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International Refugee Law and the Principle of Non Refoulement: Revisiting the case of Sisiku Ayuk Tabe[1] and Co Vs The People of Cameroon

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Abstract

This paper examines the principles of international refugee law, with a particular focus on the non-refoulement principle as the main pillar of international protection against the forced return of individuals to countries where they face serious threats to their life or freedom. This principle is enshrined in Article 33(1) of the 1951 Geneva Refugee Convention and reaffirmed by various regional and international human rights instruments. This paper critically examines the highly contested case of Sisiku Ayuk Tabe and others v. the People of Cameroon, in which leaders of the Anglophone separatist movement who had sought refuge in Nigeria were allegedly arrested by Nigerian authorities in January 2018 and refouled to Cameroon. On the basis of an analysis of legal scholarship and case law, this paper examines the circumstances surrounding the abduction or arrest of Sisiku and Co. This paper also explores whether the actions of the Nigerian and Cameroonian governments constitute a violation of the principle of non-refoulement and other commitments under international law (legality of arrest). Finally, legal and institutional reforms are recommended to improve adherence to international refugee protection standards not only in Africa but also throughout the world.

Keywords *Cameroon, Nigeria, Sisiku Ayuk Tabe, Refugee law, and non-refoulement*

1 He is an Ambazonian or Southern Cameroonian separatist leader and the controversial first president of the unrecognised Federal Republic of Ambazonia. As an asylum seeker resident in Nigeria, he was arrested in 2018 together with other separatist members and extradited to Cameroon, where they are currently serving a life sentence.

Contents

1. Background/Introduction

Since 1961, West Cameroon, referred to here as former British South Cameroon and known as Ambazonia, has been marginalised and discriminated against by the Republic of Cameroon. The prolonged marginalisation and discrimination led to the formation of pressure groups advocating for the rights of secession of the people of former British South Cameroon. The most prominent of these groups is the Southern Cameroon National Council (SCNC) founded in 1995.[1] The SCNC was founded with the aim of representing the English-speaking population in a predominantly French-speaking country by addressing the issues of self-governance and ultimately secession from the Republic of Cameroon.[2] However, the Cameroonian government considered their activities undemocratic and labelled the organization a terrorist organisation. Some of its members were arrested and sentenced to life imprisonment. Some fled to neighbouring countries such as Nigeria to seek refuge. Sisiku Ayuk Tabe, who constitutes the main subject of discussion in this paper, also fled to Nigeria. In 2018, Sisiku, together with some of his members and with the support of the grassroots, declared the independence of the former British South Cameroon, also known as Ambazonia, a region in Cameroon.[3] In the same year, Cameroonian authorities, acting in consultation with the Nigerian government, arrested Sisisku Ayuk Tabe, the leader of the SCNC, as well as other members of the group, and extradited them to Cameroon, even though there was no extradition agreement between the two countries.[4] Since then, there have been violent armed clashes between the secessionist or separatist groups and the Cameroonian military.

On the other hand, the principle of non-refoulement, which is enshrined in the Geneva Convention, is a fundamental pillar of international refugee law. The main objective is to prevent people from being returned to places where their life or freedom would be seriously threatened. The principle of non-refoulement, which is rooted in instruments such as the 1951 Refugee Convention and various regional human rights treaties, is not only a legal commitment but also an important guarantee of humanitarian protection. However, its application is often controversially interpreted, particularly in politically sensitive cases where state interests and human rights collide. The legal obligation and national interest shall be discussed extensively in the latter part of this paper.

The case of Sisiku Ayuk Tabe and Co. v. the People of Cameroon is a compelling example for examining the current relevancy and challenges of non-refoulement. In their capacity as leaders of the Anglophone separatist movement in Cameroon, Sisiku Ayuk Tabe and his comrades were arbitrarily arrested in Nigeria and extradited to Cameroon under serious legal and procedural concerns. Their involuntary return, which allegedly took place without due process and without an extradition review, has sparked international outrage and reignited the debate on the international protection of asylum seekers and political opponents.

Through a comparative analysis of the legal framework governing international asylum and the international refugee law principles applicable to Sisiku and Co., This paper attempts to shed new light on this high-profile case within the broader context of international refugee law. It examines the scope of the convention and what countries are required to do under the non-refoulement principle, reviews the problems with the extradition process, and considers the effects on international protection for refugees. As a result, it provides a multifaceted understanding of how legal principles interact with political constraints in the enforcement of refugee protection and, at the same time, makes recommendations for legislative and institutional reforms.

1 Canada: Immigration and Refugee Board of Canada, 'Cameroon: The Organizational Structure of the Southern Cameroons National Council' (4 May 2010) CMR103448 https://www.refworld.org/docid/4db7bd082.html accessed 29 May 2023.

2 Ibid.

3 Atem George Ngalim, 'The Arrest and Extradition of Sisiku Ayuk Tabe: Legal and Political Implications for Cameroon' (2019) 27 African Journal of International and Comparative Law 205.

4 Extradition is a process involving the surrender of a person by one State to the authorities of another State for the purpose of criminal prosecution or the enforcement of a sentence. In the context of extradition proceedings, the two States involved are usually referred to, respectively, as the "requesting" and the "requested" State (Requesting being the surrending State and requested being the receiving state).

2. The Arrest of Sisiku Ayuk Tabe and others

As previously mentioned, Sisiku Ayuk Tabe and other Ambazonian leaders were arrested in Nigeria and extradited to Cameroon in 2018.[5] Prior to their arrest, they lived in Nigeria as asylum seekers with certificates issued by the office of the United Nations High Commissioner for Refugees (UNHCR) in Nigeria.[6] According to the UNHCR, four of these individuals are refugees, and six are registered asylum seekers in Nigeria.[7] Their asylum application and refugee status in Nigeria were connected to the socio-political uprising in southern Cameroon, aka Ambazonian. According to the Human Rights Council Working Group on Arbitrary Detention, even though Sisiku Julius Ayuk Tabe and Co were living and working in Nigeria, they were deeply involved in political activism aimed at liberating the people of former British Southern Cameroon aka Ambazonian, a region with a political right enjoyed by every citizen in the world as enshrined under the International Covenant on Civil and Political Rights [8].

