

The Right to Freedom of Movement and the Protection of Refugees in Cameroon: What Prospect for Implementation?

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Abstract

The issue of human right protection is a fundamental concept that has attracted the international community for their safety and livelihood. This human right protection has been encouraged in all dimensions and domains, especially when it comes to free movement of persons from one place to another. The concept of freedom of movement has been embraced with lots of high esteem as people have the possibility of moving from one area to another. This phenomenon of persons from one state to another has been encouraged by states in order to protect their dealings with each other and facilitates the effective protection of human rights among member states. The Cameroon government, as a signatory and a party to numerous human instruments, has taken the main objective in that of protecting and preserving the fundamental human rights of those entering its territory with the aim of preserving national integrity. The government of Cameroon has gone a long way in ensuring that those entering its territory should be given maximum protection on their fundamental human rights, even though despite all these efforts of the state in protecting the human right of refugees, most of the refugee rights are still being violated. The refugees living in Cameroon continue to doubt their stay in the country since their main aim of taking refuge in Cameroon was for the government to render them protection; rather they are filled with lots of worries as to whether it was necessary for them to seek refuge in the country in question when they cannot boast of their minimum protection. Deductive analytical approach was used which involves the explanation of social facts through the analysis of relevant texts. In this regard, two stages of analysis were involved: analysis of laws, policies and regulations on the one hand, and explanation of the way they are applied and their challenges on the other. Analyzing this legal method helps us to answer questions related to the protection of refugees in Cameroon. Do the policies enacted by the Cameroon government to control refugee movement in their territory meet projected objectives?

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INTRODUCTION

The right to leave any country, including one's own, is an important component of the right to freedom of movement. It involves the right to depart permanently, or for a shorter or longer period. It stems from the general principle that no state owns an individual, and that the right is a personal one. The right to leave any country is not restricted to persons lawfully within the territory of a state, which means that an alien being legally expelled from the country is allowed to choose the state of destination, with the agreement of that state. The right to leave any country, including one's own, does not, however, guarantee an

unrestricted right to travel from one country to another. However, Article 12 of the UDHR, Article 22(7) of the American Convention, and Article 12(3) of the African Charter recognize the right of a person to leave his/her country in order to seek and enjoy asylum from persecution in another country. In order to enable a person to exercise his/her right to leave any country, including his/her own, obligations are imposed both on the state of residence and on the state of nationality. Since international travel usually requires appropriate documents, in particular a passport, the right to leave a country includes

the right to obtain the necessary travel documents.

Normally, the issue of a passport falls under the obligation of the state of nationality of the individual. If the citizen is a resident abroad or being resident abroad has obtained travel documents from another country, this does not relieve the state of nationality of the obligation to issue a passport. In such a case, obligations are imposed both on the state of residence and on the state of nationality. The Human Rights Committee has been called upon in the context of analyzing the right to freedom of movement, to consider the denial of provision or revocation of passports to citizens living abroad. These cases, known as the 'Passport cases', articulate positive and negative duties on both the state of residence and the state of nationality:

The state of residence is primarily compelled to avoid interfering with the freedom to leave; the state of nationality is under a positive duty to ensure effective possibilities to leave by issuing the necessary documents. States that deny their citizens a passport violate Article 12 of the International Covenant on Civil and Political Rights so far as this denial is not justified pursuant to Article 12(3).

THE RIGHT TO ENTER ONE'S OWN COUNTRY

The right of a person to enter his/her country or to return to one's own country recognizes the special relationship of a person to that country. The right entails different guarantees, such as (a) the right to remain in one's own country; (b) the right to return after having left one's own country; and (c) the right to come to the country for the first time if he/she were born outside of it. The right to return is of importance for refugees seeking voluntary repatriation.

