

Law No. 2005/006 of 27 July 2005 Relating to the Status of Refugees in Cameroon: An Additional Hurdle or a Major Step Forward to Refugee Protection?

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Abstract

Cameroon adopted a law defining the legal framework for refugee protection in July 2005, which entered into force in November 2011. This article examines the Act's rights framework and the process of refugee status determination under it, and analyses those rights guaranteed by the Act to asylum seekers and recognized refugees. Particular attention is directed at understanding the compatibility between the 2005 refugee law and international refugee and human rights instruments to which Cameroon has acceded. In so doing, this article argues that the guarantees of 2005 refugee law have not yet been fully implemented in Cameroon. As a way forward, the article will proffer recommendations to strengthen the enforcement of the 2005 refugee law. The methodology adopted for the purpose of this research is a doctrinal method. The doctrinal research involves the analysis of statutes, case laws, text books, articles, opinions of jurists and internet materials.

Keywords: Refugees, asylum seekers, Cameroon, international refugee protection, the 2005 refugee law, Refugee Convention, OAU Convention, UNHCR.

Introduction

Cameroon has a long record of performing humanitarian obligations towards refugees¹ residing in its territory. As of August 2014, Cameroon was hosting more than 240,000 people of concern to UNHCR². The majority of asylum seekers in Cameroon originate from countries in the sub-region, notably from Burundi, the Central African Republic, Chad, Democratic Republic of Congo, Guinea, Nigeria, Rwanda and Sudan. Cameroon hosts the largest number of Central African refugees. Due to the crisis in Nigeria, Cameroon has witnessed an influx of Nigerian refugees since May 2013³. There are three dominant explanations for the steady flow of refugees into Cameroon. Naturally, Cameroon is situated in the midst of countries which for decades have faced political conflict and civil war⁴. Secondly, Cameroon's economic resurgence and status as the only stable democracy in Central Africa makes it an attractive destination for asylum seekers. In the third place, Cameroon's hospitality to its neighbours has made it vulnerable to refugees who flee into the country.

It must be noted at the outset of this debate that Cameroon has acceded a number of international treaties that impinge upon its obligations towards refugees. These treaties include *inter alia* the 1951 United Nations Convention Relating to the Status of Refugees⁵, the 1967 Protocol Relating to the Status of Refugees⁶, the 1969 Organization of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa⁷, the 1948 Universal Declaration of Human Rights⁸, the 1966 International Covenant on Economic, Social and Cultural Rights⁹, the 1966 International Convention on Civil and Political Rights¹⁰, and the 1984 UN

¹ If one consults a dictionary to define the word refugee, one finds an array of synonyms such as alien, stranger, foreigner, immigrant, and newcomer. Thus, the Merriam-Webster dictionary defines a refugee as "one that flees; especially: a person who flees to a foreign country or power to escape danger or persecution". www.merriam-webster.com. The definition of a refugee at international law is established by article 1A (2) of the Refugee Convention. See *infra* section II.

² UNHCR, *Global Appeal 2015: Cameroon*, p.1.

³ *Ibid.*

⁴ The country borders Gabon, Nigeria, Chad, Equatorial Guinea, Central Africa Republic and Congo Brazzaville. The deterioration of the security situation in neighboring Central Africa Republic and Nigeria are the immediate and constant push factors for refugees to enter Cameroon.

⁵ Henceforth referred to as the "Refugee Convention" or simply "the Convention".

⁶ Henceforth, called "the Refugee Protocol".

⁷ Henceforth referred to as the "OAU Convention".

⁸ Henceforth referred to as "the UDHR". Generally, Article 14 of the UDHR defines the framework for refugee protection by recognizing the fact that "everyone has the right to seek and to enjoy in other countries asylum from persecution".

⁹ The Covenant was ratified by Cameroon on June 27, 1984 and entered into force on September 27, 1984. By extrapolation, Article 2 (2) of the Covenant includes the respect of the rights of persons with refugee status recognized in the Covenant, by stating that "the States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination as to ... national or social origin..."

¹⁰ Henceforth referred to as "the ICCPR". Cameroon acceded to the ICCPR on June 27, 1984. Article 13 of the ICCPR states that, "an alien lawfully in the territory of a state-party to the present covenant may be expelled therefrom only in pursuance of

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment¹. In Cameroon, the 1996 Cameroonian Constitution² which is the prime law of the law has guaranteed that “*duly approved or ratified treaties and international agreements shall, following their publication, override national laws, provided the other party implements the said treaty or agreement*”³.

The fact that the government of Cameroon has signed and ratified almost all major international instruments governing refugee issues constitutes a strong indication of its commitment to ameliorate the plight of refugees and asylum seekers. Accordingly, the adoption of Law No. 2005/006 of 27 July 2005 relating to the Status of Refugees in Cameroon⁴ depicts a reinforcement of this commitment. With this Act in operation a roadmap in protecting refugees is captured. The 2005 refugee law operates in parallel with Law No. 97/12 of 10 January 1997 to lay down the Conditions of Entry, Stay and Exit for Aliens⁵. The latter regulates and control entry and residence of individuals who do not fall within the ambit of humanitarian obligations owed to refugees. There are a number of scholarly articles and papers on the refugee situation in Cameroon⁶. However, there has been no consideration on the relevancy of the 2005 refugee law to the protection of refugees in Cameroon.

The thrust of this article therefore, is to critically analyze the 2005 refugee law with the intention of identifying gaps and challenges thereto and recommend for its suitability for future application. It is the contention of this author that refugees have a unique status under international refugee law and the passing of the 2005 refugee law has enhanced that position. This article will lay out the argument in several steps. The first section seeks to understand the background and the nature of international refugee law and how Cameroon and its policies have evolved within a global context. Special focus is given to the foundational international refugee treaties, and how they have been complemented by both contemporary human rights treaties and soft law⁷. The second section provides the context for the analysis by explaining the key strengths of the 2005 refugee law. The third section then proceeds to point out the fundamental challenges which undermine the implementation of the 2005 refugee law in Cameroon. The final section will provide a number of safeguards and recommendations which, if implemented, could tackle some problems that are inherent in refugee protection. This topic has been found to be important because the number of refugees in the Cameroon is rising every day and as such it is necessary to identify the implications of such mass movement of people under international and national law. Although all measures are discussed in relation to Cameroon, they are of general interest to all refugee situations.

1. The background and context of international refugee protection

Over the years, the international community has developed various instruments to address the plight of asylum seekers and refugees⁸. Therefore, the goal of this section is to present this essential context as basis for refugee protection. The organization of this section proceeds according to the following logic. The first portion explores the history of the legal and institutional framework for refugee protection. The second portion focuses on the Cameroonian refugee regime and its evolution. By plotting an evolutionary perspective of international refugee protection, one is able to understand the historical influence of certain decisions.

a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority.”

¹ Henceforth referred to as “the Torture Convention”. Article 3(1) of the Torture Convention states that, “no state-party shall expel, return (*refouler*) or extradite a person to another state where there are substantial grounds for believing that he would be in danger of being subjected to torture.” On 12 October 2000, Cameroon declared with regard to Article 21 of the Convention against Torture that it recognizes the competence of the Committee against Torture to receive and consider communications from a State Party claiming that the Republic of Cameroon is not fulfilling its obligations under the Convention.

² Law No. 96-06 of 18 January 1996 to amend the Constitution of 2 June 1972.

³ Article 45.

⁴ Henceforth referred to as “the 2005 refugee law”.

⁵ Henceforth referred to as “the Immigration Act”.

⁶ See, the following Tayimlong Robert Afuh, *The Social Protection of Refugees in Cameroon*, Unpublished Master’s Dissertation, International Relations Institute of Cameroon (IRIC), 2013. Duevi Jeannette Caroline Kourouma, “*Protection et Assistance Internationale aux Réfugiés Africains: de Kousseri à Poli / Faro, Le cas des Réfugiés Tchadiens au Cameroun.*” Unpublished Master’s Dissertation, Yaoundé: International Relations Institute of Cameroon (IRIC), 1983. Mbuli Rene, *Humanitarian crises and the management of Refugees in Central Africa: A case study of Cameroon*, Paper submitted at the World conference of humanitarian Studies in February 2009 in Groningen (Netherlands).

