

## Fairness in refugee status determination upon the transfer of competence to the national authorities of Cameroon

*Matsinkou Tenefosso Sydoine Claire<sup>1</sup> and Tinteu Yves Pauli<sup>2</sup>*

<sup>1</sup>National Center for Education,  
Ministry of Scientific Research and Innovation,  
PO Box 1721, CNE, Yaounde,  
Cameroon

<sup>2</sup>International Relations Institute of Cameroon,  
PO Box 1637, IRIC, Yaounde,  
Cameroon

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**ABSTRACT:** In 2011, the State of Cameroon took measures in view of the transfer of competence in matters of refugee status determination (RSD) from the United Nations High Commission for Refugees (UNHCR) to the national authorities by passing a decree on the organization and functioning of refugee status management organs. This work questions and evaluates measures that have been taken by the State in order to ensure that RSD will be carried out fairly when it shall take over. It proceeds by studying the various legal instruments that have been adopted by the State to govern future refugee status determination activities. The work arrives at the conclusion that measures taken to ensure fairness and impartiality in refugee status determination are insufficient and makes recommendations to this light. It however maintains that in spite of foreseeable shortcomings, it is important that the transfer of competence in matters of refugee status determination takes place since it relates to State sovereignty.

**KEYWORDS:** Cameroon, refugee, refugee status determination, displacement, protection, law.

### 1 BACKGROUND

The 1951 United Nations Geneva Convention Relating to the Status of Refugees in its Article 1(2) defines a refugee. The 1967 Protocol relating to the Status of Refugees amends this definition.

Refugee Status Determination is the procedure through which a person's claim for refugee status is established.

*A person is a refugee within the meaning of the 1951 Convention as soon as he fulfills the criteria contained in the definition. This would necessarily occur prior to the time at which his refugee status is formally determined. Recognition of his refugee status does not therefore make him a refugee but declares him to be one. He does not become a refugee because of recognition, but is recognized because he is one.*<sup>1</sup>

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<sup>1</sup>UNHCR, 1979, *Handbook on procedures and criteria for determining refugee status under the 1951 convention and the 1967 protocol relating to the status of refugees, reedited, Geneva, January 1992, HCR/IP/4/Eng/REV.1*

. According to the UNHCR Cameroon Fact Sheet, August 2013, on the 31<sup>st</sup> of December 2012, Cameroon counted 102,067 refugees and asylum seekers. Between January and August 2013, the number increased by 10,964 while in the month of August 2013, there were 485 new arrivals. These refugees and asylum seekers are mainly from the Central African Republic, Nigeria, Chad, and Rwanda. There is a proportion from numerous other countries.

The United Nations Statistical year book 2008 states that, “as part of its obligation to protect refugees on its territory, the country of asylum<sup>2</sup> is normally responsible for determining whether an asylum-seeker is a refugee or not. The responsibility is often incorporated into the national legislation of the country and, in most cases, is derived from the 1951 Convention”<sup>3</sup>. Cameroon has signed and ratified the 1951 Refugees Convention and the 1967 Protocol on the 19<sup>th</sup> of September 1967, and has enacted Law No 2005/006 of 27 July 2005 on the Status of Refugees in Cameroon. Cameroon is also a signatory to the 1969 Organisation of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa

Refugee status determination (RSD) is still done by UNHCR in many countries. According to the UNHCR Statistical Yearbook 2008, p42, out of the 154 countries for which data was available, governments were solely responsible for carrying out refugee status determination in 90 countries (58percent), while UNHCR alone was responsible for 44countries (29percent) and there was a shared responsibility between UNHCR and national authorities in 20 countries (13percent). There is increase effort by countries to establish their refugee status determination instances and procedures, and to carry out refugee status determination. Canada took over refugee status determination since 1989 when changes were made to the Immigration Act. RSD in Cameroon is carried out solely by the UNHCR although necessary measures are being taken for the State to take over.

UNHCR might carry out RSD for various reasons. Where the country concerned is not party to the Refugee Convention and/or Protocol and has not enacted refugee legislation. Where the State’s National RSD is non-functioning, or the national RSD procedure does not meet the minimum standards for fairness and efficiency. It may do so for a residual population of asylum seekers after a RSD handover to the national authorities or for the purpose of identifying refugees with resettlement needs.

The State of Cameroon has taken a series of measures in order to take over RSD. Apart from enacting a Law on the Status of Refugees in 2005, Decree No 2011/389 of 28 November 2011 on the Organization and Functioning of Refugee Status Management Organs; Arrete No 0013/DIPL/CAB of 06 August 2012 Constituting the Composition of the Refugee Status Eligibility Commission; and Arrete No 014/DIPL/CAB of 06 August 2012 Notifying the Composition of the Refugee Appeals Commission were passed.