With respect to where and how they were arrested, the individuals were abducted on 5 January 2018, approximately 7 p.m., at Nera Hotel, Abuja, as they were having drinks. Allegedly, over 20 unknown armed men forced them to lie face down, at gunpoint.[9] They were then handcuffed, hooded, pushed into cars and driven around Abuja before being taken to the Defence Intelligence Agency of Nigeria in Abuja. The gun men who carried out the arrest were part of the Nigerian security forces and did not show any of the 10 individuals a warrant or decision for their arrest, nor did they explain the reasons for the arrests. The 10 individuals were detained in Nigeria for 20 days, from 5 to 25 January 2018, on the premises of the Defence Intelligence Agency, with no warrants ever presented to them.[10] According to the Human Rights Council Working Group on Arbitrary Detention, during the first two weeks of their detention in Nigeria, the 10 individuals were held under inhumane conditions in cells with no access to sunlight.[11]

According to the report, on the day of their extradition to Cameroon, they were blindfolded and put in a bus with armed soldiers driven out of the facility. Their blindfolds were reportedly removed 15 minutes later, and the 10 individuals were told that they were on their way to the airport. Upon arrival at the military wing of the Nnamdi Azikiwe International Airport, near Abuja, the 10 individuals were left on the bus for more than two hours to suffocate heat.[12] Later, in the evening, a military cargo plane displaying Cameroon insignia landed and heavily armed men in camouflaged outfits and ski masks disembarked.[13] Ayuk and Co were reportedly handed over to those men with no explanation. At 8:15 p.m., they were blindfolded, handcuffed and loaded onto the cargo plane. A few hours later on that same day, the 10 individuals reportedly arrived at the Yaoundé Nsimalen International Airport in Cameroon. The military officers allegedly switched off the lights and used flashlights to disembark the 10 individuals and dragged them onto a bus guarded by many heavily armed men dressed in black.[14] According to the report, they remained handcuffed and hooded, and the bus was escorted by military trucks from the airport to the premises of the Secretariat of State for Defence in Yaoundé, where they were kept incommunicado without trial and access to justice for more than ten months. This is in complete violation of the Cameroonian constitution. The constitution alludes to the fact that "Every person has the right to life, to physical and moral integrity and to human treatment in all circumstances. Under no circumstances shall any person be subjected to torture, to cruel, inhumane or degrading treatment".[15] This was not only a violation of the Constitution but also a violation of the Cameroon Criminal Procedure Code, which states that a person arrested must be interrogated by the

5 Human Rights Council Working Group on Arbitrary Detention, Opinion No 59/2022 concerning Julius AyukTabe, Wilfred Fombang Tassang, Ngala Nfor Nfor, Blaise Sevidzem Berinyuy, Elias Ebai Eyambe, Fidelis Ndeh-Che, Egbe Ntui Ogork, Cornelius Njikimbi Kwanga, Henry Tata Kimeng and Cheh Augustine Awasum (Cameroon and Nigeria) A/HRC/WGAD/2022/59 (6 October 2022) https://www.ohchr.org/sites/default/files/documents/issues/detention-wg/opinions/session94/2022-10-28/A-HRC-WGAD-2022-59-Cameroon-Advance-Edited-Version.pdf accessed 19 March 2024.

6 UN Human Rights Council, Human Rights and Arbitrary Deprivation of Nationality: Report of the Secretary-General A/HRC/19/43 (19 December 2011) https://www.refworld.org/reference/themreport/unhrc/2011/en/84746 accessed 20 March 2024.

7 Ibid Note 6

8 International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171, art 19.

9 Ibid note 16

10 Ibid supra note 16

11 Ibid supra note 16

12 Ibid 16

13 Ibid supra note 16

14 Ibid supra note 16.

15 Republic of Cameroon, Law No 96/06 of 18 January 1996 to Amend the Constitution of 2 June 1972 https://www.prc.cm/en/multimedia/documents/6285-loi-n-96-06-du-18-01-1996-revision-constitution-1972-en accessed 16 May 2024.

Examining Magistrate within forty-eight (48) hours of detention.[16] They were later tried before a military tribunal in Yaoundé.

This trial attracted heavy criticism, as the military tribunal was viewed and described as lacking competent jurisdiction. It was in total violation of the African Charter on Human and Peoples Rights, which prohibits the trial of civilians in a military court without exception. The Charter clearly states that…the purpose of Military courts is to try offences of a purely military nature committed by military personnel". A lack of jurisdiction was evident in this case, as the military court is not a civil court and, as such, lacks jurisdiction over such cases. They were sentenced to life in prison[17] on charges such as support for acts of terrorism, secession, hostility to the fatherland, secession, insurrection and participation, etc.[18] The judgement has been greatly criticized, condemned and described by many as a miscarriage of justice.

16 Ibid note 16

17 'Cameroon: Detained Ambazonia Leaders Handed Life Sentence', Journal du Cameroun (20 August 2019) https://www.journalducameroun.com/en/cameroon-detained-ambazonia-leaders-handed-life-sentence accessed 10 June 2024.

18 The People of Cameroon v Sisiku Ayuk Tabe Julius and 9 Others, Law Suit No OMDJ No 669 (29 November 2018) https://thesunnewspaper.cm/2019-in-retrospect/ accessed 23 March 2024.