⁷ Soft law refers to rules that are neither strictly binding in nature nor completely lacking legal significance. In the context of international law, soft law refers to guidelines, policy declarations or codes of conduct which set standards of conduct. However, they are not directly enforceable. Culled from www.uslegal.com

⁸ There appear to be a wide legal framework holding states responsible to protect refugees. Specific standards for refugee protection are established primarily by the Refugee Convention, but are also found in regional instrument such as the OAU Convention and the Cartagena Declaration.

1.1. Evolution of international refugee regime¹

Refugee protection as a phenomenon is as old as the history of mankind². However, the conviction that the international community has a duty to provide refugees with protection and solutions started soon after the First World War within the context of the League of Nations³ and the election of Dr. Fridtjof Nansen as High Commissioner for Refugees in 1921⁴. The first Arrangements of 5th July 1922, 31st May 1924 and 12th May 1926 defined refugees by categories, specifically in relation to their country of origin. A Russian refugee was defined as “any person of Russian origin who is not or no longer wants to be under the protection of the government of the Union of Soviet Socialist Republics and who had not obtained another nationality”⁵. Similarly, an Armenian refugee was defined as, “any person Armenian origin, previously subject to the Ottoman Empire, which is not or no longer, wants to be under the protection of the government of the Republic of Turkey and who have not acquired another nationality”⁶.

It may be worthwhile noticing that refugee status determination within the framework of the League of Nations was, therefore, not a measure generally applicable to individual migrants fleeing their country, but only to specific situations of mass exodus. The 1933 Convention Relating to the International Status of Refugee⁷ contained a more flexible definition than those agreements dealing with specific groups of refugees, as it allowed modifications by each contracting party⁸. It also established the concept of refoulement⁹, which is a crucial element of modern asylum law¹⁰. The Convention was followed by the 1938 Convention Concerning the Status of Refugees Coming from Germany. The 1938 Convention specifically addressed resettlement in its Article 15¹¹. Tragically, lack of political will by the international community is arguably responsible for the demise of both the 1933 and 1938 conventions¹².

¹ The term “regime” is subject to varying interpretations, however, this article relies on the understanding found in international relations and political theory. Krasner defines ‘regimes’ as “sets of implicit or explicit principles, norms, rules, and decision-making procedures around which actor’s expectations converge in a given area of international relations.” Krasner, Stephen D. (ed) *International Regime*, Cornell University Press, Cambridge, 1989, p.2.

² Grahl Madsen contends that, according to the Bible, Adam and Eve were driven out of Eden and thereby became the first refugees. Mary and Joseph had to seek refuge in Egypt with the child Jesus Christ. Thus, the history of refugees goes as far back as the known history of mankind. See Grahl Madsen, *The Status of Refugees in International Law*, vol 1, 1966, p.9.

³ The League of Nations was founded in 1919 out of the Treaty of Versailles. It was the first international organization to address refugee issues. See Peace Treaty of Versailles, Covenant of the League of Nations articles 1 -30, April 28, 1919.

⁴ For a detailed review of Nansen’s life and work See Claudena M. Skran, “Profiles of the First Two High Commissioners”, in *Journal of Refugee Studies*, Vol 3, No 4, P. 277-296, .1995. See also Special issue: Fridtjof Nansen and the International Protection of Refugees in *Refugee Survey Quarterly*, Vol 22, Issue 1, April 2003,

⁵ Jean-Pierre, ed. *Collection of International Instruments and Other Legal Texts Concerning Refugees and Displaced Person*, vol 1, Division of International Protection of the Office of the United Nations High Commissioner for Refugees, Geneva, 1995. p.44-45. See Guy S. Goodwin-Gill *et al*, *The Refugee in International Law*, 3rd ed., Oxford University Press, Oxford, 2007, p.16.

⁶ *Ibid*

⁷ Convention Relating to the International Status of Refugees, Oct. 28, 1933, 159 L.N.T.S.199

⁸ Article 1 of the 1933 Convention applied its provisions to Russian, Armenian and assimilated refugees, subject to such modifications as each contracting party might introduce at the moment of signature or accession. See Paul Weis, *The Concept of the Refugee in International Law*, in *Journal du Droit International*, 1960, p.928-942.

⁹ Its Article 3 reads: “Each of the Contracting Parties undertakes not to remove or keep from its territory by application of police measures, such as expulsions or non-admittance at the frontier (refoulement), refugees who have been authorized to reside there regularly, unless the said measures are dictated by reasons of national security or public order. It undertakes in any case not to refuse entry to refugees at the frontier of their countries of origin. It reserves the right to apply such internal measures as it may deem necessary to refugees who, having been expelled for reasons of national security or public order, are unable to leave its territory because they have not received, at their request or through the intervention of institutions dealing with them, the necessary authorizations and visas permitting them to proceed to another country.”

¹⁰ The term derives from the French word “refouler”, which means to drive back or repel. The prohibition on non-refoulement in international law is usually described in relation to three key areas: refugee law, human rights law and customary law.

¹¹ Article 15 stipulates that “with a view to facilitating the emigration of refugees to overseas countries, every facility shall be granted to the refugees and to the organizations which deal with them for the establishment of schools for professional re-adaptation and technical training”

¹² Dr. Luise Druke (Representative of the UNHCR) has described both the 1933 and the 1938 conventions as an “abysmal failure, merely confirming the general lack of willingness of countries around the world to offer a lifeline to the Jews”. Dr. Druke supports this assertion by pointing out that the 1933 convention only had 8 signatories: Belgium, Bulgaria, Czechoslovakia, Denmark, France, Great Britain, Italy and Norway. It was signed but not ratified by Egypt. Nevertheless, it was by virtue of this Convention that the principle of non-refoulement acquired the status of international treaty law. See Robert J. Beck, “Britain and the 1933 Refugee Convention: National or State Sovereignty?” in *International Journal of Refugee Law*, vol 11, Issue 3, 1999, p. 597-624.

The outbreak of the Second World War compelled the international community to acknowledge the importance of a more permanent and well defined solution for the masses of people who were being made homeless by the horrors of war¹. One of several responses to the situation was the adoption of the Refugee Convention². This Convention is sometimes referred to as “the Magna Carta of international refugee law”³. Under Article 1A (2) of the Refugees Convention, as amended by Article 1(2) of the 1967 Refugees Protocol⁴, a refugee is someone 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....”

This refugee definition is broader than the prior practice in two ways. It links refugee status to those who have a basis for fearing persecution rather than to a specific crisis or a specific nationality group⁵. In other words, this definition rejected the group approach and led to the determination of refugee status on an individual basis⁶. Moreover, it expands the reasons that warrant refugee status⁷. The Refugee Convention also explicitly identifies United Nations High Commissioner for Refugees⁸ as having supervisory responsibility for its implementation⁹. Nonetheless, the Convention definition of a refugee bears characteristics that James Hathaway¹⁰ identifies as embracing pro-Western political values. By including only persons who have been disfranchised by their state on grounds of race, religion, nationality, membership of a particular social group or political opinion, ideological dissidents to international protection were made by Western states, which condemned the Soviet bloc politics through international law¹¹. Hathaway’s assessment of the Refugee Convention system lies in stark contrast with Aleinkoff’s contention that the Convention drafters meant to protect against violations of human rights, whether or not such violations were premised on the five enumerated Convention grounds¹².

While the Refugee Convention is the most widely used instrument for refugee protection, there are also regional arrangements, which have expanded on the Convention’s definition of refugee. As far as Africa is concerned, in 1969 OAU Convention was adopted which broadens the definition of refugees to include “every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of

¹ When the war ended in 1945, 30 million people were left uprooted. Soldiers or displaced persons could not return home because of border changes, including more than twelve million ethnic Germans who were expelled from USSR. See Daniele Joly et al, *Refugees in Europe*, Russel Pres Ltd, Nottingham, 1990, p.6.

² The Refugee Convention was adopted by the United Nations Conference on the Status of Refugees and Stateless Persons which was held in Geneva on 2-25 July 1951. It was opened for signature on 28 July and entered into force on 22 April 1954.

³ See UNHCR, “50 Anniversary: The Wall Behind which Refugees can Shelter, the 1951 Geneva Convention”, *Refugee Magazine*, Vol.2, Issue 123 of 2001.

⁴ The Protocol updates and slightly alters the Refugee Convention of 1951, but the only substantial changes made removed time and geographical restrictions on claims. Protocol Relating to the Status of Refugees, January 31, 1967, 19 U.S.T. 6223, 606 U.N.T.S. 267

⁵ Before the adoption of the 1951 definition the refugees in the preceding years were identified as a group such as persons of a certain origin not enjoying the protection of their country. After the adoption they were identified as individuals on a case-by-case basis by the general concept of ‘fear’ for a relevant motive.