The right to enter one's own country is a right enjoyed by a person who is abroad. Accordingly, the state has the positive obligation to take all necessary measures to ensure that a citizen abroad has the right to return to his/her own country, since constitutionally recognized rights are guaranteed not only within the territory of the state but within its jurisdiction as well. If the citizen is detained abroad, positive obligations

require the state of nationality to deal with the state where the citizen is detained in order to secure the enjoyment of the right to return, since no citizen on his/her own can act with equal legal status with the governmental authorities of the foreign country. The right to return, however, does not imply that a person who has committed a crime shall be freely entitled to return to his or her home country.

Absolute freedom of movement would include the right to enter another country. However, given the complexities of residence, the rights of the nationals already residing in a country, and the preservation of certain cultural rights, it has never been possible to achieve absolute freedom of movement in any human rights forum.

The right to the freedom of movement is found in a substantive number of international and regional conventions. The UDHR contains the first universal statement on the right to freedom of movement. Article 13 UDHR states that *everyone has the right to freedom of movement and residence within the borders of each state and everyone have the right to leave any country, including his own, and to return to his country*. Article 13 UDHR does not directly restrict the right to freedom of movement to those lawfully within the territory. Under many subsequent international and regional instruments, however, the right to freedom of movement applies only to persons lawfully within a given territory. Article 12 ICCPR states that everyone lawfully within the territory of a state has the right to liberty of movement and the freedom to choose his or her residence. Moreover, the state may not arbitrarily deprive someone of the right to enter his or her own country.

As far as the protection of refugees is concerned, the Refugee Statute has made provision in its article 26 by providing as follows: *refugees have the right to choose their place of residence and to move freely within its territory subject to regulations applicable to aliens*.

From the foregoing, it is a well-defined principle that refugees seeking asylum in any country, who have fulfilled the conditions as

refugees, have the right to freely move around without any restriction based on their nationality, race, religion or other factor. They should be given the same protection as if they were nationals of the country in which they are seeking asylum. The right to freedom of movement goes along side that of non-refoulement which is to the effect that no one should be forced to return to his country when it is seen that returning to his country, he or she will face persecution.

ENCOURAGING FREE MOVEMENT OF FOREIGNERS

The state of Cameroon protects the right of every person to move about freely and to elect residence anywhere within or outside the national territory. The Preamble of the Constitution provides: “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”. Law No. 68/LF/3 of 11 June 1968 to institute the Cameroon Nationality Code contains a very favorable provision, which allows any person found in Cameroon, without a nationality, to be granted Cameroonian nationality. Section 12 provides that Cameroonian nationality shall be granted, as of right, by virtue of the birth in Cameroon, to any person who has no other nationality of origin. In this vein, Law No. 90/042 of 19 December 1990 institutes the National Identity Card and Decree No. 91/160 of 11 March 1991 fix the characteristics and lays down the conditions for issuing and delivering the same. This shall be the only document required from nationals aged at least 18 to move about freely. Decree No. 90/1245 of 24 August 1990 on the issuing of passports and travel of nationals abroad institutes four categories of passports and subjects the travel of nationals abroad to the presentation of this official document.

Law No. 97/09 of 10 January 1997 lays down the conditions for entry, stay, and exit of aliens and its enabling instrument No. 2000/286 of 12 October 2000 subjects the stay of foreigners to the acquisition of a residence permit. These instruments englobe a certain number of liberal guarantees, such as authorizing the seizing of an administrative court in case of objection against an expulsion

order, without the necessity to petition hierarchy, as the court is bound to rule within a week. This law considers border drive, escorting back to the border and expulsion as administrative measures. However, in the case of any conviction for infringement of immigration laws, the court may order the above measures without prejudice to other penalties. Cameroonians and any foreigner whose stay is legal can move about freely and freely use their property. However, such freedoms may be restricted if general interest or public order so dictates.