3. Legality of the Arrest

According to reports by the Human Rights Council Working Group on Arbitrary Detention (HRCGAD), Sisiku and co. were abducted at gunpoint and extradited to Cameroon in total violation of Articles 7 (Equality Before the Law), 13 (Freedom of Movement), 18 (Freedom of Thought, Conscience, and Religion), and 19 (Freedom of Opinion and Expression) of the Universal Declaration of Human Rights[19] as well as Articles 19 (Freedom of Opinion and Expression), 21 (Right of Peaceful Assembly), 22 (Freedom of Association) and 26 (Equality Before the Law/Non-discrimination) of the International Covenant on Civil and Political Rights of 1966 (ICCPR).[20] Their arrival in Cameroon constitutes a complete violation of the right to due process and the right to legal assistance, as rooted in Articles 7 and 9 of the Cameroonian Code Criminal Procedure.[21] Article 7, for instance, states that 'every individual suspected or accused of a criminal offense shall be presumed innocent until proven guilty in a fair trial'. The presumption of innocence under Article 7 must be read in conjunction with Article 8, which addresses the right to a fair trial before a competent court within a reasonable time. Articles 7 and 9 of the Criminal Procedure Code comply with Article 11 of the Universal Declaration of Human Rights. In the case of Sisiku and Co, the ten-month detention in Cameroon without formal charges or access to a fair trial therefore constitutes a breach of the presumption of innocence as guaranteed by Articles 7 and 9 of the Criminal Code. Furthermore, Cameroonian law is bound by international treaties through Article 45 of the Constitution, which gives international treaties precedence over domestically adopted laws. Nevertheless, Nigeria and Cameroon are parties to the ECOWAS protocols and the African Charter on Human and Peoples' Rights, which prohibit the arbitrary detention of refugees and asylum seekers. Both countries are also signatories to the ICCPR with the obligation to protect Sisiku and Co in its territory.

Moreover, apart from Nigeria's obligation under international law to protect Sisiku and Co. within its territory, the arrest and extradition also violated several articles of the 1999 Constitution of the Federal Republic of Nigeria, in particular Article 35, which guarantees the right to personal liberty on the grounds that "every person shall have the right to liberty and freedom from arbitrary arrest or detention and no one shall be deprived of his liberty except in accordance with a procedure established by law."[22] The individuals were arbitrarily arrested and detained without due process, in violation of Nigerian law on detention and extradition.[23]

Additionally, Article 36, related to the right to a fair trial, states that "In the determination of his civil rights and obligations, every person shall have the right to a fair hearing within a reasonable time by and with the guarantee of the law, by an independent and impartial tribunal established by law." In the situation of Ayuk Tabe and others, they were detained without charge, denied access to lawyers and not brought before a Nigerian court prior to their deportation.[24]

In addition to Articles 34 and 35 of the Constitution, Article 46, which grants the victims the possibility of legal redress, was also violated. The victims' lawyers were reportedly denied the opportunity to challenge their arrest or deportation in court on behalf of the victims. Furthermore, the right to due process under the Nigerian Extradition Act of 1996 was violated. Under the Extradition Act, Sections 4 to 11 require that an extradition request must be submitted by the requesting state (Cameroon) through proper diplomatic channels. In the case of Sisiku and Co, such a request was not made by the Cameroonian authorities, and the Nigerian authorities did not provide any clarification.[25] This constitutes an extrajudicial arrest and a breach of both domestic and international extradition protocols.

Furthermore, according to the UNHCR, Nigeria, Sisiku and Co were already living in Nigeria at the time of their arrest, and some of them had already been granted refugee status and were therefore protected un-

19 United Nations, Universal Declaration of Human Rights (10 December 1948) arts 7, 13, 18, 19 https://www.un.org/en/about-us/universal-declaration-of-human-rights accessed 26 March 2024

20 United Nations, International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) Treaty Series vol 999, p 171 https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights accessed 26 March 2024

21 Republic of Cameroon, Law No 2005 of 27 July 2005 on the Criminal Procedure Code, Official Gazette of the Republic of Cameroon.

22 Federal Republic of Nigeria, Constitution of the Federal Republic of Nigeria (1999), as amended https://publicofficialsfinancialdisclosure.worldbank.org/sites/fdl/files/assets/law-library-files/Nigeria_Constitution_1999_en.pdf accessed 27 March 2024.

23 Ibid note 23.

24 Ibid note 23

25 Federal Republic of Nigeria, Extradition Act, Cap E22, Laws of the Federation of Nigeria (1966).

der the 1951 Refugee Convention[26] and its 1967 protocols.[27] The fact that the arrest was unconstitutional therefore raises an element of illegality, as the defendants had actually been living in Nigeria, and some of them had renounced their Cameroonian citizenship and embraced Nigerian citizenship. In other words, Nigeria had jurisdiction with regard to criminal responsibility if any, but they were tried in Cameroon in preference to Nigeria.[28] Again, it is immaterial whether the detainees were in Nigeria illegally or not since the principle of non-refoulement affords protection to all persons, regardless of whether they have been granted refugee status.

Handing them over to Cameroon violates their fundamental right (right to protection) in that, a state must respect, protect and fulfil the human rights of all persons under her jurisdiction, regardless of the circumstances, which the Nigerian government did not do in this particular case. The Nigerian authorities' move by returning political detainees to Cameroon constitutes a violation of the principle of non-refoulement, which is the bedrock of international refugee law. The principle of non-refoulement will be discussed in more detail later in this paper. Notably, the indictees, while in Cameroon, filed a petition at the Nigeria Federal High Court in Abuja with regard to their illegal deportation to Cameroon. In accordance with the judgement of the Nigerian High Court relating to their petition, the court found the deportation of the separatist leaders to Cameroon unlawful and made it clear that the forced deportation of the Anglophone separatist leaders to Cameroon was illegal and unconstitutional. According to HRCGAD's report, the accused were detained in Nigeria for 20 days without any arrest warrant and thus were arbitrary.[29] The arbitrary arrest falls in line with the position of the Community Court of Justice of the Economic Community of West Africa States (ECOWAS) in the Sikuru Alade case, in which the court held that the pretrial custody of the Complainant for more than nine years without trial violates the prohibition of the arbitrary detention in the African Charter on Human and Peoples' Rights. According to the court, the use of the holding charge to detain a suspect indefinitely violates Alade's rights under the African Charter to liberty and freedom from arbitrary detention (Article 6), to have his case heard within a reasonable time (Article 7) as well as equality before the law (Article 3).[30]

Irrespective of whether the leaders were a threat to the Nigerian State (with the exception of the principle of non-refoulement), the federal government had not followed due process and had therefore violated both the Nigerian constitution and Articles 32 and 33 of the UN Refugee Convention.[31] Notably, all the reliefs sought in the petition by the applicant were granted.[32] In addition, the court also ordered the Federal Government to ensure that the deportees were returned to Nigeria. However, 7 years after the pronouncement, the judgement was not implemented. At this point, one is tempted to feel that justice seems to have been served, but politically, however, the enforcement seems unclear. This is an indication that justice had been denied because a delay in justice equates to a denial of justice.