⁶ The 1951 Convention and the subsequent Protocol on Refugee Status, however, do not outline procedures for determining refugee status. Thus, it is the state’s responsibility to work out its own procedures for assessing the validity of a refugee claim.

⁷ It specifies five grounds: race, religion, nationality, political opinion, and membership in a social group. The first four grounds were present in the draft convention considered by the conference of plenipotentiaries. The fifth, membership in a particular social group, was introduced at the conference as an amendment by the Swedish representative. See Nehemiah Robinson, *Convention Relating to the Status of Refugees: Its History, Contents and Interpretation*, Institute of Jewish Affairs, New York, 1953, p.53.

⁸ Henceforth referred to as “the UNHCR”. Created by the UN General Assembly on December 14, 1950, the UNHCR is mandated to lead and coordinate international action for the worldwide protection of refugees and the resolution of refugee problems. In 2003, the General Assembly extended the organization’s mandate “until the refugee problem is solved.” Since its creation, the UNHCR has helped millions of refugees, earning two Nobel Peace Prizes in 1954 and 1981.

⁹ Article 35(1) of the 1951 Convention, subtitled ‘Co-operation of the national authorities with the United Nations’, reads: The Contracting States undertake to co-operate with the Office of the United Nations High Commissioner for Refugees, or any other agency of the United Nations which may succeed it, in the exercise of its functions, and shall in particular facilitate its duty of supervising the application of the provisions of this Convention. Article II (1) of the 1967 Protocol contains the same obligations in relation to UNHCR’s functions, including its “duty of supervising the application of the present Protocol”.

¹⁰ James Hathaway, *The Law of Refugee Status*, Vancouver, Butterworths, 1991, p.6.

¹¹ *Ibid*

¹² See Alexander Aleinkoff, “The Meaning of Persecution in United States Asylum Law”, in *International Journal of Refugee Law*, vol 5, Issue 12, 1991.

habitual residence in order to seek refuge in another place outside his country of origin or nationality"¹. Experts like Newland² and Aiboni³ view the definition in the 1969 OAU Convention as an improvement and very useful not only for African efforts to improve the status of refugees but for international efforts as well. The rights of refugees and asylum seekers have been further strengthened by the adoption of the African Charter on Human and Peoples' Rights⁴. The African Charter drew inspiration from the UDHR, the two international Covenants⁵, as well as the European⁶ and American Conventions on Human Rights⁷. Among other things, the African Charter provides that every individual shall have the right, when persecuted, to seek and obtain asylum in other countries in accordance with the laws of those countries and international conventions⁸. Accordingly, it also provided for the creation of the African Commission on Human and Peoples' Rights to oversee the implementation of the treaty⁹.

The Cartagena Declaration on Refugees reiterates the UN refugee definition, but also considers it necessary to enlarge the concept of a refugee to "*persons who have fled their country because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed the public order*"¹⁰. Although the Cartagena Declaration is not binding, it is practiced by a number of Latin American States¹¹. Brazil, Colombia, and Mexico have implemented the definition set forth in the Cartagena Declaration into their national regulatory framework for the treatment of refugees¹².

In addition to international treaties pertaining to refugees there are a wide variety of UNHCR initiatives that are designed to increase support for the Refugee Convention and respond to new challenges in refugee protection. Although these initiatives are not legally binding, they serve as guidelines for interpreting the ambiguous aspects of the Refugee Convention and the Protocol. Three of the most recent initiatives are the Agenda for Protection of 2002, the Strengthening Protection Capacity Project, and the High Commissioner's Dialogue on Protection Challenges.

The discussion above shows that the legal identity of the refugee has not remained static; rather, it has evolved, and continues to evolve, as a direct consequence of the movement of peoples across borders. It should be kept in mind that the basis for refugee protection can be traced to these major developments. The second segment of this section present the developments of Cameroon's refugee policy.

1.2. Historizing Cameroon's refugee policy

Following independence, and the inception of new constitutional dispensation, Cameroon acknowledged its status as an independent international actor by becoming a member of the UN on 20 August 1960¹³.

Among the instruments to which Cameroon is now a signatory state is the Refugee Convention, to which it became a party on 23 October, 1961. In addition to the Refugee Convention Cameroon has also joined other African states by acceding to the OAU Convention on 10 September, 1969. Furthermore, Cameroon is also a party to various other human rights instruments, which directly impact on the rights of refugees within the

¹ Article 1 (2) of the Refugee Convention.

² Kathleen Newland, *The New Politics of Displacement*, World Watch Paper. No.43, 1981, p. 11.

³ Sam Amaize Aiboni. *Protection of refugees in Africa*, Swedish Institute of International law, Uppsala, 1978, p.5.

⁴ Hereinafter called "the African Charter". All 53 Member States of the African Union have ratified the African Charter on Human and Peoples' Rights. This makes it the most important human rights instrument on the continent.

⁵ The International Covenant on Civil and Political Rights and The International Covenant on Economic, Social and Cultural Rights

⁶ The European convention on human rights was drafted in 1950 and in force since 1953.

⁷ The American Convention on Human Rights, also known as the Pact of San José, is an international *human rights* instrument. Signed at the Inter-American Specialized Conference on Human Rights, San José, Costa Rica, 22 November 1969.

⁸ Article 12(3) of the African Charter on Human and Peoples' Rights 1981.

⁹ Article 30 of the African Charter provides that "an African Commission on Human and Peoples' Rights, hereinafter called "the Commission", shall be established within the Organization of African Unity to promote human and peoples' rights and ensure their protection in Africa".

¹⁰ Cartagena Declaration on Refugees", 1984. Adopted at a colloquium entitled "Coloquio Sobre la Protección Internacional de los Refugiados en América Central, México y Panamá: Problemas Jurídicos y Humanitarios", held at Cartagena, Columbia, 19-22 November 1984.

¹¹ Authors such as Arboleda have argued that the Declaration represents endorsement by the States concerned of appropriate and applicable standards of protection and assistance See Arboleda, Eduardo, "Refugee Definition in Africa and Latin America: The Lessons of Pragmatism" in *International Journal of Refugee Law*, vol. 3, no. 2, 1991,p. 186-205. Found in Chimni (ed) *International Refugee Law: A Reader*, Sage Publications, New Delhi, 2000.

¹² Specifically, it is included in Brazil's Act 9474/97, Colombia's Decree 4503, and Mexico's *Ley Sobre Refugiados y Protección Complementaria* (Refugee and Complementary Protection Act) of 2011.

¹³ For a detail history of Cameroon see the following. Verkijika G. Fanso, *Cameroon History for Secondary Schools and Colleges*, Macmillan, London: New York, 1990. John Mokake, *Basics facts on Cameroon History Since 1884*, CURE Series, 2009.

country, thereby building onto the basic refugee rights framework. On 19 December, 1986 Cameroon ratified the Torture Convention. As a result article 3 prevents the Cameroonian state from returning any person to a state where there are substantial grounds for believing that the person would be in danger of being subject to torture. More generally, Cameroon has ratified, *inter alia*, the International Covenant on Economic, Social and Cultural Rights¹, the Convention on the Rights of the Child and the International Covenant on Civil and Political Rights². These conventions are the major international and regional instruments that set standards of protection for refugees at international and regional level. However, their provisions are not enforceable in local courts without first having been domesticated through the enactment of enabling legislation by the Cameroonian parliament³.

The development of refugee law and policies in the country has been slow. Until 2005, Cameroon really had no domestic refugee legislation. Instead of having a document regulating refugee rights, they were simply referred to as non-nationals and subsumed under the broader immigration laws. Also pertinent to mention is the fact that Law No. 1990/043 of 1990 which Lay down conditions of entry, stay and exit of aliens in Cameroon does specifically mention the term “refugee”. It does, however, assert the inviolability of Cameroon’s borders and emphasize the necessity of proper documentation for any movements into and out of Cameroon, contrasting with the fluid mobility that existed before the institution of national borders. Furthermore, the 1997 Immigration Act does mention refugees but states only that a refugee card will be delivered to people who qualify for asylum⁴.

