

The Right to Non-discrimination and the Protection of Foreigners Status within the CEMAC Sub-Region: The Case of Cameroon, Chad and Gabon

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Abstract

Cameroon, Chad, and Gabon have a series of proliferated laws, legal provisions, and institutions having overlapping mandates in various documents regarding the protection and promotion of foreigners' rights residing in their respective territories. Despite the available laws, international law remains the main instrument that regulates foreigners' treatment within the states. Since the creation of CEMAC, member states and Cameroon, Chad, and Gabon have established credible policies in protecting foreigners living within their respective territories. Even though with the establishment of laws, these laws, for a long period, have become obscure and obsolete. Migrants continue to experience aspects of violence, discrimination, and expulsion regardless of the status they occupy. States, on their part, suffer especially when these foreigners indulge in fraudulent activities that affect the security and sovereignty of the state. These problems faced by migrants despite the availability of local laws on foreigners' protection have instigated the posing of questions in order to ascertain the adequacy of the lawful protection of foreigners in Cameroon, Chad, and Gabon.

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INTRODUCTION

The concept of discrimination has been considered as one of the vices that affect the effective protection of human right practices and enforcement in any state encouraging and promoting human right protection and safety. The government of Cameroon, Chad and Gabon has taken the initiatives in curbing and eradicating discriminatory practices, especially those meted out to foreigners taking up residence in their respective territories.

Cameroon's Actions as to Non-Discrimination

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

are based, underlines the recognition of the rights of a legal person.

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

Such measures aim at reducing the gender gap in the enjoyment and exercise of rights that necessitate the development of policies and programs, the adoption of legal instruments and the creation of institutions addressing issues related to women's rights, and the development of projects for the promotion of such rights. This task falls within the competence of the Ministry of Employment and Vocational Training [1], responsible for the development and implementation of measures related to the respect for women's rights in society, the elimination of all forms discrimination against women, the reinforcement of equality safeguards in the political, economic, social, and cultural areas, and the implementation of a national policy on the family.

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

Article 1 of the Cameroon Penal Code lays down the principle of equality of all before the law in the following terms: "*The Cameroon Criminal law shall apply to all without exception.*" There is no specific provision punishing female genital mutilation, which is generally repressed as assault or aggravated assault, namely an offence against a person's physical integrity that the Criminal Code specifies and punishes.

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

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

The entry into force of Law No. 2005/006 of 27 July 2005, on the status of refugees in Cameroon demonstrates the resolve of the Government of Cameroon to combat even more determinedly discrimination affecting refugees. Under Article 9 of the law, Cameroon's legislature accords refugees the exercise of the following fundamental rights, within the limits of the rights accorded to citizens of Cameroon [2].

This equivalence of treatment is further contained in Article 10, paragraph 1, of the law, according to which:

- (a) As regards the exercise of an activity as an employed or self-employed person, and without exemption from taxes and duties, as well as regarding the social rights linked to the exercise of such activity, persons recognized as refugees shall be accorded the same treatment as nationals.

According to paragraph 2, "persons recognized as refugees, shall be accorded the same treatment as nationals, the right to become naturalized in relation to access to education, the right to enroll at school and university and the costs of student welfare services." This policy of treating refugees in the same way as Cameroonian nationals

reflects the absolute determination of the Government of Cameroon to eliminate any form of discrimination based on nationality.

This effort by the Cameroon government in eliminating and curbing discriminatory practices has gone a long way in providing safety and protection to its citizens and even to foreigners. Foreigners will not be comfortable in taking up residence in any given state where discriminatory practices will be melted on them. To this, the provisions of several legal texts giving room for non-discriminatory practices and ensuring their implementation and enforcement is a perfect ground to show how the country goes a long way in protecting those residing in their territory be it nationals or foreigners. There is a great difference between the enactment of laws and their implementation. The country continues to witness sporadic increase in the rate of human rights violation and discriminated practices on its citizens and even on the migrants residing in the country [3]. This practice has greatly affected the human right situation and those foreigners' coming or staying in the country.

Chad and Its Non-Discriminatory Policies

The Chadian State is concerned with ensuring the development of the economic, social and cultural rights of all nationals, be it the foreigners residing in their territory. The measures often taken to exploit resources or introduce policies are underpinned by a desire to advance the welfare of citizens.