Law No. 90/054 of 19 December 1990 relating to the maintenance of law and order empowers administrative authorities to:

- Check the movement of persons and goods
- Requisition persons and goods in accordance with the law
- Requisition the police and gendarmerie to maintain or restore order; and
- Take measures to detain persons for a renewable period of 15 days to fight banditry

The movement of goods and persons by road is governed by Law No. 96/07 of 8 April 1996 on the protection of the road network, which empowers administrative authorities to erect temporary rain gates when circumstances so dictate. Circular Letter No. 3047/DGSN of 7 September 1990 to Inspectors General, Technical Advisers, Directors, Heads of Divisions and Provincial Service Heads of the National Security on the withdrawal and confiscation of documents belonging to road users is intended to put an end to some excesses and to clearly state the conditions and procedures for withdrawing vehicle and personal official documents. To better protect the right to move about freely, measures have been taken to properly organize police checkpoints. In a communiqué of 25 July 2005, the Delegate General for National Security prescribed certain measures to his collaborators on the organization and functioning of police check points as well as their behavior along the highway. He ordered that fixed checkpoints during the day be lifted to ease movement and the freedom of citizens to move about. Similarly, he empowered only judicial police officers to charge road users for

any traffic offences and when necessary to withdraw their documents.

The government has consistently shown concern for foreigners and refugees, taking into account their ever-increasing numbers. Law No. 97/101 of 10 January 1997 to amend and supplement certain provisions of Law No. 64-LF-13 of 26 June 1964 to fix the system of extradition prohibits the extradition of persons to destinations where they risk being subjected to torture. This law is an adoption of section 3 of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. In application of this provision, the Court of Appeal for the Centre Province rejected the application for the extradition of eight Rwandan nationals accused of genocide. It held in application of the above-mentioned law, that “a person cannot be extradited to another country where there are serious reasons to believe that he runs the risk of being tortured”.

It must, however, be noted that both the convention and the law are silent on extradition where a person risks being subjected to other cruel, inhuman, or degrading treatment or punishment. The CPC also prohibits such cases. Therefore, by virtue of Section 645 (d) of the Code, extradition is not applicable “where there are reasons for the country requested to believe that the person concerned shall be subjected to torture and other punishment or treatment, which is cruel, inhuman and humiliating, in the requesting country”.

Cameroon promulgated Law No. 2005/006 of 27 July 2005 relating to the status of refugees to provide an appropriate legal solution adapted to local realities. Section 2 of this law adopts the definition of refugee contained in the Geneva Convention of 28 July 1951 on the Status of Refugees and the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa signed in Addis-Ababa on 10 September 1969. Pursuant to this section, the following shall be considered as refugees: *“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 fear, 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 habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it; Any person who, owing to an aggression, foreign occupation, foreign domination or events that seriously undermine public order in either part or all of his country of origin or nationality, is obliged to leave his habitual residence to seek refuge in another place outside his country of origin or nationality”.

By virtue of Sections 7 (1) and 15 of Law No. 2005/006, it is henceforth forbidden to extradite, turn back, 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 (Section 8). A refugee shall enjoy economic and social rights and especially the right to naturalization. The law cited above sets up a commission for eligibility for the status of refugee and yet another commission to examine petitions from refugees. The procedure for asylum has been significantly simplified and a mere deposit certificate allows the applicant to enjoy the fundamental rights recognized both by the Geneva Convention of 1951 and the Addis-Ababa Convention on Refugees.

In support of government actions, the activities of some NGOs engaged in defending and protecting human rights may be acknowledged. Thus, the NGO “New Human Rights” instituted the Support Program for Refugees (SPR) in 1997 to ensure the scrupulous respect of the rights of refugees to move about and elect residence freely. This NGO receives refugees and gives them advice and assistance in obtaining asylum and information about Cameroon so as to facilitate their choice of residence and access to the job market. At a meeting organized on 26 June 2005 by the Christian Action for the Abolition

of Torture (ACAT), to commemorate the United Nations International Day for Support to Victims of Torture, the Association of Refugees without Borders (ARSF) and ACCAT Littoral presented a joint paper on “the Violation of the Rights of Children and Refugees”. Participants recommended, among others, “the adoption of a national law on refugees and the setting up of a national commission on eligibility for the status of refugees”. The government had already addressed this issue as can be seen from the above-cited law. It should be noted, however, that a refugee or a foreigner on legal stay in Cameroon may be expelled for reasons of national security and public order.