The absence of specific laws dealing with refugees meant that the immigration laws as contained in the Immigration Act was applied to the refugees. This approach had two main flaws. First, addressing refugee matters under immigration laws means that the regimes was silent on crucial matters in refugee protection such as how refugees were to be defined, whether asylum seekers and refugees were protected from refoulement, by what standards refugees were to be treated and how their plight was to be resolved. In the second place, the reliance on ordinary immigration law in dealing with the refugee problem was problematic in situations of mass influx. Faris corroborates this point when he states that, “the problem of the refugee is totally unrelated to immigration law and to the law relating to ordinary aliens. To classify the refugee as an ordinary alien evades the problem. Immigration law is intended to cope with the admission of individuals and not a mass influx of people”⁵.

It was partly due to the inadequacies of the above approach that the Cameroonian legislators had to promulgate the 2005 refugee law. The Act, according to its article 1 is intended to “*define the status of refugees in Cameroon and is applied without prejudice to the international conventions ratified by Cameroon*”. The 2005 refugee law is more detailed than most African refugee legislation and includes solution to many refugee problems. Of particular importance are the provisions found in Chapter III of the 2005 refugee law, which outline the rights and obligations of refugees in Cameroon.

It should be mentioned, however, that there are some internal legal texts which governs aspect of refugee protection in Cameroon. The first is Arrete No 0013/DIPL/CAB of 06 August 2012 Constituting the Composition of the Refugee Status Eligibility Commission. Besides, Arrete No 014/DIPL/CAB of 06 August 2012 Notifying the Composition of the Refugee Appeals Commission was also passed.

The test of whether a law is being effectively implemented at the national level does not depend on form alone, but on an overall assessment of what actually happens in practice. Looking at the situation described above, it becomes interesting to consider, what type of protection refugees and asylum seekers are actually entitled to under the 2005 refugee law. As the following discussion will show, the 2005 refugee law has to a great extent enhanced the protection of refugees.

2. The 2005 refugee law: Sign of progress for Cameroon’s asylum system?

The 2005 refugee law consolidated previous international instruments relating to refugees, and remains to this day the primary documents dealing with the rights of refugees in Cameroon. It is therefore, worth presenting the main contributions of the 2005 refugee law to Cameroon’s asylum system. The three fundamental contributions of the 2005 refugee law are: (1) the definition of the term “refugee” according to the internationally accepted

¹ Cameroon ratified the International Covenant on Economic, Social and Cultural Rights ratified the Convention on 27 June, 1984.

² Cameroon ratified the ICCPR on 19 December 1986.

³ When a State signs and ratifies a treaty, it is obliged to make sure that its national legislation conforms with its new international obligations, although it is not necessarily obliged to adopt new legislation for this purpose. Article 36 of the 1951 Convention requires States to provide information on such laws and regulations as ‘may’ be adopted to ensure application of the Convention.

⁴ Article 38(1) of the Immigration Act stipulates that “*the refugee card shall be an identification document issued to aliens who is granted refugee status*”.

⁵ Faris, J.A., “The Angolan Refugees and South Africa” in *South African Yearbook of International Law*, vol 2, 1976, p. 176-186.

definition provided by the Refugee Convention and the OAU Convention (2) the incorporation of international law standards relating to refugees and asylum seekers; and (3) the establishment of national mechanisms for the identification of persons in need of protection. For the sake of convenience we shall analyze these contributions separately, one after the other.

2.1. The contextualization of the term “refugee”

For a person to qualify for refugee status in Cameroon, he or she must conform to the definition of a refugee. A question of some immediacy, therefore, is: who is a refugee? From a reading of 2005 refugee law we discover that the complete legal definition of the term “refugee” is constructed in three kinds of provisions, which have been termed respectively the “inclusion”, “cessation” and “exclusion” clauses¹. The inclusion clauses define the criteria that a person must satisfy in order to be a refugee. They form the positive basis upon which the determination of refugee status is made. The so-called cessation² and exclusion clauses³ have a negative significance; the former indicate the conditions under which a refugee ceases to be a refugee and the latter enumerate the circumstances in which a person is excluded from the application of the Act although meeting the positive criteria of the inclusion clauses. The discussion here will be limited to the positive elements of the inclusion clauses⁴.

The first paragraph of the refugee definition under the Cameroonian legislation is closely modeled on to the Refugee Convention. It defines a refugee as,

*any person who owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership to a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fears, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former residence as result of such events, is unable or, owing to such fear, is unwilling to return to it*⁵.

It is important to note that this definition focused on persecution as the key factor in determining status as a refugee. Therefore, individuals who are persecuted for precisely one of the enumerated motives but by force or choice remains within their home country also are not defined as refugees. Similarly, civilians who flee into a neighboring country on account of natural disaster, famine, economic destitution, or war, civil war, guerilla activities and colonialism similar reasons are not protected under the first segment of article 1 of the 2005 refugee law. The second prong of article 1, however, expands the refugee definition to include any *person who, owing to an aggression, foreign occupation, foreign domination or event that seriously undermine public order in either part or all of his country of origin or nationality, is obliged to leave his habitual residence and seek refuge in another place outside his country or origin or nationality*⁶. In legal terms, the inclusion of the phrase “events seriously disturbing public order” expands the scope of the refugee definition. In Cameroon, this is the basis for determining refugee status and admitting refugees on the basis of the collectivity circumstances of their own countries and not an individual basis as in the Refugee Convention.

In essence, the 2005 refugee law has incorporated the definitional elements provided for under both the Refugee Convention and the OAU Convention. This is a positive aspect of the law as it takes cognizance of the fact that violence and persecution can exist side by side. Hence, this definition can be seen as a point of departure having effectively settled the question of “who is a refugee” in Cameroon.

2.2. Incorporation of the legal rights of asylum seekers and refugees⁷ in the 2005 refugee law

The provisions of the 2005 refugee law may be divided into two basic areas. The first, which has been discussed until this point, concerns the definition of eligible parties and the rules for establishing eligibility. The second area, which complements the first, deals with the protection of asylum seeker and refugees. Therefore, this subsection presents the analysis of the rights guaranteed by the 2005 refugee law to asylum seekers and refugees.

2.2.1. Rights of asylum seekers

The right to seek and enjoy asylum is a basic human right enshrined in Article 14 of the UDHR¹ and it is tightly

¹ See UNHCR, *Handbook and Criteria for determining refugee status under the 1951 Convention and the 1967 Protocol relating to the status of Refugees*, UNHCR, Geneva, January 1992.

² See Section 4 of the 2005 Refugee Law. The conditions pointed out by the Cameroonian law for the loss of the right of asylum is similar to the cessation clauses established by the 1951 Geneva Convention,

³ See Section 3 of the 2005 Refugee Law.

⁴ In its article 1, paragraphs 1 and 2, the 2005 refugee law establish who shall be the subjects of the right to asylum

⁵ Section 2 paragraph 1.

⁶ Section 2.

⁷ My use of the terms “asylum seeker” and “refugees” are deliberate. An asylum seeker, as used in this article, is a person seeking refugee status, but who has not been recognized as or declared to be a refugee by a government or by the UNHCR. The term “refugee” has been ascribed its legal definition contained in the Refugee Convention and the OAU Convention. Refugee status is legally constitutive.

linked to the right to right to life recognized in the preamble of the Cameroonian Constitution². Also important is the African Charter which provides that “*every individual shall have the right when persecuted to seek and obtain asylum in other countries*”³. The followings are rights of asylum seekers under the 2005 refugee law.

2.2.1.1. Right to non-refoulement

The general rule of non-refoulement provides that an individual should not be returned to a state where he or she is likely to face persecution, other ill-treatment or torture. It is an exception to the principle of state sovereignty which entails that no country is obliged to allow foreigners into its territory. The legal basis for this principle is article 33 of the Refugee Convention⁴, article 2(3) of the OAU Convention⁵, article 3 of the Torture Convention⁶ and article 7 of the ICCPR⁷. In addition, many recent commentators have stated that non-refoulement has attained the status of customary international law⁸ or even a *jus cogens* norm⁹. The significance of this is that even countries that are not party to the Refugee convention must respect this principle.

Not surprisingly, then the drafters of the 2005 refugee law elegantly consecrate the principle of non-refoulement in two provisions. Section 7 of the 2005 refugee law provides that “*no person shall be turned back at the border, nor subject to any measure, whatsoever, that may force him to return to or remain in a territory where his life, physical integrity or freedom is threatened by any reasons mentioned in Section 2 of this law*”. The language of this provision is nevertheless broad and unequivocal. It prohibits the return of a refugee to a territory where his or her life or freedom would be endangered. The term “return” necessarily looks to the place to which a refugee is returned. In addition, the non-refoulement obligation also requires that refugees not be refused admission to the state of refuge in the first place.