3.1 International Legal framework applicable to the principle of non-refoulement.

Throughout history, people have left their countries of origin in search of safety or have been forced to do so because they feared being persecuted either by virtue of their political views or even their membership in a particular social group.[33] However, it is not the purpose of this article to analyse the causes of migration but rather to address the applicable laws available to those who find themselves in a country either voluntarily or by force. Therefore, our starting point is the principle of non-refoulement, which is a fundamental

26 UN General Assembly, Convention Relating to the Status of Refugees (28 July 1951) United Nations, Treaty Series, vol 189, p 137 https://www.refworld.org/legal/agreements/unga/1951/en/39821 accessed 30 April 2024.

27 UN General Assembly, Protocol Relating to the Status of Refugees (31 January 1967) United Nations, Treaty Series, vol 606, p 267 https://www.refworld.org/legal/agreements/unga/1967/en/41400 accessed 30 April 2024.

28 See ss 34 and 35, Constitution of the Federal Republic of Nigeria (note 23).

29 Ibid note 24.

30 Treaty establishing the Economic Community of West African States (ECOWAS) (July 1991) http://www.courtecowas.org/site2012/pdf_files/revised_treaty.pdf accessed 8 May 2024.

31 Golda A Ajode, 'Could Nigeria Court Ruling Ease the Conflict in Southern Cameroon?' Institute for Security Studies (30 April 2024) https://issafrica.org/iss-today/could-nigerias-court-ruling-ease-the-conflict-in-southern-cameroon accessed 30 April 2024.

32 AFP Lagos, 'Nigeria Court Says Extradition of Cameroon Separatists "Illegal"' France 24 (3 March 2019) https://www.france24.com/en/20190303-nigeria-court-says-extradition-cameroon-separatists-illegal accessed 28 April 2024.

33 CF Moran, 'Strengthening the Principle of Non-Refoulement' (2021) 25 International Journal of Human Rights 1032 https://doi.org/10.1080/13642987.2020.1811690 accessed 23 May 2024.

concept in international law that prohibits the expulsion, return, or deportation of individuals to a country where they are at risk of facing persecution, torture, or other forms of inhuman or degrading treatment.[34] This principle is primarily enshrined in the 1951 Refugee Convention and its 1967 Protocol, as well as in various human rights treaties and national laws.

The term "refoulement" was first defined under the 1933 Convention Relating to the International Status of Refugees[35] drafted and adopted under the auspices of the League of Nations.[36] Article 3 of the 1933 Convention is of particular importance, since it contains one of the very first explicit expressions of the principle of non-refoulement in international law. This article states, inter alia, that; " [R]efugees shall not be forcibly returned to the country they fled from, where their life or freedom would be threatened."

Despite being first mentioned in 1933, the term can be traced back to 1882. However, it is not within the remit of this article to trace back to 1882 but rather to address the current legal literature of the principle. Article 33 (1) of the 191 refugee convention sets out the legal basis for the principle of non-refoulement. This article states, inter alia, that

> [n]o 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.[37]

The 1967 Protocol relating to the Status of Refugees went further to broaden the scope of the 1951 Convention by eliminating geographical and other limitations and making the principle of non-refoulement universally binding on all refugees, irrespective of when or where they became refugees.[38]

The Universal Declaration of Human Rights guarantees everyone the right to seek international protection in other countries and emphasizes the principle of non-refoulement as the basis of international protection law and the right to asylum.[39] In addition to the Universal Declaration of Human Right and Refugee Convention, international human rights law, especially the International Covenant on Civil and Political Rights (ICCPR), has also made the principle an integral component of the prohibition of torture and cruel, inhuman or degrading treatment or punishment under Article 7. Additionally, according to the United Nations Human Rights Committee, an organ responsible for monitoring the implementation of rights as contained in the ICCPR, its interpretation of article 7 of the ICCPR has stated the following:

> States Parties must not expose individuals to the danger of torture, or cruel or inhuman or degrading treatment or punishment upon their return to another country by way of their extradition, expulsion or refoulement.[40]

In addition, the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment stipulates in Article 3 that:

> "[n]o 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".[41]

Apart from the international legal mechanism regulating the principle of non-refoulement, it also features

34 UN High Commissioner for Refugees (UNHCR), UNHCR Note on the Principle of Non-Refoulement (November 1997) https://www.refworld.org/policy/legalguidance/unhcr/1997/en/36258 accessed 16 March 2025.

35 Convention Relating to the International Status of Refugees (adopted 28 October 1933, entered into force 13 June 1935) 159 LNTS 199.

36 League of Nations, Report of the Commission of Enquiry into the Events in Manchuria (1932) League of Nations Doc C.663.M.321.1932. VII.

37 UN General Assembly, Convention Relating to the Status of Refugees (28 July 1951) art 33(1).

38 UN General Assembly, Protocol Relating to the Status of Refugees (31 January 1967) United Nations, Treaty Series, vol 606, p 267, art 1 https://www.refworld.org/legal/agreements/unga/1967/en/41400 accessed 22 March 2025.

39 Ibid note 36.

40 UN Human Rights Committee (HRC), Report of the UN Human Rights Committee (Vol 1, A/53/40, 1998) https://www.refworld.org/reference/annualreport/hrc/1998/en/40036 accessed 23 May 2024

41 UN General Assembly, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (10 December 1984) United Nations, Treaty Series, vol 1465, p 85 https://www.refworld.org/legal/agreements/unga/1984/en/13941 accessed 19 November 2024

some regional instruments, notably the EU, Africa, Asia, and America. For the purposes of this article, however, the in-depth analysis will be limited to protection coverage in Africa and Europe.