As regards legislation, the Constitution of the Republic of Chad contains provisions that clearly affirm the recognition of economic, social, and cultural rights. This is the case in the following examples:

- Freedom of association recognized under Article 28 of the Constitution. Under this provision, all citizens residing in Chad are free to join the trade union of their choice.
- The right to strike recognized and provided for explicitly under Article 29. However, the Constitution provides that this right must be exercised within the framework of the laws that regulate it.

The law makes the dissolution of associations, political parties and trade unions subject to the

conditions provided for by their statutes or to legal procedures [4]. Everyone entering and staying legally in Chad must have employment without discrimination [5] and the state recognizes the right to work of all citizens. It guarantees workers fair remuneration for their services or output. No one may be prejudiced in his work on account of his origin, opinion, belief, sex, or marital status.

Chad has accepted the principle set out in the Universal Declaration of Human Rights and ratified other United Nations instruments that ensure the protection of economic, social, and cultural rights. Chad guarantees everyone equality before the law regardless of origin, race, sex, religion, political opinion or social status [6]. The Constitution thus provides under Article 14, second paragraph, that the state has a duty to ensure the elimination of all forms of discrimination against women and to guarantee the protection of their rights in all areas of private and public life.

It is clear in this respect that discrimination relating to economic, social, and cultural rights is prohibited. Regarding foreigners, with the exception of the political rights reserved solely for nationals, they enjoy the same rights as nationals [7] within the limits of the law, as set out in the Covenant. This aspect of non-discrimination is also adumbrated in Article 18 of the Convention dealing with migrant workers by stating that:

1. Migrant workers and members of their families shall have the right to equality with nationals of the state concerned before the courts and tribunals. In the determination of any criminal charge against them or of their rights and obligations in a suit of law, they shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.
2. Migrant workers and members of their families who are charged with a criminal offence shall have the right to be presumed innocent until proven guilty according to law.
3. In the determination of any criminal charge against them, migrant workers and members of their families shall be entitled to the following minimum guarantees: in

any case where the interests of justice so require and without payment by them in any such case if they do not have enough means to pay;

- (a) To examine or have examined the witnesses against them and to obtain the attendance and examination of witnesses on their behalf under the same conditions as witnesses against them;
 - (b) To have the free assistance of an interpreter if they cannot understand or speak the language used in court;
 - (c) Not to be compelled to testify against themselves or to confess guilt.
4. In the case of juvenile persons, the procedure shall be such that it will consider of their age and the desirability of promoting their rehabilitation.
 5. Migrant workers and members of their families convicted of a crime shall have the right to their conviction and sentence being reviewed by a higher tribunal according to law.
 6. When a migrant worker or a member of his or her family has, by a final decision, been convicted of a criminal offence and when subsequently his or her conviction has been reversed or he or she has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to that person.

Section 18 of the 1990 Migrant Worker Convention emphasizes that the principle of equality should be respected by all states harboring migrant workers. These workers should be offered the same protection and accessibility to fundamental services of states without discrimination. This section stipulates that migrant workers in Chad should not be discriminated against when it comes to issues pertaining to the application and procedure in acquiring justice before the Chadian national when such a migrant is alleged to have committed a crime. The same procedure as followed in case of a Chadian national should

also be applied to a migrant worker and his family.

The problem here is that Chad has not ratified the said Convention, and this explained the constant violation of migrant workers' rights in the country. To respect international prescription, Article 15 of the Constitution provides that "Foreigners who have been admitted legally to the territory of the Republic of Chad enjoy the same rights and freedoms as nationals, excluding political rights. They are required to abide by the Constitution and the laws and regulations of the Republic." This therefore means that in Chad foreigners have the same rights as its nationals. This is not completely true because the unstable nature of the country has a negative effect on foreigners involved in huge investment in the country. Setting up a business in the country has been blemished with many irregularities [8] and discrimination. Nationals are given privilege to the detriment of foreigners who reside in the territory.