The 2005 refugee law therefore incorporates the obligation of non refoulement as contained in Article 33 of the Refugee Convention and the wider ambit found in articles 1(2) and 2(3) of the OAU Convention. In article 8(2), the 2005 refugee law connects the principle of non- refoulement to the expulsion of the refugee, prohibiting the expulsion of asylum seekers without the permission of the Refugee Status Eligibility Commission. Regrettably, in this context, no mention is made to life or threats of being subject to torture or inhuman or

¹ Article 14(1) of the Universal Declaration of Human Rights enshrines the right of individuals “to seek and to enjoy in other countries asylum from persecution”. Scholars agree that this provision merely affords the individual a right to seek asylum, not a right to receive it. In this connection, see Hersch Lauterpacht, “The Universal Declaration of Human Rights”, in *British Yearbook on International Law*, 1948, p.354, 373 (positing that article 14(1) provides “a right ‘to seek’ asylum, without any assurance that the seeking will be successful”).

² From a constitutional perspective an individual who reasonably fears persecution has a legal right to seek asylum in Cameroon. The preamble of the Cameroonian Constitution provides that “*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, to cruel, inhumane or degrading treatment*”.

³ Article 12(3)

⁴ The principle of non-refoulement was formulated at Article 33 stating that:

1. No Contracting State shall expel or return (“refouler”) 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 or political opinion.
2. The benefit of the present provision may not, however, be claimed by a refugee whom 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.

⁵ Article 2(3) of the OAU Convention stipulates that “no person shall be subjected by a Member State to measures such as rejection at the frontier, return or expulsion, which would compel him to return to or remain in a territory where his life, physical integrity or liberty would be threatened for the reasons set out in Article I, paragraphs 1 and 2”. With this provision, the OAU Convention widened the scope of nonrefoulement for refugees in Africa and made it absolute.

⁶ The Convention against Torture contains a strong expression of non-*refoulement* in its Article 3: “No State Party shall expel, return (“refouler”) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture”, adding in its paragraph 2 that, “for the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights”

⁷ According to Article 7 of the ICCPR “*no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation*”.

⁸ See, e.g., *Conclusion on the International Protection of Refugees: Non-Refoulement*, Conclusion No. 6 (XXVIII), UNHCR, Executive Committee, 1977. Stating “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”. See also Elihu Lauterpacht and Daniel Bethlehem, *The Scope and Content of the Principle of Non-Refoulement: Opinion*, UNHCR, 2001, p.253, stating the essential content of the principle of non-refoulement as customary law

⁹ Vienna Convention on the Law of Treaties, 1155 U.N.T.S. 331, 8 I.L.M. 679, entered into force January 27, 1980. Article 53 states that “*For the purposes of the present Convention, a peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character*”.

degrading punishments.

Regardless of the above-mentioned safeguards, law enforcement officers who are unaware of refugee law in general and “non-refoulement” in particular send back refugees across the border¹. Security has been pointed out by all of the interviewees from the government as a reason for sending back some asylum seekers. In our view, this approach is doctrinally unsound and rife with critical risks for genuine refugees. We stand squarely against the view that asylum seekers are themselves a threat to Cameroon’s security. International refugee law as originally conceived fairly meets the legitimate needs of both refugees and the communities that receive them. It does not ignore the security interests of asylum countries, but refuses to allow those interests to run roughshod over the equally urgent need of persons at risk of persecution to secure entry to a place of safety. There is therefore the need of striking a balance between obeying international obligations and that of protecting national interests.

2.2.1.2. Non-penalization for illegal entry

The Refugee Convention recognizes that refugees have a lawful right to enter a country for the purposes of seeking asylum, regardless of how they arrive or whether they hold valid travel or identity documents². This means that it is incorrect to refer to asylum seekers who arrive without authorization as “illegal”, as they in fact have a lawful right to enter Cameroon to seek asylum. Importantly, the 2005 refugee law incorporates a restricted form of the non-penalization provisions contained in Article 31(1) of the Refugee Convention. In this respect, the 2005 refugee law states that “*no penal sanction shall be taken, on account of his illegal entry or presence, against any person who, coming directly from a country where his life and freedom is threatened in the sense of Section 2 of this law, provided he presents himself without delay to the national authorities mentioned in Section 7*”³. This means that asylum seekers do not break any Cameroonian laws simply by arriving without authorization. However, the 2005 refugee law permits 24 hours of detention, renewable twice⁴. Unfortunately, the 2005 refugee law does not explain which authority is competent to detain refugees and on which grounds. Moreover, the law does not set out the legal remedies or safeguards available to refugees subjected to detention.

In the past, Cameroon consistently respected the provision against imposing penalties to asylum seekers for illegal presence. In recent years, however, there has been growing concern in Cameroon about the treatment of unauthorized asylum seekers. For example, in January 2015, the Government detained 17 Nigerians asylum seekers for attempting to enter the country illegally. It is our view that this misrepresentation of the law is partly due to the fact that border officials are not given any special guidelines regarding handling refugees and asylum seekers. Although there has been training of immigration officials on refugee law, it is at a very superficial level.

2.2.2. The rights of refugees

The 2005 refugee law itself does not simply end after defining who is a refugee and speaking of non-refoulement, it goes on to establish certain minimum standards that states should maintain when it comes to refugees. In this regard, Article 9 of the 2005 refugee law stipulates that refugees are entitled to the rights provided in the Refugee Convention and the OAU Convention⁵. This poses the question whether the refugees are entitled to the rights enshrined in the ICCPR and the African Charter since those Conventions are not refugee conventions *per se*. Regardless of article 9, Cameroon has ratified the ICCPR and is therefore bound by it. Article 2(1) of the ICCPR states that there shall be no discrimination in the rights enshrined in the Convention. The same line of argument can be used for the African Charter⁶. This study focuses on three of these rights, namely, the freedom of movement, the right to employment and the right to naturalization. It is worth recalling that at the Arusha Conference in 1979, recommendations were made on each of the above issue. As regards the freedom of movement and the right to work, the object was to facilitate implementation while naturalization was looked as a

¹ Tayimlong Robert Afuh, *The Social Protection of Refugees in Cameroon*, Unpublished Master’s Dissertation, International Relations Institute of Cameroon, Yaoundé, 2013, p.114.

² Article 31(1) of the Refugee Convention states:

“The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of Article 1, enter, or are present in their territory without authorisation, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence”.

³ Section 8(1)

⁴ *Ibid*

⁵ The substantive rights guaranteed in the 2005 refugee law include the right to practice religion freely, the right to property, freedom of association, the right to sue, the right to work, the right to education, the right to housing, the right to social assistance, freedom of movement, the right to obtain identity and travel documents, the right to transfer of assets, and the right to naturalization.

⁶ The Preamble of the African Charter stipulates that “*the peoples of which are still struggling for their dignity and genuine independence and undertaking to eliminateall forms of discrimination, particularly those based on race, ethnic group, colour, sex, language, religion or political opinions*”

preferred solution when voluntary repatriation was no longer envisaged¹.

2.2.2.1. Freedom of movement

The freedom to move within a State and to choose a place of residence is one of the most basic human rights and thus protected by numerous treaties and agreements. Internationally, the first evidence of this right is found in the UDHR which states that “*everyone has the right to freedom of movement and residence within the borders of each State*”². Today, the ICCPR is the treaty fundamental for the freedom of movement within States³. It provides the right to liberty of movement and freedom to choose his or her residence in Article 12, stating in paragraph 1: “*Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence*”. Article 26 of the Refugee Convention states that, *each contracting state shall accord to refugees lawfully in its territory the right to choose their place of residence and to move freely within its territory, subject to any regulations applicable to aliens generally in the same circumstances*”. Although reservations for this article are not forbidden and indeed widespread, the government of Cameroon has not made any reservations in this regard. In view of the foregoing, this article is fully applicable to refugees in Cameroon.

