation in suit no. FHC/ABJ/CS/85/. The court further ordered the respondents to pay N5 million in general and aggravated damages for illegal violation of the fundamental rights to life, dignity of person, fair hearing, health, freedom of movement and freedom of association. The Court equally made an order of perpetual injunction restraining the Respondents from further violating the Applicants fundamental rights in any manner whatsoever without lawful justification, 2018.