With respect to Africa, the 1969 Organization of Africa Unity (OAU)[42] Convention Governing the Specific Aspects of Refugee Problems in Africa has enshrined a number of important principles in connection with asylum applications, including the principle of non-refoulement. For instance, the Convention (read in conjunction with article 12 of the Banjul Charter of Human Rights) makes it clear 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…..."[43]

The African Union (AU) has played an important role in upholding the principle of non-refoulement, which prohibits the return of refugees or asylum seekers to countries where their freedom or life would be threatened. With its legal framework and institutions, the AU has actively contributed to protecting and promoting the principle on the African continent. The AU went above and beyond the 1951 Refugee Convention by extending protection to people fleeing general violence, foreign aggression and internal conflicts. It has been ratified by a vast majority of African states, thus making it a strong regional instrument. The African Charter on Human and Peoples' Rights (ACHPR) is also known as the Banjul Charter,[44] adopted on June 27, 1981, by the Organization of African Unity (OAU); although it does not explicitly mention non-refoulement, it guarantees the right to life as well as protection from torture or inhuman treatment.[45]

Furthermore, the Kampala Convention (2009)[46] focuses on the protection of internally displaced persons (IDPs) in Africa. While the Convention does not apply directly to refugees, it reaffirms AU's broader activism for the protection of vulnerable communities from involuntary return to hazardous areas.[47]

The African Union and its subsidiary bodies have also developed a solid framework for the protection of individuals against refoulement. They have reaffirmed their commitment to adhering to the principle through resolutions and case law of national court decisions, ensuring that no individual is returned to a country where their safety or freedom would be under threat. Notably, the AU Resolution ACHPR/Res.114(XXXXII) of 2007 was adopted by the African Commission on Human and Peoples' Rights in 2007. This resolution underlines the importance of recognizing and protecting the human rights of all migrants, including refugees and internally displaced persons. It urges States Parties to respect the principle of non-refoulement and to bring their national legislation into line with international human rights standards and conventions.[48]

With respect to national courts, the principle of non-refoulement has also been upheld in the South African case of Ruta v. Minister of Home Affairs before the Constitutional Court, which found that the principle of non-refoulement applies to both de facto and de jure refugees. The court underlined that all asylum seekers are protected by this principle until a proper decision on their claim has been made with due diligence.[49]

At the European level, the starting point is the Charter of Fundamental Rights of the European Union. Article 18 on the right to asylum states: "The right to asylum shall be guaranteed with adherence to the Geneva Convention on Refugees".[50] Article 19 stipulates that, in the event of deportation, expulsion or extradition, "No one shall be removed, expelled or extradited to a State where there is a serious risk that he or she would

42 Organization of African Unity (OAU), Charter of the Organization of African Unity (25 May 1963) https://www.refworld.org/legal/constinstr/oau/1963/en/20810 accessed 27 May 2024

43 Organization of African Unity (OAU), Convention Governing the Specific Aspects of Refugee Problems in Africa ('OAU Convention') (10 September 1969) 1001 UNTS 45, art II(3).

44 Organization of African Unity (OAU), African Charter on Human and Peoples' Rights ("Banjul Charter") CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), 27 June 1981 https://www.refworld.org/legal/agreements/oau/1981/en/17306 accessed 20 March 2025.

45 Ibid note (article 4 and 5).

46 African Union (AU), 2009 African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa ("Kampala Convention") (23 October 2009) https://www.refworld.org/legal/agreements/au/2009/en/70509 accessed 21 March 2025.

47 See Article 11 of the Kampala Convention 2009

48 African Commission on Human and Peoples' Rights, Resolution on Migration and Human Rights (ACHPR/Res.114(XXXXII)07, 42nd Ordinary Session, Brazzaville, Republic of Congo, 2007) https://achpr.au.int/en/adopted-resolutions/114-resolution-migration-and-human-rights-achprres114xxxxii07 accessed 21 May 2025.

49 Ruta v Minister of Home Affairs and Others [2018] ZACC 52, 2019 (2) BCLR 178 (CC), 2019 (3) SA 329 (CC)

50 European Union, Charter of Fundamental Rights of the European Union (14 December 2007) 2012/C 326/02, art 18 https://www.refworld.org/legal/agreements/eu/2007/en/13901 accessed 22 April 2025

be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment."[51]

Additionally, at the EU level, there is the EU asylum framework, also known as the Common European Asylum System (CEAS).[52] The CEAS contains four important directives, three of which are irrelevant to the principle of non-refoulement. It consists of the Qualification Directive (Directive 2011/95/EU), the Asylum Procedures Directive (Directive 2013/32/EU), the Reception Conditions Directive (Directive 2013/33/EU) and the Return Directive (Directive 2008/115/EC).[53]

With regard to the Qualification Directive (Directive 2011/95/EU), member states have established clear standards for the granting of international protection. The principle of non-refoulement is enshrined in Article 21(1), which states that "Member States shall respect the principle of non-refoulement in accordance with their international obligations."[54] The Asylum Procedures Directive (Directive 2013/32/EU) has developed a simplified and clear standard to ensure access to fair procedures before an individual can be removed.[55] With respect to the Return Directive (Directive 2008/115/EC), EU Member States have adopted common standards for the return of illegal migrants by stipulating in Article 5 of the Directive that Member States must respect the principle of non-refoulement when implementing return decisions.[56]

With respect to the EU and case law, the European Court of Human Rights has found that the expulsion of an individual to a third country where he or she is at risk of being subjected to torture and inhuman or degrading treatment or punishment for such treatment is contrary to article 3 of the Convention. This was in the classic case of Soering v. United Kingdom [57]. In soering, s case, the court had to decide whether extraditing someone to a third country violates the European Convention on Human Rights, especially Article 3 relating to the prohibition of torture. The ECtHR ruled in favour of Soering by stating that:

> "In the Court's view, the decision by a contracting state to extradite a fugitive may give rise to an issue under Article 3, and hence engage the responsibility of that state under the Convention, where substantial grounds have been shown for believing that the person concerned, if extradited, faces a real risk of being subjected to torture or to inhuman or degrading treatment or punishment in the requesting country."[58]

The Court found unequivocally that the prohibition of torture and inhuman treatment under Article 3 of the ECHR is an essential element of non-refoulement and that a person may not be expelled to a place where there is a serious risk of such treatment.[59] Nevertheless, in its interpretation of Articles 13 and 15 of the European Convention on Human Rights in connection with the International Covenant on Civil and Political Rights of 1966 and the American Convention on Human Rights of 1969, the ECtHR also clarified that the principle of non-refoulement is generally recognized as an internationally accepted standard as far as the protection granted to refugees under the 1951 Refugee Convention is concerned. The court went on to conclude as follows:

> [It] would hardly be compatible with the underlying values of the Convention, that "common heritage of political traditions, ideals, freedom and the rule of law" to which the Preamble refers, were a Contracting State knowingly to surrender a fugitive to another State where there were substantial grounds for believing that he would be in danger of being subjected to torture; however, heinous the crime allegedly committed.