The Position of the Gabonese Government

On the part of Gabon, the government works tirelessly to promote and observe economic, social, and cultural rights in its state without any trace of discrimination as to persons living there. Most of the action she has undertaken falls under activities aimed at achieving the Millennium Development Goals. Her activities take the form of projects and programs that allow the issue of human rights to be clearly considered. Article 170 of the Labor Code retakes Article 3 of the Covenant of Economic, Social, and Cultural Rights, 1966. It states that foreigners have the same rights and obligations under labor legislation, subject to the special provisions of the law. On 1st July 1974, the Office of the High Commissioner for the Advancement of Foreign Women was created with a mandate to address issues relating specifically to foreign women. In 1983, the Office became the State Secretariat for the Advancement of Women charged with the responsibility to introduce and implement gender policy. In February 1999, the state secretariat became the Ministry for the Family and the Advancement of Women [9]. This then became the Ministry of

Health, Social Affairs, Solidarity, and the Family in 2009. This institution has promoted and protected the rights of women in accordance with that provided for in international convention especially the on the Elimination of all form of practices against women in 1989. This Convention has provided for equality of all women and fighting illegal practices against women. However, the Ministry faces lots of difficulties in accomplishing its mission and objective due to lack of human and financial resources. The insufficient materials and resources in monitoring the situation of women especially migrant women have affected the extent of application of these non-discriminatory practices on migrant and thus affecting their rights and status.

Law No.05/86 of 16th June 1986, provides for the regime of admission and stay of foreigners in the Republic of Gabon. This law is implemented through Decree No. 6/86 of 18th June 1989, for the establishment of a special fund for immigration and Decree No. 999/PR of 31st July 1986, regulating the modalities of issuance of residence permit. The residence permit is valid for two years and is renewable. The law is applicable to foreigners and stateless persons who are visiting Gabon for less than three months, as well as those who wish to reside for a period longer than three months. Decree No.999/PR of 31st July 1986 regulates the conditions for applying for the residence permits, which vary for each category of residence [10].

According to Article 10 of the Refugee Law, refugees are entitled to the same treatment as nationals with respect to access to education, registration fees at school and at university, and access to basic social services. Article 11 stipulates that regarding access to and conditions of employment, refugees will be treated in the same manner as nationals. Refugees are issued with renewable refugee ID cards free of charge, which are valid for two years. However, under Decree 646, asylum-seekers are not allowed to work in Gabon.

With the transformation of refugee status to a foreign resident status in Gabon [11], in the

absence of any specific statutory instrument for refugees, the only existing relevant law is Law No. 05/86. The law provides “the regime of admission and stay of foreigner in the Republic of Gabon,” as well as for conditions and rights attached to residence permit in Gabon. The treatment reserved to a foreign resident by Law No. 05/86 of 16th June 1986, is not the same as that reserved to refugees under the Refugee Law. Furthermore, asylum seekers who are not authorized to work by virtue of Decree 646 experience difficulties in acquiring residence permits, as employment is one of the pre-conditions for granting residence in Gabon under Law 05/86.

Several foreigners are married to Gabonese nationals and have children born in Gabon. The Nationality Code [12] sets out conditions and modalities for eligibility to obtain nationality. This could either be by origin [13] or acquisition [14]. Furthermore, those children born from mixed marriages, whereby either parent has Gabonese nationality, or those foreigners married to Gabonese nationals, can easily acquire nationality. Acquisition of Gabonese nationality through naturalization is less accessible and is a lengthy and costly procedure. No measures have been taken to facilitate naturalization procedures for refugees, even though Article 34 of the 1951 Refugee Convention provides that the contracting states shall make every effort to expedite naturalization proceedings for refugees and to reduce, as far as possible, the charges and costs of such proceedings.

INCONSISTENCIES AFFECTING THE DISCRIMINATORY PRACTICES ON FOREIGNERS IN CAMEROON, CHAD, AND GABON

The progress in the protection of migrants' status in Cameroon, Chad, and Gabon has met with inadequate achievement owing to several obstacles hindering the effective protection of those taking up residence in these states. These obstacles or impediments come as a result of the ineffectiveness or restriction imposed on Humanitarian agencies whose main role is that of monitoring and implementing international standard put in place to provide foreigners residing in foreign states with protection. Most of the activities of these organizations are

violated by the states where they operate, or they may sometimes lack the available facilities to protect these migrants. Apart from the international perspective, national institutions, particularly the human rights commission created to enhance human rights protection especially of migrants have experienced lots of difficulties in seeing that the effective protection of the status of these special categories of persons comes to reality. Such inconsistencies faced by migrants on their status cannot just be limited on the institutions, but also extend to the lacunas of the law enacted by these respective member states. Most of their laws to an extent negatively affect the foreigners who decide to take up residence in the respective state. The laws set in place usually violate the human rights of these people making life unbearable for them.