Impediments in the Free Movement of Foreigners

Even though refugees residing in Cameroon have been given absolute protection when it comes to those moving into the territory of Cameroon, these foreigners continue to experience fundamental violation of their human rights. Most of these violations or impediments vary from xenophobic practices, adaptability of staying in the country, and other relevant aspects.

Xenophobia, Violence, Discrimination, and Racism

Refugees are often subjected to discrimination when moving into the Cameroon territory because of their colour and race, or their actual or perceived religion, or a combination of these, and they may be the target of unfavourable treatment simply because of their refugee status. Women refugee workers, who make up half the total, can be doubly penalized. The plight of refugee workers is a growing concern, since foreign-born workers represent significantly a rising proportion of the workforce in many countries. Estimated at 1 million, refugee persons in this country 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. Ten percent of the workforce in Cameroon are currently made up of foreigners. One manifestation of discrimination against refugees is their concentration, often regardless of their skill levels in “3D” jobs

where protection is often inadequate or absent in law or in practice.

Although these member states tend to grant documented migrant *de jure* equality of treatment with nationals as regards remuneration, hours of work, holidays with pay, and minimum age, they face a variety of employment restrictions. 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 refugee 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.

Regional integration schemes grant some nationalities privileges over others, with member states extending equality of

opportunity and treatment of refugees from countries within the same regional integration, 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. 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 refugees. For instance, there has been an increase in bilateral or multilateral agreements concluded by unions from origin and destination countries 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 foreign 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.

Adaptability

Another fundamental challenge that refugees when moving into a territory faced and which greatly affect their status and right is the fact

that these refugees 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 refugees moving in Cameroon 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, most foreigners living in Cameroon encounter serious health problem due to the mild climate of the area. 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 regions in Cameroon have a mixed culture and spheres of life makes it difficult for foreigners to adapt themselves to this. The nature of food, living standard, and language make it a problem to those who have acquired legal status to reside in this country. Most of the citizens in Cameroon consider those of the Western World as foreigners due to their race, colour, language, and even religion. Access to some basic facilities in this country constitutes a challenge and impediment affecting refugee status. Such situation is common with foreign students coming to these countries to pursue their educational carriers. Most of them find it difficult to adapt themselves to the living conditions 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 to 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 sceptical 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.” 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. 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 refugees 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 favourable treatment offered to them by these receiving states. 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 is not favourable.

Arbitrary Expulsion and Deportation

The principle of non-refoulement prohibits 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, 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. A refugee shall enjoy economic and social rights and especially the right to naturalization. Even Cameroon has to discourage the arbitrary expelling of aliens from their territory since they consider this as violation of fundamental human rights of all. The situation becomes different for the purpose of public peace, order and security as the said person can be extradited forcibly 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. 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.

The same situation occurred in June 2011, when Cameroonians living in Equatorial Guinea were beaten up 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.

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. 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 refugee 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 is in accordance with national law and procedures;
- That national law and procedures should be of enough 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. 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.

The situation in Cameroon and Gabon 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 have to 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 the matters of foreigners' protection.

CONCLUSION

The issue of movement of foreigners and refugees in Cameroon has been a long outstanding tradition where the state has taken the initiative in ensuring that those taking residence in their respective territory should be given some absolute level of protection in all the spheres of human right protection. This movement of refugees has experienced great initiative by the Cameroonian government by putting in place effective measures at all levels, be it the laws and even possible institutions in really managing and protecting refugees' rights and safety. Even though the Cameroon state has enumerated a series of legal dispositions in ensuring refugee rights, these foreigners and refugees continue to face eminent violations of their fundamental human rights when they must undergo specific interference in their basic human rights when taking residence in the Cameroonian territory. These violations of refugees' rights have been a high debate as in questioning whether there is really freedom given to these foreigners who take up residence in Cameroon since they continue facing possible difficulties in their fundamental human rights when residing in Cameroon.

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