The preamble of the Cameroonian Constitution guarantees all citizens the right to freedom of movement and residence anywhere in the national territory⁴. This right is extended to aliens who are legally present in the national territory, and thus applies to recognized refugees⁵. Refugees have been able to move freely in the country in the past. However, in recent years Cameroon has adopted the encampment policy. For instance, Nigerian refugees are now settled at the Minawao⁶ refugee camp where they are expected to reside upon being granted refugee status. The question then is if international law sufficiently specifies the possibilities for restrictions and if these restrictions are necessary. Although there is no authoritative answer to this question, Goodwin Guy has opined that the temporal restriction to designated arrears does not violate the Refugee Convention in case of mass influx or similar situation of emergency⁷. The foundation for this argument is found in a Commentary on the Refugee Convention which states in a footnote that “*the provision of Article 26 would also not conflict with the special situation where refugees have to be accommodated in special camps or in special areas even if this does not apply to aliens generally*”⁸. In our view, the sudden mass influx of Nigerian refugees does not amount to an emergency situation⁹. On this background, one has to conclude that the confinement of Nigerian refugees at the Minawo refugee camp contravenes article 26 of the Refugee Convention and Section 9 of the 2005 refugee law.

2.2.2.2. The right to work

Employment is indispensable and forms an important aspect of the basic rights of refugees in Cameroon. Section 9 of the 2005 refugee law allows refugees the right to seek employment in Cameroon. This provision is in line with international law as provided for in article 17 of the Refugee Convention, article 23(1) of the UDHR, article 6 of the ICCPR and article 16 of the African Charter. The Preamble of the Cameroonian Constitution stipulates that “*every person shall have the right and the obligation to work*”. It has strongly been argued that “*without the right to work, all other rights are meaningless*”¹⁰.

Permitting recognized refugees to work appears, on the surface, to be a progressive policy. Gainful employment will make refugees and asylum seekers less dependent on NGOs or government for assistance. In practice, however, the government of Cameroon has not done this and its policies for foreign nationals severely limit their rights to work. For instance, the Cameroonian Labour Code¹¹ stipulates that “*a contract of employment concerning a worker of foreign nationality must be endorsed by the Minister in charge of Labour*”.

¹ Recommendation 6. See L. G Eriksson et al (eds), *An analyzing account of the Conference on the African Refugee Problem*, Arusha May 1979, Scandinavian Institute of African Studies, Uppsala, 1981.

² Article 13 (1)

³ Beyani Chaloka, *Human Rights Standards and the Free Movement of People within States*, Oxford University Press, Oxford, 2000, p. 7.

⁴ The preamble of the Cameroon Constitution provides that “*every person shall have the right to settle in any place and to move about freely, subject to the statutory provisions concerning public law and order, security and tranquility*”.

⁵ World Refugee Survey 2008, Cameroon, culled from www.unhcr.org. Accessed on 12/01/2006.

⁶ The biggest refugee camp in Cameroon, Minawao in the far North region located some 90 kilometres from the regional capital Maroua. Minawao camp was set up by the U.N. and Cameroon's government in the aftermath of the arrival of displaced persons on Cameroonian soil. They form the first refugees fleeing the Islamic sect Boko Haram incursion, and also people from the Central African Republic

⁷ Goodwin Guy, *The Refugee in International law*, Oxford University Press, Oxford, 2007, p.465.

⁸ Robinson, Nehemiah, *op cit*, note 37.

⁹ In March 2015, the UNHCR estimated that the Minawao camp was home to nearly 33,000 Nigerian refugees who had fled repeated attacks on their village.

¹⁰ Statement of Mr. Henkin of the United States, UN Doc. E/AC.32/SR.37, Aug. 16, 1950, at 12.

¹¹ Law No 92 -007 of 14th August 1992 on the Labour Code.

*previously to commencement thereof*¹. Apparently, this provision downgrades Cameroon's responsibility to protect the rights of refugees to employment, and renders it a mere matter of discretion of the minister in charge of labour. As a result of this discrimination many refugees do not apply for positions because they know they will be unsuccessful. This explains why many refugees work odd jobs in the informal sector. Unfortunately, according to Damien Eloundou of "RESPECT Cameroon"², employers under payment and lack of pay, is something that many refugees experience³. Most women on their part engage in prostitution as the easier way to get fast money. It is therefore vital that the government and its operational partners help to promote employment opportunities for them so that they can contribute meaningfully to the socio-economic development of the country as a whole and the host communities in particular.

2.2.2.3. The right to naturalization

The Refugee Convention stipulates that, "the Contracting States shall as far as possible facilitate the assimilation and naturalization of refugees. They shall in particular make every effort to expedite naturalization proceedings (...)"⁴. This does not entail that refugees have the right to be naturalized. The article merely states that the contracting States may undertake to facilitate the process of naturalization. Even though this article is written in the sense of a recommendation, it does contain an obligation to facilitate the naturalization of refugees. At the same time, naturalization as a form of integration is recommended several times by the UNHCR⁵.

In Cameroon issues of nationality is laid forth primarily in Law No. 1968-LF-3 of the 11th June 1968 to set up the Cameroon Nationality Code⁶, with supplementary procedure detailed in Decree n° 1968 DF-478 of the 16th December 1968 to Establish Rules of Procedure Under the Nationality Code⁷. Section 7 of the Nationality Code attaches citizenship to:

- a) *A legitimate child born of a Cameroonian father or a Cameroonian mother;*
- b) *An illegitimate child born of parents of whom one is Cameroonian, when his affiliation to that one is first established, though the other be foreign; but subject in either case to the minor's right to renounce Cameroon nationality within six months before his majority, either if he was born out of Cameroon or if, according to the national law of the foreign parent, he is able to avail himself of that nationality".*

This means that children whose parents are both refugees cannot acquire citizenship. A child will however obtain nationality if one of his parents is a Cameroonian. A question is whether children in the former category, would be termed stateless persons. Arguably, even if they could claim citizenship of their parent's country of origin, they will in fact lack that country's protection as their parents fled from it. Moreover, Cameroon is not a State party to either the 1954 Convention relating to the Status of Stateless Persons, or to the 1961 Convention on the Reduction of Statelessness. It is necessary to take a step to incorporate in the 2005 refugee law a section dealing with grant of citizenship of refugees after a certain number of years.

2.3. The establishment of national bodies for the determination of refugee status

No consideration of the 2005 refugee law would be complete without a discussion at the refugee management organ. Article 16 of the 2005 refugee law established the Refugee Status Eligibility Commission and the Refugee Appeal Board. Among the functions of the Commission is to examine application for refugee status. The creation of these institutions is also in accordance with UNHCR standards which require that "every rejected applicant has the right to appeal a negative refugee status determination decision"⁸. Cameroon in this light has advanced than some African countries like Uganda in which Marina Sharpe and Salima Namusobya, say that the same committee that sat at first instance hears and decides on appeal⁹.

It is no exaggeration to say that the national organs established to conduct refugee status determination in Cameroon suffer functional limitations. Being controlled, either directly or indirectly by the government, through funding, composition of membership, and provision of operational guidelines among others, it is evident that the efficiency of these institutions will be compromised and undermined by governmental interference. Section 17 of the 2005 refugee law states that "*the decisions of the two organs shall not be subject to any appeal*

¹ Section 27(2).

² The primary objective of Respect Cameroon NGO is to improve the conditions of refugees in the city.

³ See Emily Mattheisen, 'Because I am a stranger' Urban refugees in Yaoundé, Cameroon, *New Issues In Refugee Research*, UNHCR, September 2012.

⁴ Article 34

⁵ "See Goetz, N.H., "Towards self-sufficiency and integration: an historical evaluation of assistance programmes for Rwandese refugees in Burundi, 1962-1965", *New Issues in Refugee Research*, research paper No. 87, 2003, p. 20.

⁶ Hereinafter referred to as "the Nationality Code".

⁷ There are three methods of attaining Cameroonian nationality: birth, marriage or naturalization.

⁸ See UNHCR, *Procedural Standards for Refugee Status Determination under UNHCR's Mandate*, 20 Nov 2003.

⁹ See Marina Sharpe et al., "Refugee Status Determination and the Rights of Recognized Refugees under Uganda's Refugee Act", in *International Journal of Refugee Law*, vol 24, Issue 3, 2012, p. 561-578.

before the ordinary law courts". Yet, the right to appeal is a fundamental element of a fair trial and is recommended by the UNHCR. It is recommended that the Act be amended to allow of a right to appeal to a separate body. This right should be exercised at the instance of the applicant. This will give the process fairness, transparency and objectivity.

In a nutshell, the 2005 refugee law the first step towards translating international commitment into practicable national policy. The paradox is that refugees and asylum seekers still continue to suffer in Cameroon even when the Act was enacted to protect their rights. Therefore, the next section will explore the challenges to the effective implementation of the 2005 refugee law in Cameroon. It is important to bring the problems to the effective implementation of the 2005 refugee law because the legislation under review cannot operate in a vacuum.