Xenophobia, Violence, Discrimination, and Racism

Foreigners are often subjected to discrimination because of their color and race, or their actual or perceived religion, or a combination of these, and they may be the target of unfavorable treatment simply because of their migrant status [15]. Women migrant workers, who make up half the total, can be doubly penalized. The plight of migrant workers is a growing concern, since foreign-born workers represent significantly a rising proportion of the workforce in many countries. Estimated at 4 million, migrant persons in these countries and some 32 million in other developing regions, the movement of men and women seeking better job opportunities in these countries are likely to increase in the coming years [16]. Ten percent of the workforce in Chad, Cameroon, and Gabon are currently made up of migrants, while in a number of Asian or American countries percentages are higher, representing over 50% of the workforce in some Gulf States. One manifestation of discrimination against migrants is their concentration, often regardless of their skill levels in “3D” jobs [17], where protection is often inadequate or absent in law or in practice [18].

Although these member states tend to grant documented migrants *de jure* equality of treatment with nationals as regards

remuneration, hours of work, holidays with pay, and minimum age, they face a variety of employment restrictions [19]. The incidence and extent of differential treatment may vary depending on whether migrants are permanent or temporal and whether they are high skilled or low skilled. National migration policies are more inclined to provide for equal opportunities and treatment between nationals and migrant workers in high-skilled positions than those in unskilled and low-status jobs. High-skilled migrants are usually offered more guarantees to shift towards permanent settlement than the low skilled. Such preferences are doubly hard on low-skilled workers, who are already particularly vulnerable to exploitation and violations of their rights. If low skills are the result of denied equal opportunities in education or at work in their countries of origin because of their sex or religion or race, inferior treatment of low-skilled migrant workers in destination countries further aggravates discrimination. Resistance towards providing equal treatment with nationals is much stronger in respect of social security rights, employment mobility, and access to employment and vocational training. The provision of alternative employment, relief work, and re-training often depends on whether the migrants are temporal or permanent settlers, which is contrary to the provisions of ILO standards, including the Migrant Workers Convention, 1975. This is an important issue, especially in the light of the steady increase in temporary workers’ programs that often bind migrant workers to the same employer or may require them to leave the country immediately after termination of the contract, and to return only after a certain period. These temporary schemes discourage settlement of migrant workers in the country, which in practice often has the effect of excluding them from equal treatment rights [20].

Regional integration schemes grant some nationalities privileges over others, with member states extending equality of opportunity and treatment to migrant workers from countries within the same regional integration [21], but not to persons who are not citizens of a member state. However, there have been some encouraging developments in

the form of Cameroon, Chad, and Gabon regulations granting equal treatment to third-country nationals legally residing in the country [22]. Moreover, even though these countries do not support permanent immigration, there seems to be a growing recognition that in some sectors it may be desirable.

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

On a positive note, trade unions around these countries have increasingly taken steps to address the plight of migrants. For instance, there has been an increase in bilateral or multilateral agreements concluded by unions from origin and destination countries [23] to assist migrant workers and combat their exploitation, one example being the agreement signed by Cameroon and the Chinese government in 2010. Another interesting initiative is the “CEMAC Passport” launched among the CEMAC member countries, which, since 2005, allows a migrant worker who is already a member of a union in his or her country of origin to be hosted by another member union in the host country [24].

Adaptability

Another fundamental challenge that migrants face and which greatly affect their status and right is the fact that these migrants or foreigners live difficult life as they adjust to new communities and cultures. Most of them cannot adapt to the country’s ways of life and policies. The main challenges that migrants

residing in Gabon, Cameroon, and Chad face are that of health because of the climate which affects their health status. According to a report gotten from the World Health Organization, report of 2012 [25], most foreigners living in Chad encounter serious health problem due to the mild climate of the area. The same situation of climate and health problem is experienced in Cameroon and Gabon [26]. For example, the situation of refugees is deplorable where problem of illnesses related to malnutrition, such as calcium deficiency and anemia are reported regularly.