Preoccupations exist as to the capability of national organs to fairly carry out RSD. It is important to question the legislative provisions when we look at the shortcomings of individual State refugee status determination for countries where it already exists in Africa. A study carried out by Marina Sharpe, 2013 entitled “The 1969 OAU Refugee Convention and the Protection of People fleeing Armed Conflict and Other Situations of Violence in the Context of Individual Refugee Status Determination”<sup>4</sup> shows that out of the 45 States for which information was available, “35 had State run RSD systems, most of which shared similar characteristics, thus shortcomings as far as procedures are concerned”. In most countries RSD is done by an administrative eligibility committee with members from different government departments in which the UNHCR usually has an advisory observer status, except for rare cases. Appeals are often not available, and when they are available, the same eligibility committee sometimes with a few new members hears and decides the appeal. In addition, a judicial review is rarely available.

This work evaluates the various acts that have been taken in view of guaranteeing fairness in refugee status determination and the respect for the principle of non-discrimination as stated in Article 3 of the 1951 Refugee Convention. From the various acts it appears that while some necessary conditions have been put in place for fair RSD operations, there is still need for amelioration.

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<sup>2</sup> A country of asylum is the country where the asylum seeker seeks or obtains asylum; an asylum seeker being a person who has sought international protection and whose claim of refugee status has not yet been determined.

<sup>3</sup> UNHCR Statistics yearbook 2008, p 41

<sup>4</sup> Marina Sharpe (2013) (University of Oxford), *The OAU Refugee Convention and the Protection of People fleeing Armed Conflict and Other Situations of Violence in the Context of Individual Refugee Status Determination*, UNHCR Legal and Protection Policy Research Series, Division of International Protection, PPLA/2013/01

## **2 MATERIALS AND METHODS**

This work makes use resources from both primary and secondary sources. Primary materials used are the various texts adopted by the State of Cameroon in view of the transfer of competence in matters of refugee status determination from the United Nations High Commission for Refugees to the National Authorities of Cameroon. They are

- Law No 2005/006 of 27 July 2005 on the Status of Refugees in Cameroon
- Decree No 2011/389 of 28 November 2011 on the Organization and Functioning of Refugee Status Management Organs
- Arrete No 0013/DIPL/CAB of 06 August 2012 Constituting the Composition of the Refugee Status Eligibility Commission
- Arrete No 014/DIPL/CAB of 06 August 2012 Notifying the Composition of the Refugee Appeals Commission

Since RSD by the national authorities is not yet effective, the only way to predict its ability to guarantee fairness was to analyze the various texts that govern it as well as the social environment of the country. Analysis in many cases was done in comparison to the international standard as found in international texts.

Also, secondary sources of information such as articles, books and reports were also used to serve as support for analysis.

## **3 RESULTS**

### **3.1 CONDITIONS FOR FAIRNESS IN FUTURE RSD OPERATIONS BY THE CAMEROONIAN NATIONAL AUTHORITIES**

Decree No 2011/389 of 28 November 2011 on the Organisation and Functioning of Refugee Status Management Organs in Cameroon provides some conditions to favor fairness in future RSD. Although the Law does not expressly justify the organization and functioning of refugee status management organs, we can interpret its provisions as setting the basis for fairness in RSD.

#### **3.1.1 THE ORGANISATION OF REFUGEE STATUS MANAGEMENT ORGANS TO PROVIDE FOR FAIRNESS IN RSD**

The eligibility management organs are identified so as to meet the basic international requirement of RSD Procedures number iii set by the Executive Committee of the High Commissioner's program at its twenty-eighth session in October 1977.<sup>5</sup> The structure and their composition of these organs set basis for fairness and impartiality.

As far as the structure is concerned, it can be noticed that, applications are studied at different levels in order to limit the risk of mistake. There is a pre-examination of applications by the Technical Secretariat. Article 7 of Decree No 2011/389 of 28 November 2011 on the Organisation and Functioning of Refugee Status Management Organs in Cameroon provides for a Technical Secretariat within the ministry in charge of external relations which will be in charge of receiving applications from asylum-seekers in view of forwarding them to the commissions in charge of examining them. In case asylum seekers apply to the UNHCR, their applications shall be transferred to the Technical Secretariat by the UNHCR<sup>6</sup>. Though it is to be just a transit organ, its it will make sure that all necessary information is available for the Eligibility and Appeal Commissions to effectively do their work and that application are not rejected on grounds of incomplete files or information. Upon registration the Technical Secretariat might summon the asylum seeker, for discussions with a habilitated agent in charge of carrying out investigations and collecting complementary information which might be useful for RSD.<sup>7</sup> The Technical Secretariat will draft a report containing facts, legal analyses based on legal instrument in force and the sociological situation of the asylum-seeker.<sup>8</sup>