3. Hurdles or Challenges to the effective implementation of the 2005 refugee law in Cameroon

The factors limiting the effective implementation of the 2005 refugee law in Cameroon include *inter alia*, lack of political will, substantive and structural gaps, negative police attitudes towards refugees, xenophobia, lack of awareness about refugee rights and widespread official corruption. These problems negate the rights of refugees, and contribute heavily to my conclusion that the 2005 Refugee law is not fully implemented in Cameroon.

3.1. Lack of political will

The lack of political will is one of the factors that hamper the effective implementation of the 2005 refugee law in Cameroon. In the past, the Cameroonian government has been a generous host to refugees, but in recent years, Cameroon has paid less attention to its obligations under international refugee law. Indeed, it is an undeniable fact that the government of Cameroon has failed to demonstrate the needed fidelity and commitment to the promotion and protection of refugee rights. A few examples help explain this conundrum. Most recently, in 2014, Cameroon closed its border with Nigeria¹, subjecting Nigerian refugees to abuse by unscrupulous government officials and criminals as they make their way into Minawao refugee camp. Furthermore, the Cameroonian government has consistently delayed building and authorizing new refugee camps, subjecting refugees to prolonged periods of substandard care. Furthermore, the influx of refugees from Central Africa in the 2013 was not expected by the Government; hence, Cameroon as a hosting country met some challenges. One of those challenges is getting enough drinkable water². These precarious living conditions bring problems of malnutrition and water-borne diseases.

3.2. Substantive and structural gaps

The effective implementation of the refugee under the 2005 refugee law is also hampered by the imprecision in the recognition of the right. The first point of argument is that the 2005 refugee law fails to spell out succinctly that the right to seek and enjoy asylum is a human right. In fact, there is ambiguity in the law which makes the human right character of the right to seek asylum a doubtful one. The second flaw of the law is the omission of the *jus cogen* right to fair hearing as encompassed in the preamble of the Cameroon constitution³, article 10 of the UDHR, article 14(1) in the ICCPR, and article 17 of the Banjul Charter. Such a provision is crucial for refugees seeking legal protection from other violations in the host state. Along with this right is that of access to court of law which may be contingent upon the freedom of movement of refugees. This right is expressly protected in the preamble of the Constitution, and should be incorporated into the 2005 refugee law.

Other rights accorded in international refugee law which has not been incorporated in the 2005 refugee law include *inter alia*, rights to nutrition, health care and protection of refugee women, children and families. Given that Cameroon is a party to the principal instruments of refugee law, the 2005 refugee law is supposed to be at least in line with the international conventions.

3.3. Negative police attitudes towards refugees

Interviews and focus group discussions with refugees in Cameroon attest to deep-rooted suspicions and negative perceptions of refugees among police officers. There is a widespread belief within the police corps that refugees should be restricted to camps. Police officers also typically assume that refugees are criminally minded, while Nigerian refugees in particular are suspected of having links with the Boko Haram⁴. This is exacerbated by the

¹ Five Nigerian states: Borno, Adamawa, Benue, Taraba and Cross River share border with the Cameroon

² See Moki Edwin Kindzeka, "CAR Refugees Face Difficult Conditions in Cameroon", culled from www.voanews.com on 20/04/2015.

³ The preamble of the Cameroonian Constitution stipulates that "*the law shall ensure the right of every person to a fair hearing before the courts*"

⁴ Boko Haram is a Nigerian militant Islamist group that has been active since 2009. The name of the group literally means "Western education is forbidden".

fact that police officers, particularly in the junior ranks, seem unfamiliar with refugee cards¹. Although the UNHCR routinely passes copies of its documents to police stations in Cameroon, staff turnover and a lack of training mean that many officers do not have the necessary knowledge and awareness to properly police areas with large refugee populations.

3.4. Xenophobia

Xenophobia poses a serious threat to the effective implementation of the 2005 refugee law. Procher, Ilson and Ayto have opined that the word xenophobia is derived from Greek words 'xeno', meaning stranger or foreigner, and 'phobia', meaning fear². It is a strong dislike, hatred or fear of foreigners and strangers. Although Cameroonians are generally hospitable, economic constraints have pushed many to be less considerate towards the "strangers". Many Cameroonian residents and authorities say refugees outside the camps present security risks to their communities. According to the head of the Chadian community, most refugees by the very fact of their status find difficulties of being recruited when job offers come up even if they qualify³. In the accommodation sector for example, some landlords tend to increase the cost of "rooms- to -let" under the erroneous misconception that all foreigners are loaded with money⁴. All these make the integration process very difficult.

3.5. Widespread official corruption

Corruption⁵ has been called "Cameroon's worst-kept secret"⁶. In 2014, the Corruption Perceptions Index by Transparency International ranked Cameroon 136 out of 175 countries. Concerns about corruption are present in NGO-government interaction. The director of Première Urgence - Aide Médicale Internationale⁷ has observed that,

"Il y a une demande quasi-systématique des fonctionnaires de l'état, quand on leur demande de s'appliquer sur certains problèmes, ils ne le font qu'en moyen en finance. Or, c'est leur travail, ils sont payés pour ça. Donc, on trouve que c'est un peu curieux d'être obligé de les repayer pour qu'ils fassent juste leur travail. Et d'évidence, on évalue que le fait de leur repayer crée des dysfonctionnements et ça nourri quelque chose de malsain dans le pays⁸."

The fact that government employees expect NGOs to pay them a per diem, and that the NGOs need their cooperation to carry out their work in compliance with Cameroonian law, puts the NGOs in a tricky situation. Furthermore, the prevalence of corruption in refugee management in Cameroon has already been highlighted by Angela BUTEL who points out this social ill in refugee management in the Eastern Region of Cameroon by government officials⁹.

All these render the enforcement of the 2005 refugee law difficult hence making it a weak regulatory tool. In the foregoing context, one would want to ask, "What is to be done"?

4. Future Policy options

The following are some recommendations arising from this article that if applied, would result in Cameroon's policies and practices of refugee protection being consistent with and supportive of international refugee law.

4.1. Awareness-raising amongst the host communities and refugees

The first important step forward for refugees in Cameroon would be to implement programs that would increase awareness of refugee rights for refugees and government officials. As mentioned earlier, understanding of human rights by the displaced persons can be empowering since it helps refugees and asylum seekers to be aware of their rights. In order to improve the level of awareness on general human rights and refugee rights, the

¹ Many police officers sometimes claim either not to recognize their refugee card or insinuate that they are forged.

² Procher et al, *Longman Dictionary of Contemporary English*, Longman, Harlow & London, 1978. p. 1275

³ Mbuli Rene, *op cit* note 17.

⁴ *Ibid*

⁵ Corruption in the legal context refers to a wrongful design to acquire or cause some pecuniary or other advantage. Corruption may encompass a variety of wrongful acts, such as, among others, bribes, kickbacks, jury tampering, and abuse of public office. Culled from www.uslegal.com on 12/06/2015

⁶ Thomson Reuters, "Why corruption is Cameroon's worst-kept secret », 18 Nov 2014.

⁷ Première Urgence - Aide Médicale Internationale (PU-AMI) is a French NGO working specifically in refugee crises.

⁸ There's a practically systematic demand from functionaries of the state, when we ask them to help with certain problems, they won't do it unless we pay them. But, this is their job, they're paid for this. So, we find it a bit curious to be obliged to repay them to get them to do their jobs. And clearly, we observe that the fact of repaying them creates dysfunction and that feeds into something unhealthy in the country." See Angela Butel, *Humanitarianism and the "National Order of Things": Examining the Routinized Refugee Response in Eastern Cameroon*, Honors Projects, Macalester College, 2013, p. 75-78.

⁹ Angela Butel, *Ibid*

UNHCR and its implementing partners¹ may have to consider increasing the number of capacity building workshops to at least once a month. The workshops should also not be limited to Yaoundé as is currently the case but should equally be organized in other refugee host communities in the East, Adamaoua, Littoral, North and Far North regions, etc. It is only by such means that the objectives of these workshops would be met.

4.2. Adequate funding of the UNHCR

The two primary governmental organizations dealing with refugees in Cameroon are the UNHCR and the Cameroon Red Cross. Despite financial support from the special budget of the High Commissioner and the budget revision in 2014, UNHCR still faces enormous funding challenges to cater for the refugees in Cameroon. The Cameroonian government should therefore allocate some funds to support the efforts of the UNHCR. It might be good to mention here that it is the primary responsibility of governments to cater for the refugees on their soil and international organization are simply there to support and ensure the effectiveness of the actions.