Furthermore, culture is another prominent issue. The fact that most of the countries in the CEMAC region have a mixed culture and spheres of life makes it difficult for foreigners to adapt themselves to this. This was the situation in Chad where we discovered that most of the foreigners find it difficult to adapt themselves to the culture of the country. For example, the nature of food, living standard and language (most of the citizens speak “*fulbe*” and this poses communication difficult) make it a problem to those who have acquired legal status to reside in this country. Most of the citizens in Chad consider those of the Western World as foreigners due to their race, color, language, and even religion.

Added to the above, the access to some basic facilities in these countries constitutes a challenge and impediment affecting migrants’ status. Such situation is common with foreign students coming to these countries to pursue their educational carrier. Most of them find it difficult to adapt themselves to the living condition and standards of living in the areas. It is a great challenge for foreign students to have access to some basic facilities especially at the level of lodging as owners use this as an advantage to enrich themselves through increase of charges of foreigners. Foreign students face discrimination in all aspects of life making it uncomfortable for them to live and adapt to the ways of life in the country. Even access to employment is another problem. Having a job in these countries is a problem; employers become very skeptical to offer jobs to foreigners, and even when they have one, they cannot meet up with their

necessities since remuneration is so menial and low compared to that of their country of origin. With a high unemployment rate among the local population of Cameroon, the ability for refugees to compete for limited job opportunities is more difficult. According to a UNHCR representative, "Cameroon has a great deal of educated people, so competing in the job market is not easy for refugees as highly qualified Cameroonians are already employed [27]." All refugees interviewed in this research were very clear to make the point that it is not easy for them to find work in Cameroon, and that every day is a struggle living in Yaoundé [28]. Several refugees in Cameroon are unable to find a job that matches their skill set, and because of non-recognition of education or previous experience gained, many refugees often suffer from underemployment. They cannot enjoy the same facilities that national employees' get from their employers; some of these foreigners are discriminated upon when dealing with advantages of employment. Most of them believe that they are suffering in these residing countries and they cannot even stay for the normal period of application, and they are forced to return to their country of origin.

Emotional isolation is also experienced. Coming into a region for the first time especially for those foreigners having families, they find it difficult staying in a new environment and relating with the people around them. Some always feel isolated and abandoned since they are far away from their families and loved ones. This factor really affects the foreigners negatively making them lose their sense of belonging notwithstanding the comfortable and favorable treatment offered to them by these receiving states [29]. Even some business migrants coming to do business cannot cope due to the treatment they receive in these countries. Most often, the modalities of acquiring business licenses, the business arena in which they operate, makes it impossible for them to adapt. They complain of the high tax charges offered them by receiving states and even sometimes acquiring a document is a problem due to long and difficult procedure that this country poses. This makes it difficult especially for those foreigners from the north who think that the

investment climate in Cameroon, Chad, and Gabon are not favorable.

Arbitrary Expulsion and Deportation

The principle of non-refoulement prohibiting states to transfer anyone to a country where he or she faces a real risk of persecution or serious violation. Human right is a fundamental principle of international law and one of the strongest limitations on the right of states is to control entry into their territory and to expel aliens as an expression of their sovereignty. For example, by virtue of sections 7 (1) and 15 of Law No. 2005/006, it is forbidden to extradite, turn back [30], or to take any measures whatsoever which force anyone, covered by the above definition, to return or remain in a country where his life, physical integrity or freedom could be threatened. If such a person is an illegal immigrant, no criminal sanction may be taken against him, but he shall present himself, without delay, to competent national authorities for regularization of his situation [31]. A refugee shall enjoy economic and social rights and especially the right to naturalization. Even Chad and Gabon have to discourage the arbitrary expelling of aliens from their territory since they considered this as violation to fundamental human rights of all. The situation becomes different for the purpose of public peace, order and security as the said person can be extradite forcefully to his country of origin for fear of insecurity and his involvement in other crimes that can affect public order and peace. But such expulsion should be done with the permission of the state of origin of the alien since it is forbidden by law to send back somebody where the person will face torture or persecution in the country expelled to [32]. This has not been the case with the countries under consideration, where most of them used the pretext of expulsion as a means of maintaining public peace and security stipulating that foreigners are the primary suspects of criminal activities and encourage all types of illegal activities.