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<sup>5</sup> *Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees, Reissued Geneva, December 2011, p. 37.*

<sup>6</sup> *Applications for asylum are deposited at the level of the Technical Secretariat either by the asylum-seekers themselves or through the UNHCR.*

<sup>7</sup> *Article 9 (2) of the 2011 Decree.*

<sup>8</sup> *Ibid., Article 9 (7).*

The institution of a double level of examination also favours fairness in RSD. Article 16 of the 2005 Refugee Law provides for the creation of the Eligibility Commission and the Appeals Commission. This complies with UNHCR standards which require that “every rejected Applicant has the right to appeal a negative RSD decision<sup>9</sup>.” The law gives petitioners the possibility to contest any decision rendered by the Eligibility Commission if such a decision does not favour them.<sup>10</sup> Asylum-seekers may be required to appear personally before the Commission and may also be authorized to include new elements into their application files.<sup>11</sup>

The composition of organs in charge of RSD ensures impartiality and fairness. The 2011 Decree in Article 4(5) provides that no designated member may belong to the two commissions at the same time. This is in line with the UNHCR standard which provides that “The appeal should be determined by an Eligibility Officer other than the Officer who heard the claim in first instance”<sup>12</sup>. Cameroon in this light has advanced than some African countries like Uganda in which Marina Sharpe and Salima Namusobya, 2012 say that the same committee that sat at first instance hears and decides on appeal<sup>13</sup>. Secondly, members of the commissions are required to take an oath of faithfulness and impartiality before the High Court prior to the exercise of their functions.<sup>14</sup>

Also, there is the requirement for the commissions to sit and deliberate, in absolute majority of their members<sup>15</sup>. The existence of a quorum enables decisions taken to be representative of the opinions of many persons. To ensure that the quota required is always met, substitutes to members of the commission are appointed to replace them in case they are temporally unavailable or provisionally prevented from performing their functions.<sup>16</sup> In case a member dies or is permanently incapacitated, the Minister of External Relations appoints someone else to replace him for the rest of his mandate.<sup>17</sup>

The limitation of mandate makes greater room for impartiality. Excess longevity in any position might cause abuses of power. The mandates of each of the members are limited to three years renewable once.<sup>18</sup>

### 3.1.2 THE ESTABLISHMENT OF PROCEDURES THAT GUARANTEE FAIRNESS IN RSD

Some guarantees of fair treatment are given to refugees before during the examination of their applications. We have the application of the principle of non-refoulement which is provided for in Article 33 of the 1951 Refugee Convention and enshrined in Cameroonian law as per Article 7(1) of the 2005 Law on the Status of Refugees in Cameroon. Article 8 (2) of the 2005 law is to the effect that no asylum-seeker may be sent back before the Eligibility Commission renders its decision except for reason of national security, public order or in application of a decision rendered in conformity with the law. If the Eligibility Commission renders a negative decision and pending the decision of the Appeals Commission the asylum seeker may not be expelled<sup>19</sup>. In any case, even in case of expulsion upon rejection of application, an asylum-seeker may not be sent back or forced to stay in a country where his freedom is threatened for any of the reasons mentioned in the definition of the term “refugee”.<sup>20</sup>

The possibility of *Prima Facie* recognition of refugee status ensures fairness in the treatment of refugees. The 2011 Decree provides that in cases of a massive influx of persons seeking refugee status, and faced with the impossibility to determine

<sup>9</sup> UNHCR, *Procedural Standards for Refugee Status Determination Under UNHCR’s Mandate*, 20Nov 2003, available at <http://www.refworld.org/docid/42d66dd84.html> [accessed 18 October 2013] p 7-1

<sup>10</sup> Article 13 (1) of the 2011 Decree

<sup>11</sup> Article 13 (4) and (5) of the 2011 Decree

<sup>12</sup> UNHCR, *Procedural Standards for Refugee Status Determination Under UNHCR’s Mandate*, 20Nov 2003, available at <http://www.refworld.org/docid/42d66dd84.html> [accessed 18 October 2013] p 7-1

<sup>13</sup> Marina Sharpe and Salima Namusobya, 2012, *Refugee Status Determination and the Rights of Recognized Refugees Under Uganda’s Refugee Act, 2006*, *International Journal of Refugee Law*, Vol 24, p561

<sup>14</sup> Article 5, 2011 Decree.

<sup>15</sup> 2011 Decree, Article 6(2)

<sup>16</sup> *Ibid.*, Article 4 (3).

<sup>17</sup> *Ibid.*, Article 4 (1), (2) and (6).

<sup>18</sup> Article 4 of the 2011 Decree.