51 Ibid Article 19.

52 European Union, Directive 2011/95/EU on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection [2011] OJ L 337/9.

53 Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection [2011] OJ L 337/9.

54 Ibid note 53

55 Ibid note 53

56 Ibid note 53

57 Soering v United Kingdom (1989) 11 EHRR 439..

58 Ibid note 44 (para 111)

59 Court of Justice of the European Union (CJEU), Joined Cases C-411/10 and C-493/10, N. S. v Secretary of State for the Home Department and M. E. and Others v Refugee Applications Commissioner and Minister for Justice, Equality and Law Reform (21 December 2011) paras 75, 111.

> Extradition in such circumstances, while not explicitly referred to in the brief and general wording of Article 3 (art. 3), would plainly be contrary to the spirit and intent of the article, and in the Court's view, this inherent obligation not to extradite also extends to cases in which the fugitive would be faced in the receiving state by a real risk of exposure to inhuman or degrading treatment or punishment proscribed by that article (art. 3).[60]

3.2 A review of the legal framework applicable to Sisiku Ayuk Tabe and Co.

As already mentioned, Article 33 of the 1951 Refugee Convention is one of its most important articles, laying down the principle of non-refoulement. Despite being a cornerstone of refugee protection and adherence to non-refoulement, the article itself has several limitations. First, Article 33(2) provides for an exception to non-refoulement on grounds of internal security or public safety. The wording of the article demonstrates that the rights granted to refugees under this provision can be invoked. This is particularly true if there are reasonable grounds to believe that the refugee in question would pose a serious threat to the security of the member state in which he or she is seeking asylum. In the absence of a more precise definition of the term used, the legislation has created a loophole, given that states can sometimes exploit this provision for broad or politically self-driven reasons by interpreting simple criminal offences or even acts of civil disobedience as terrorism.

Another gap in Article 33(2) is its ambiguity. For example, terms such as "well-founded reasons," "security of the country," and "public order" are vague and lack further clarification. This lack of clarity can lead to subjective interpretation, inconsistent application, and sometimes abuse by states seeking to exclude or remove refugees: It may be difficult to reconcile this language with the Convention against Torture, which strictly prohibits return in cases where torture is likely, whereas the interpretation of Article 33(2) of the Refugee Convention could leave room for qualified refoulement. This means that refugees can be returned even if they are exposed to serious risks if the exception in Article 33(2) is invoked, as found in Sisisku and Co.

Another limitation of the Refugee Convention is that it does not provide an enforcement mechanism or monitoring body to ensure adherence. The absence of such a monitoring or enforcement body gives states discretion and limits their accountability for breaches, particularly where domestic or international court scrutiny is weak.

On the basis of the above analysis, the legal question here relates to the lawfulness extradition of Sisiku and Co to Cameroon, taking into consideration that both Nigeria and Cameroon have signed and ratified all refugee conventions and their subsequent protocol. Are there any exceptions to this principle that Nigeria could perhaps use to justify its actions? Even if Nigeria had a justification, given that the reading of the principle of non-refoulement is linked to the prohibition of torture, which is an example of Jus Cogens norms as defined under the Vienna Convention on the Law of Treaties, it gives the principle a status of a peremptory norm accepted by the international community as a norm from which no derogation is permitted.[61]

In an attempt to expand on some of these findings or questions, it is important to recall the facts once again. We are told that apart from Sisiku, who had been residing and working in Nigeria long before the crisis that finally resulted in his arrest, the rest of the defendants fled from Cameroon to Nigeria after the arrest warrant against them was issued.[62] According to the lead counsel for the accused, the Nigerian authorities knew about the arrest warrant and the circumstances leading to the issuance of the arrest warrant, as well as the consequences of returning the accused to Cameroon.[63] This was the main underlying reasoning of the Abuja High Court, which states that the arrest, detention and extradition is unconstitutional, as it vi-

60 Soering v The United Kingdom (Application No 1/1989/161/217) Council of Europe: European Court of Human Rights, 7 July 1989, para 88 https://www.refworld.org/jurisprudence/caselaw/echr/1989/en/40530 accessed 6 June 2024.

61 United Nations, Vienna Convention on the Law of Treaties (23 May 1969) United Nations Treaty Series, vol 1155, p 331, art 53 https://treaties.un.org/doc/Treaties/1969/05/19690523%2000-30%20AM/Ch_XXIII_01p.pdf accessed 29 April 2025.