We see, for example, that in 2017 Sudanese refugees were asked to leave Chadian territory under the pretext that they were engaged in all sorts of criminal activities affecting the security and peace of the state. The same

situation occurred in June 2018 where Cameroonians living in Equatorial Guinea were beaten and some of their documents even seized because they were considered to constitute a threat to the security of the Guinean sovereignty and their stay was increasing cause of the high crime waves of the country [33].

Also, the same situation occurred in Gabon in 2008 where it was held that there were a high percentage of about 40% foreigners living in Gabon, and most of them were from neighboring countries [34] who came in to compete with nationals making it sometimes difficult for the Gabonese nationals to have access to job. This situation made Gabonese nationals to consider foreigners as intruders, making life and the atmosphere to be very uncomfortable for them, and sometimes incriminated them and as such left the government with no other choice than to except such persons from its territory.

Foreigners Detention

It is said that under international human rights law, detention of asylum seekers or undocumented migrants, either on entry to the country or pending deportation, must not be arbitrary and must be carried out pursuant to a legal provision [35]. By International standards relating to immigration control, detention should be the exception rather than the rule, and should be a measure of last resort, to be imposed only where other less restrictive alternatives, such as reporting requirements or restrictions on residence, are not feasible in the individual case. The mere fact that a detained migrant is free to leave a place of detention by agreeing to depart from the country does not mean that the detention is not a deprivation of liberty. The right to liberty and security of the person under international human rights law requires that deprivation of liberty be justified, must be in accordance with the law, and must not be arbitrary. Deprivation of liberty may be “arbitrary” either because it is not based on a legitimate basis for detention or because it does not follow procedural requirements. An essential safeguard against arbitrary detention is that, law must adequately prescribe all detentions. This reflects the general human rights law principle of legal certainty, by

which individuals should be able to foresee, to the greatest extent possible, the consequences which the law may have for the acts. The need for legal certainty is regarded as particularly vital in cases where individual liberty is at stake. The principle of prescription by law has two essential aspects:

- That detention be in accordance with national law and procedures;
- That national law and procedures should be of sufficient quality to protect the individual from arbitrariness.

Under international law and standards, foreign nationals in prisons are permitted reasonable facilities to communicate with diplomatic representatives of their state [36]. Those without diplomatic representation in the country, or refugees or stateless persons, shall be allowed reasonable facilities to communicate with their relevant diplomatic representative, or any national or international authority whose task is to protect such persons [37]. Chadian legislation also protects foreigners in detention. According to the Chadian law, detained foreigners have special protection and the country of their nationality must be informed by the prison administration of the reasons of their detention, the place where they are detained and the conditions of their detention [38]. Detained refugees and asylum seekers are subject to specific protections under international law and standards, including Article 16 of the 1951 Refugee Convention, as well as under Article 21 of the Chadian Constitution.

Migrants who were accused of illegal entry into a country were held in police custody in most of these countries [39], but the treatment given to them was deplorable and some were even sent to prison where the conditions of living were harsh and amounted to cruel, inhuman and degrading treatment or punishment [40]. Detention facilities were overcrowded, and prisoners often had no access to adequate health services and other basic facilities. Many of the prisoners were sick and malnourished. Foreigners in this side of the country continued to be arrested and detained without charge by ANS members, and in some cases were prevented from receiving visits from any friends or love ones,

doctors or lawyers. The police and gendarmerie-detained persons for civil matters, contrary to provisions of the Chadian Constitution and laws. Conditions remained harsh, amounting to cruel, inhuman, and degrading treatment. Cells were overcrowded, and food and drinking water were inadequate. There was no health care in prisons, including for serious transmissible diseases such as tuberculosis. Men, women and children were held together indiscriminately in most prisons. No mechanisms were in place to allow prisoners to complain about their treatment. Inmates were often chained in the prisons in Abéché, Sarh and Doba [41].

The same situation of migrants being held in detention is also experienced in Cameroon and Gabon and this greatly affects the status of migrants residing in this state thus rendering protection inadequate and inefficient. It is the responsibility of states to offer absolute protection to foreigners who reside in their territories and even if they commit crimes or have illegally entered the territory, their fundamental human rights must be protected and guaranteed to the letter. Nevertheless, migrants or foreigners continue to experience violation of their rights and liberties making the international community to have a negative impression of the country in question when it concerns matters of foreigners' protection.