4.3. The necessity of an independent national refugee commission

The Government of Cameroon should establish an independent national refugee commission. This Commission should receive complaint from refugees whenever they allege that their human rights have been violated. The Commission should also advise the government on human rights and consult other bodies concerned with human rights in general and refugees in particular for their better protection in Cameroon.

4.4. The need for increased international support

Countries providing international protection to refugees bear a great responsibility since they have to protect the rights of refugees and to discharge their usual obligation towards their citizens. The concept of responsibility sharing has been conceived as measures taken by international community to share the responsibility of protecting refugees². It is regrettable that the international community has remained noticeably silent on the deteriorating conditions of refugees in Cameroon. As part of their responsibility sharing³, the international community should assist Cameroon financially and technically. Agencies and organizations dealing with refugee and human rights matters in Cameroon should network and lobby the Government and other stakeholders to take necessary measures to ensure that the authorities do not turn a blind eye to refugee issues in Cameroon.

Conclusion

This article has analyzed the effectiveness of the 2005 refugee law implementation in Cameroon. From what has been said, it may be concluded that the 2005 refugee law is a sign of progress for Cameroon's asylum system. However, the main finding of this research shows that there is indeed a discrepancy between the rights of refugees guaranteed by international and national instruments and their implementation in Cameroon. It has been demonstrated that the effective implementation of the 2005 refugee law is limited by lack of political will, substantive and structural gaps, negative police attitude towards refugees, xenophobia and widespread official corruption. These challenges, however, are by no means insurmountable. To alleviate this problem, it is important that Cameroon should focus its attention on strengthening the enforcement of the 2005 refugee law. Our society should start from the premise that asylum rather than being a threat is an opportunity for Cameroon, and should avoid seeing asylum seekers and refugees as a burden.

Furthermore, the 2005 refugee law needs to be amended to incorporate the gaps identified above. Incorporating international law into national legislation is particularly important in arrears on which the Refugee Convention is silent. It is significant to bear in mind that, the issues of refugee protection go beyond the need to preserve asylum and extend to the need for concrete action to prevent the situations which lead to refugee movements, refugee related environmental problems cannot be solved by the UNHCR alone, but in cooperation with several actors. The implementation of the above-mentioned recommendations will go a long way to enhance the protection of refugees in Cameroon.

References

Alexander Aleinkoff, "The Meaning of Persecution in United States Asylum Law", in *International Journal of Refugee Law*, vol 5, Issue 12, 1991.

¹ UN Centre for Human Rights and Democracy in Central Africa and the National Commission for Human Rights and Freedom

² Bonaventure Rutinwa, "Asylum and Refugee Policies in Southern Africa", Paper presented at SAMP/LHR/HSRC Workshop on Regional Integration, Poverty and South Africa's Proposed Immigration Policy, Pretoria, 23 April 2002 61.

³ The 1967 Declaration on Territorial Asylum expanded on the Refugee Convention though is a nonbinding instrument. Article 2(2) of the Declaration stipulates that:

"Where a State finds difficulty in granting or continuing to grant asylum, States individually or jointly or through the United Nations shall consider, in a spirit of international solidarity, appropriate measures to lighten the burden on that State".

- Angela Butel, *Humanitarianism and the “National Order of Things”: Examining the Routinized Refugee Response in Eastern Cameroon*, Honors Projects, Macalester College, 2013.
- Atle Grahl-Madsen, *The Status of Refugees in International Law*, vol 1, A W Sijthoff Leiden, 1966.
- Beyani, Chaloka, *Human Rights Standards and the Free Movement of People within States*, Oxford University Press, Oxford, 2000.
- Bonaventure Rutinwa ‘Asylum and refugee policies in Southern Africa’ Paper presented at SAMP/LHR/HSRC Workshop on Regional Integration, Poverty and South Africa’s Proposed Immigration Policy, Pretoria, 23 April 2002.
- Claudena M. Skran, “Profiles of the First Two High Commissioners”, in *Journal of Refugee Studies*, Vol 3, No 4, p. 277-296.
- Chimni (ed), *International Refugee Law: A Reader*, Safe Publications, New Delhi, 2000.
- Daniele Joly et al, *Refugees in Europe*, Russel Pres Ltd, Nottingham, 1990.
- Duevi Jeannette Caroline KOUROUMA, “*Protection et Assistance Internationale aux Réfugiés Africains: de Kousseri à Poli / Faro, Le cas des Réfugiés Tchadiens au Cameroun.*” Unpublished Master’s Dissertation, Yaoundé: International Relations Institute of Cameroon (IRIC), 1983.
- Emily Mattheisen, ‘Because I am a stranger’ Urban refugees in Yaoundé, Cameroon, *New Issues In Refugee Research*, UNHCR, September 2012.
- Faris, J.A., “The Angolan Refugees and South Africa” in *South African Yearbook of International Law*, vol 2, 1976, p. 176-186.
- Goetz, N.H., “Towards self-sufficiency and integration: a historical evaluation of assistance programmes for Rwandese refugees in Burundi, 1962-1965”, *New Issues in Refugee Research*, research paper No. 87, 2003.
- Goodwin-Gill et al, *The Refugee in International Law*, 3rd ed., Oxford University Press, Oxford, 2007.
- Hersch Lauterpacht, “The Universal Declaration of Human Rights”, in *British Yearbook on International Law*, p. 354-373, 1948.
- James Hathaway, *The Law of Refugee Status*, Vancouver, Butterworth, 1991,
- Jean-Pierre (ed). *Collection of International Instruments and Other Legal Texts Concerning Refugees and Displaced Persons*. Vol. I, Division of International Protection of the Office of the United Nations High Commissioner for Refugees, Geneva 1995.
- John Mokake, *Basics facts on Cameroon History Since 1884*, CURE Series, 2009.
- Krasner, Stephen D. (ed) *International Regime*, Cornell University Press, Cambridge, 1989.
- Kathleen Newland, *The New Politics of Displacement*, World Watch Paper. No.43, 1981.
- Marina Sharpe et al,” Refugee Status Determination and the Rights of Recognized Refugees under Uganda’s Refugee Act”, in *International Journal of Refugee Law*, vol 24, Issue 3, 2012, p. 561-578.
- Mbuli Rene, *Humanitarian crises and the management of Refugees in Central Africa: A case study of Cameroon*, Paper submitted at the World conference of humanitarian Studies in February 2009 in Groningen (Netherlands).
- Moki Edwin Kindzeka, “CAR Refugees Face Difficult Conditions in Cameroon”, culled from www.voanews.com on 20/04/2015.
- Newland K, *The New Politics of Displacement*, World Watch Paper. No.43, 1981.
- Nehemiah Robinson, *Convention Relating to the Status of Refugees: Its History, Contents and Interpretation*, Institute of Jewish Affairs, New York, 1955.
- Newland K. 1981. *The New Politics of Displacement*, in *World Watch Paper*, No.43, p. 11.
- Paul Weis, *The Concept of the Refugee in International Law*, in *Journal du Droit International*, 1960, p.928-942.
- Procher et al, *Longman Dictionary of Contemporary English*, Longman, Harlow & London, 1978.
- Robert Afuh, *The Social Protection of Refugees in Cameroon*, Unpublished Master’s Dissertation, International Relations Institute of Cameroon (IRIC), 2013.
- Robert J. Beck, “Britain and the 1933 Refugee Convention: National or State Sovereignty?” in *International Journal of Refugee Law*, Vol 11, Issue 3, 1999, p. 597-624.
- Sam Amaize Aiboni, *Protection of refugees in Africa*, Swedish Institute of International law, Uppsala, 1978.
- UNHCR, “50 Anniversary: The Wall Behind which Refugees can Shelter, the 1951 Geneva Convention”, *Refugee Magazine*, Vol.2, Issue 123 of 2001.
- _____, *Handbook and Criteria for determining refugee status under the 1951 Convention and the 1967 Protocol relating to the status of Refugees*, UNHCR, Geneva, January 1992
- _____, *Procedural Standards for Refugee Status Determination under UNHCR’s Mandate*, 20 Nov 2003
- Verkijika G. Fanso, *Cameroon History for Secondary Schools and Colleges*, Macmillan, London: New York, 1990

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