62 *Sisiku Ayuk Tabe and Others v Attorney General of the Federation and Others (Federal High Court, Abuja, 1 March 2019) FHC/ABJ/CS/85/2018 (unreported)*

63 Ibid note 41.

olates international treaties signed and ratified by Nigeria.[64] Aside from being unconstitutional, the court moved on to state that the decision to return Sisiku and Co violated the national law of Nigeria, which sought to protect asylum seekers and displaced persons residing in Nigeria. For example, the National Commission for Refugees, Migrants, and Internally Displaced Persons (NCFRMI).[65] Section 21(1) a-b of NCFRMI makes it clear that:

> "No person who is a refugee within the meaning of this Act shall be refused entry into Nigeria, expelled, extradited or returned in any manner whatsoever to the frontiers of any territory where—
>
> (a) his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion; or
>
> (b) his life, physical integrity or freedom would be threatened as a result of external aggression, occupation, foreign domination or events seriously disturbing public order…"[66]

Perhaps the Nigerian authorities would have invoked Article 33 of the Refugee Convention as well as the Nigeria Refugee Commission Act if the conditions were met. According to the requirements under article 33 (2), a refugee can be returned if there is a threat to the national security of the host country (National Security and Public Danger) or if his proven criminal nature and history poses a danger to the community (both present and future threats). In terms of Part I(2) (a-b) of the Nigeria Refugee Commission Act, the act shall not pertain to a refugee who constitutes a threat to the security of Nigeria or who has been adjudicated by a court for a serious offense within the meaning of the Conventions as contained in Schedules 1-3 to this Act.[67]

The problem with Article 33 of the refugee convention is that the framers did not clearly define what acts constitute a threat to the national security of the state concerned. However, Lauterpacht and Bethlehem are of the opinion that in order for the exception to apply, it must be demonstrated in each individual case that the fugitive constitutes a present or future danger to the host country. The danger must be very grave and not trivial, and it must threaten the national security of the host country.[68]

According to Article 33(2) of the Refugee Convention and Part I (2) (a-b) of the Nigeria Refugee Commission Act, there is no substantial evidence that the fugitives constitute a threat or danger to the internal security of Nigeria, nor is there any evidence that they have been convicted by a final judgement of a particularly serious criminal offense that constitutes a danger to the community of the said country. Furthermore, the European Court of Justice, in its interpretation of Article 33 (2) in the Reg v Bouchereau case, underscored that, going by State practice and the travaux preparatoires of the convention, offences with no specific impact on National Security are not to be regarded as threats to National Security.[69]

Although Article 32(2) appears to be an exception to the principle of non-refoulement, its applicability should be considered with primary caution where the implications of a broader interpretation are apparent.[70] The Executive Committee of the UNHCR has pointed out in its Conclusion No. 7 that, considering that the expulsion of a refugee may have very serious consequences, expulsion measures against a refugee should be taken only in very exceptional cases and after due consideration of all circumstances, including the possibility that the refugee may be referred to a country other than his or her country of origin.[71]

64 Ibid Ayuk Tabe note 63

65 National Commission for Refugees, Migrants and Internally Displaced Persons (NCFRMI), established originally as the National Commission for Refugees (NCFR) in 1989 by Decree No 52 following Nigeria's ratification of the 1951 Refugee Convention and the OAU Convention of 1969, later restructured and renamed as NCFRMI to include responsibilities for migrants and IDPs, https://ncfrmi.gov.ng accessed 20 July 2025.

66 Ibid note 66.

67 Ibid note 56.

68 Sir Elihu Lauterpacht and Daniel Bethlehem, The Scope and Content of the Principle of Non-Refoulement: Opinion (Cambridge University Press, June 2003) https://www.refworld.org/reference/research/cup/2003/en/49371 accessed 20 May 2024.

69 Regina v Bouchereau (Case 30/77, 27 October 1977) [1977] 2 CMLR 800, [1977] ECR 1999 http://www.bailii.org/eu/cases/EUECJ/1977/R3077.html accessed 10 June 2024.

70 UN High Commissioner for Refugees (UNHCR), UNHCR Note on the Principle of Non-Refoulement (November 1997) https://www.refworld.org/policy/legalguidance/unhcr/1997/en/36258 accessed 28 June 2024.

71 UN High Commissioner for Refugees (UNHCR), UNHCR Note on the Principle of Non-Refoulement (November 1997) https://www.ref-

In their opinion, both Zimmermann and Wennholz state that, for the most part, the principle of non-refoulement is a legal norm and that the exceptions under Article 32 should be interpreted narrowly.[72] This should have been the approach adopted by the Nigerian authorities, considering that Nigeria is a party to the 1951 Convention and that its subsequent protocol has the obligation to protect refugees in her territory. The obligations and duties of states with respect to asylum seekers were reiterated in UN Resolution A/RES/54/146, which asserts that the protection of refugees is the primary responsibility of states.[73] The same Resolution called on the parties to cooperate with the UNCHR and aid in the search for durable solutions to refugee problems, including voluntary repatriation, local integration and third country resettlement.[74]

Although the cooperation of Nigerian authorities with the Cameroonian government during the extradition of Sisiku and Co. was denounced by the UNHCR as a violation of international refugee law and the associated protocol, the Nigerian government proceeded to enable the extradition of the fugitives.[75] This blatant violation of international law by Nigeria without consequences raises questions about the shortcomings of enforcement mechanisms in international refugee law. This is a lacuna in international law that ought to be bridged.

Furthermore, the 1951 Refugee Convention provides protection only to international protection applicants who are outside their original country or place of residence. This means that an asylum seeker must be outside the country where persecution exists to be provided protection.[76] The Convention only protects fugitives who have found themselves or have already arrived in the country. This loophole has not only weakened the aim and purpose of the convention but also allowed member states to take measures (known as anti-migrant walls) in an attempt to prevent asylum seekers from arriving in their country. In 2011, in an attempt to prevent the influx of migrants from developing countries from arriving in Greece, Greece began erecting anti-migrant walls. [77] In 20215, after fierce criticism from the EU, Hungary proceeded to erect a fence around her territorial borders in an attempt to prevent asylum seekers from entering the country. The move was widely denounced by the UNHCR, who considered Hungary's actions to be incompatible with international law and EU law.[78] Notwithstanding the status of non-refoulement as a fundamental legal obligation, prohibition is frequently violated by contracting states in both Africa and Europe. Notwithstanding the status of non-refoulement as a fundamental legal obligation, its implementation is flawed, with states often prioritizing their sovereignty and national security over humanitarian obligations.