CONCLUSION

The existence of much international, regional and local legislation aimed at protecting migrants in Cameroon, Chad and Gabon shows the laudable efforts made by these countries to deal with immigration issues and that of migrant protection. Despite all the efforts by international humanitarian, human rights, migration, labor and refugee laws, it is surprising that refugees and migrants residing in Cameroon, Chad and Gabon continue to face many challenges which have rendered or posed a threat on the livelihood of these persons, thus creating a non-conducive environment for habitation.

The numerous problems faced by refugees and migrant persons including inadequate housing, feeding, accommodation and even threats to their standards of living, bring to light many

worries to the international community making them pose many questions as to the effectiveness of available international instruments set in place in providing relief and protection to those engaged in immigration. There is an increase in the number of rampant violation of migrants' rights and status especially in the Asian and African continents and CEMAC sub-region in particular.

Cameroon, Chad and Gabon have made great efforts to see to the application of these international and regional commitments through national laws like the constitution, labor laws, penal codes, immigration laws, those on trafficking as well as those governing refugees and asylum seekers in their territories.

The putting in place of these laws and regulatory frameworks in these countries have offered some degree of protection and guarantees on foreigners or migrants' rights like those relating to employment, education, business security, property, health and a list of other protections. The legal texts governing migrants' protection in these countries have made provisions in their national laws conforming to those provided for in regional and international laws, to provide adequate protection of migrants' status and right through the fighting and sanctioning of those discriminatory practices meted against migrants in their territories. This guarantee and protection of migrant rights by these countries' national laws and regulations have been helpful in attracting foreigners to reside in the various member states.

Notwithstanding all these initiatives and commitments instituted by Cameroon, Chad, and Gabon through the enactment of laws and creation of institutions to protect migrants' rights and status, all these have been considered as window dressing. Theory does not provide a definite answer to the question whether the protection offered to migrants in these countries through their various national laws and policies and even the creation of institutions is guaranteed. In other word, there seem to be an automatic difference between law making and law implementation. To create laws and institutions is one thing, and to

implement the laws and see to it that the institutions perform their assigned tasks is another.

REFERENCES

1. Ministry of Employment and Professional Training, Cameroon.
2. These rights include that as to non-discrimination, freedom of religious practice, right to property, the right of association, the right to be a party to legal proceedings, the right to work, the right to education, housing, social welfare and public assistance, free movement, to obtain identity documents and travel documents and the right to transfer of assets.
3. The Country Report on the Human Right Practice, Amnesty International Human Right Report, 2012.
4. Constitution, Article 30.
5. Ibid, Article 3.
6. Ibid, Article 14.
7. Ibid, Article 18.
8. This is a report given by a Malian citizen that intend doing business in Chad that it takes several months before the Chadian authority could offer him a license to operate, and even when such permission is granted, he received discrimination and increase in tax rate something not experienced by Chadian nationals.
9. Decree No. 000013/PR/MFPF of 7 January 2002.
10. Residents, contractors, independent workers, owners, lessees or pensioners, as well as family members of a resident.
11. The transformation of refugee status to a foreign resident status in Gabon was an option foreseen in the context of the comprehensive durable solutions strategy for the Congolese refugees in the framework of cessation of their status.
12. Law No. 37/98 of 20 July 1999 initiating the Gabon Nationality Code.
13. Law No. 37/98 of 20 July 1999 initiating the Gabon Nationality Code.
14. Birth, filiations, and recognition.
15. Marriage, adoption, naturalization and reintegration.
16. This is the case of Ms. Marie Loubaky who experienced many difficulties since she became a refugee. She no longer had a permanent job with a steady income to support her family. She and her family had lost their former high social standing and, as Congolese refugees, became a marginalized and discriminated part of Gabonese society. As a refugee she was subjected to verbal abuse and sexual insinuations from the Gabonese police. Marie was used to take care of her children by herself but, as a refugee, the absence of a spouse made her and her family even more vulnerable to physical and mental abuse. Moreover, her affiliation with the former government of Congo-Brazzaville and her work as a journalist put her at risk politically in Gabon. As such, around the time of the Gabonese presidential elections of autumn 2005, Marie's situation became extremely precarious. The unease and the fear for forcible removals increased among the Congolese refugee community and Ms. Loubaky felt threatened. It was clear that Marie's safety could no longer be guaranteed and that she needed to leave Gabon for a safe country of asylum.
17. "Towards a fair deal for migrant workers in the global economy", Report VI, International Labour Conference, 92nd Session, Geneva, 2004; OSCE; IOM; ILO: Handbook on establishing effective labour migration policies in countries of origin and destination (Vienna, 2006).
18. Dirty, dangerous and degrading.
19. Ibid, "Towards a fair deal for migrant workers in the global economy", P. 150–165 (agriculture), 173–178 (sweatshops), 181–194 (care economy, domestic work) and, to some extent, 166–172 (construction).
20. Such persons cannot hold high posts of responsibilities in the said countries due to the fact that they are considered as foreigners with little or no aspect of recognition meant to perform only particular functions of less importance.
21. OSCE; IOM; ILO: *Meeting the Challenges of Migrants Workers in Central Africa* P. 134–144.
22. This is the case of Cameroon, Equatorial Guinea, and Gabon considered as the giants of the CEMAC Sub-Regional Integration Communities.