3.3 Refugee law and State Sovereignty in Sisiku and Co

If a state signed or ratified a treaty, whether international or regional, it is bound to comply with its obligations. Looking at the present facts, the most relevant applicable body of law is the international refugee law, which imposes obligations on both Nigeria and Cameroon by virtue of their signatory status. Nigeria's legal obligation under international refugee law, in particular the 1951 Refugee Convention and the OAU Refugee Convention,[79] prohibited the extradition or deportation of persons like Sisiku and Co to Cameroon, where there was a substantial risk of persecution, torture or an unfair trial. Nigeria's obligation under the principle of non-refoulement was crystal clear, given that Sisiku and Co were registered asylum seekers or, at the very least, persons in need of protection. Her forcible removal in the absence of due process and extradition proceedings violated both Nigerian and international procedural law.

world.org/policy/legalguidance/unhcr/1997/en/36258 accessed 28 June 2024

72 Andreas Zimmermann and Philipp Wennholz, 'Article 33 (2)' in Andreas Zimmermann (ed), The 1951 Convention on the Status of Refugees and its 1967 Protocol: A Commentary (Oxford University Press, Oxford 2011) para 2

73 UN General Assembly, Resolution Adopted by the General Assembly [on the report of the Third Committee (A/54/600)] 54/146, 22 February 2000, para 7, Office of the United Nations High Commissioner for Refugees, A/RES/54/146 https://www.refworld.org/legal/resolution/unga/2000/de/30550 accessed 8 June 2024

74 Ibid Para 12.

75 Ibid note 61.

76 Ibid note 73

77 Dimitriadi, 'A Steel Fence for Europe's External Borders' (Border Criminologies Blog, 2023) https://blogs.law.ox.ac.uk/border-criminologies-blog/blog-post/2023/05/steel-fence-europes-external-borders accessed 16 July 2024.

78 Krisztina Than, 'Hungary's Anti-Migrant Policies May Violate International Law – UNHCR' (Reuters, 2016) https://www.reuters.com/article/world/hungary-s-anti-migrant-policies-may-violate-international-law-unhcr-idUSL5N18975X/ accessed 16 July 2024.

79 Ibid note 78

Cameroon, on its part, was also obliged, after taking the detainees into custody, to guarantee a fair trial, protection from arbitrary detention and humane treatment in accordance with the International Covenant on Civil and Political Rights (ICCPR) and the Convention against Torture.[80] In view of the available facts, both countries violated their obligations under international law. Nigeria violated the principle of non-refoulement by deporting asylum seekers in the absence of legal proceedings, while Cameroon violated the right to a fair trial and the right to protection from arbitrary detention. Furthermore, it may be argued that in the case of Sisiku and Co., the Nigerian government had the option of either surrendering Sisiku and Co. to the Cameroonian government in order to maintain good diplomatic relations with its neighbour (Cameroon) by suppressing separatist movements, or respecting its obligations under international law. However, it opted not to initiate formal extradition proceedings, which suggests that political expediency prevailed over the rule of law. By doing so, the integrity of the international refugee protection system can be undermined.

80 Articles 6 and 7 of ICCPR (n 3) and Article 3 of the Convention Against Torture (n 42).

4. Conclusion/Recommendation

Detention and forced extradition of Sisiku Ayuk Tabe and others from Nigeria to Cameroon represents a serious violation of the principle of non-refoulement, which is a universal principle of international refugee law. While being recognised as refugees and asylum seekers by the UNHCR, they were deprived of access to a fair trial and to protective mechanisms to which they are entitled under the 1951 Refugee Convention, the 1969 OAU Convention, the Convention against Torture and section 21(1) of Nigeria's NCFRMI Act.

In 2019, the Federal High Court of Nigeria upheld their appeal, declaring their deportation illegal and unconstitutional, thereby acknowledging that Nigeria had breached its binding legal obligations not to return persons to a country where they risk persecution or inhuman treatment. The case underscores the absoluteness and non-derogable nature of the principle of non-refoulement and exposes the tension between the national security interests of the state and the necessity to uphold international legal norms.

Finally, the Sisiku case is a sharp reminder that respect for the principles of refugee protection must be given the highest priority, even in politically tense situations. Non-compliance with the principle of non-refoulement undermines not only the rights of the affected persons, but also the credibility of the international refugee protection system and Nigeria's commitment to human rights. In light of this, legislative and institutional reforms to guarantee adherence to the principle of non-refoulement around the world are essential. Adherence to the principle of non-refoulement can be better guaranteed by improving national legislation, strengthening international legal frameworks, building institutional capacity and promoting cooperation between governments and civil society organisations. Such efforts will ensure that asylum seekers are protected from further harm and are not forced to return to their country of origin. Against the background of the above analysis, the following is a list of key legislative and institutional measures that would contribute to strengthening this principle

- There is a need to strengthen domestic legal frameworks. To ensure this, there is a strong need for countries to explicitly incorporate non-refoulement into national law, especially immigration, asylum, and refugee protection laws. The aim of such an outcome is to ensure that there is a legal basis for providing protection to asylum seekers.

- Additionally, there is a need to establish clear-cut, transparent, and accessible procedures for asylum applications. The goal is to ensure that individuals are not expelled before their claims are fairly reviewed.

- Another recommendation is the need to strengthen international cooperation and legal frameworks. To achieve this goal, the universalisation of refugee protection has become essential. The aim is to cover the lacuna brought in by countries that may not be parties to the 1951 Refugee Convention or its Protocol. Efforts should be made to promote universal ratification and adherence to these instruments, as well as regional refugee protection frameworks, e.g., the OAU Convention in Africa and other regional organs.

- Furthermore, there is a need to strengthen regional human rights mechanisms such as regional human rights bodies like the European Court of Human Rights (ECHR) or the Inter-American Court of Human Rights, as well as the Africa Charter on Human and People's Rights, to enforce non-refoulement and hold states accountable for violations.

- Another level of recommendation involves institutional capacity building. This can be accomplished by introducing independent asylum bodies. The intention is to ensure that asylum-seeking procedures are managed by independent and impartial bodies to prevent political interference or biases that could undermine the principle of non-refoulement. These bodies should have the authority to challenge decisions made by authorities that would violate the principle.

- Strengthening the role of civil society by collaborating with and supporting non-governmental organisations (NGOs) that assist asylum seekers and refugees is inevitable. This is because NGOs can play a vital role in monitoring non-refoulement practises, providing legal aid, and advocating for policy changes.