23. Council Directive 2003/109/CEMAC of 25 November 2003 concerning the status of third-country nationals who are long-term residents, Official Journal L 16, 23 Jan. 2004, P. 0044–0053. Under the Directive, Member States will recognize long-term resident status after five years' continuous legal residence. They would be guaranteed equal treatment with CEMAC nationals with respect to most socio-economic rights.
24. This is done mostly by the countries having embassy in the said country who usually hold talks with the host countries of the migrants to discuss the way forward and possible ways in which the conditions of foreigners in the in these countries especially those seeking employment and working in the said countries.
25. This situation is different in Gabon and Equatorial Guinea who are still dragging their feet as far as free movement of persons with the CEMAC is concerned. The situation has not change notwithstanding the CEMAC Passport.
26. World Health Organization World Statistic Report 2012 in Chad P. 213.
27. This was the information gotten from a German National who came to Cameroon the first time on the 14th of January 2012. "I find it very difficult to adapt with the climate due to the harshness particularly in the Littoral Region where the wildness of the climate makes it impossible for me to live in this area of the country and I thought in the first instance to go back home."
28. Interviewed rendered by Commissioner of the UNHCR in Yaoundé, Cameroon at 9:30 am on Tuesday July 9th, 2013 as to the situation and challenges of refugees residing in Cameroon.
29. Diallo, a Senegalese refugee living in Yaoundé through an interview on Wednesday 10 July 2013 talking on the living condition here in Yaoundé.
30. "Notwithstanding the friendly nature of Cameroonian around me, I am really enjoying my stay here, but the fact that my family and ones are still in America makes feel isolated and abandon, I finds it difficult to interact and make new friends here in Cameroon, it seems as if I am dead cause most of friends are in the State and this make me sometimes to have that anxiety to go back home" interviewed granted on the 13th of June 2013 by an American Citizen working in Cameroon.
31. On the 8 October 2008, 2 police officers (NDAM IBRAHIM and NDAM AMADOU) illegally arrested a refugee from Equatorial Guinea and made him to return to his country. By Decisions No. 0000348/DGSN/CAB and No. 0000349/DGSN/CAB of 17 October 2008, the Delegate general of National Security suspended the said officers for period of three months.
32. Section 8 of the same law.
33. Ibid, Section 33(1) of the 1951 Refugee Convention which talks about the principles of non-refoulement.
34. BBC Africa news 9th June 2011 on the problems faced by Cameroonians living in Equatorial Guinea giving rise to several Cameroonians repatriated to their country.
35. These countries include Central Africa Republic, Chad, Cameroon, Sudan, Nigeria and others who sees Gabon as a country with high employment opportunities due to the high and vibrant nature of the economy.
36. Article 9 International Covenants on Civil and Political Rights, Article 5 European Convention on Human Right, Article 6 Africa Charter on Human and People Rights, Article 7 America Convention on Human Right, Articles I and XXV ADRDM, Article 14 ACHR.
37. Standard Minimum Rules for the Treatment of Prisoners (SMR), rule 38(1); Bangkok Rules, rule 53.
38. SMR, rule 38 (2); Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, UNGA RES.43/173, 9 December 1988, Principle16.2.
39. Ordinance No 32/PR/2011, 4 October 2011, Article 36 of Chad.
40. The Human Right Reports on the Practice of Human Right in Cameroon, Chad, and Gabon, 2012.
41. Ibid

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