<sup>19</sup> Article 13 (6) of the 2011 Decree

<sup>20</sup> Article 8 (2) of 2005 Refugee Law.

their status on an individual basis, the Eligibility Commission can decide *prima facie* to recognize their refugee status subject to subsequent verifications.<sup>21</sup>

The requirement for a timely treatment of RSD files is important as it is often said that justice delayed is justice denied. The asylum seeker on arrival has 15 days to inform the national authorities of his presence and situation. The Technical Secretariat which receives the file has a two months period renewable three times<sup>22</sup>. Upon reception of the application file, the Eligibility Commission shall have a maximum deadline of two months renewable once to render its decision.<sup>23</sup> As for the Appeals Commission, it shall render its decision within a maximum deadline of two months non-renewable from the moment it is seized.<sup>24</sup> In addition, whenever discussions are required with an asylum-seeker, he has to be convened at least two weeks before the due date.<sup>25</sup> Asylum seekers have up to thirty days from the date they are notified of the decision of the Eligibility Commission to appeal<sup>26</sup>.

Moreover, procedures before both commissions will be free of charge.<sup>27</sup> The procedure remains free of any financial charges even if the State bears additional cost such as when the services of an interpreter are needed.<sup>28</sup> The requirement to justify decision by the commissions help prevent arbitrariness.

Considerations for family members guarantee impartiality in RSD. In cases of arrival of whole families, the recognition of the refugee status of the head of the family shall equally lead to the recognition of that of other family members.

Fairness in RSD is also ensured by providing specific guarantees for persons with special needs. The 2005 Refugee Law states that it applies to all asylum-seekers without any discrimination.<sup>29</sup> Provision is made for children and women. According to the UN Committee on the Rights of the Child, the refugee definition "... must be interpreted in an age and gender-sensitive manner..."<sup>30</sup> The procedure relating to RSD before national organs are gender-sensitive as per Article 9 (6) of the 2011 Decree which provides that the auditioning of a female asylum-seeker may be done, if she so wishes, by an agent of the same sex. The specific situation of unaccompanied children is taken into consideration<sup>31</sup> All unaccompanied children, subject to necessary verifications, shall benefit from the status of refugee.<sup>32</sup> Should an unaccompanied child be auditioned, the presence of a social worker shall be imperative.<sup>33</sup>

## **4 DISCUSSIONS**

### **4.1 THREATS TO FAIRNESS IN FUTURE RSD BY THE CAMEROONIAN AUTHORITIES**

Despite the conditions put in place to ensure fairness in RSD procedure upon transfer of competence to the national authorities, some elements are likely to give room for partiality in RSD. These are found in the organisation of the national refugee status management organs and their functioning.

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<sup>21</sup> Article 12.

<sup>22</sup> Article 9 (8) of the 2011 Decree.

<sup>23</sup> *Ibid.*, Article 10.

<sup>24</sup> *Ibid.*, Article 13 (2).

<sup>25</sup> *Ibid.*, Article 9 (3).

<sup>26</sup> *Ibid.*, Article 15 (3). The notification of decisions rendered by the commission to asylum-seekers, in itself, already meets with one of the international requirements relating to rules of procedure in RSD. See UNHCR, *Procedural Standards for Refugee Status Determination Under UNHCR's Mandate*, 20 Nov 2003, available at: <http://www.refworld.org/docid/42d66dd84.html> [accessed 18 October 2013 p. 6-1].

<sup>27</sup> Article 14 of 2011 Decree.

<sup>28</sup> *Ibid.*, Article 9 (4).

<sup>29</sup> Article 6 (1) of the 2005 Refugee Law

<sup>30</sup> UN Committee on the Rights of the Child, *General Comment No. 6 (2005)-Treatment of Unaccompanied and Separated Children Outside Their Country of Origin*, CRC/GC/2005/6, Sep. 2005 ("CRC, General Comment No. 6"), <http://www.unhcr.org/refworld/docid/42dd174b4.html>, para. 74.

<sup>31</sup> CRC, *General Comment No. 6*, paras. 7–8. See also, UNHCR, *Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum*, Geneva, 1997 p. 5, paras. 3.1-3.2. See also, UNHCR, UNICEF et al, *Inter-agency Guiding Principles on Unaccompanied and Separated Children*, Geneva, 2004, <http://www.unhcr.org/refworld/docid/4113abc14.html>, p. 13.

<sup>32</sup> Article 6 (2) of the 2005 Refugee Law.

<sup>33</sup> Article 9 (5) of the 2011 Decree.

As far as the organisation of the national refugee status management organs is concerned, shortcomings exist at the level of their structural organisation and composition. The structuring of organs exclude national jurisdiction. The 2005 Refugee Law states that decisions of the two commissions shall not be subject to any petition before national common law jurisdictions.<sup>34</sup> This provision might give room for abuses and rejection of applications on political or other grounds as an instrument of foreign policy. After all, foreign policy has influenced the refugee management system of many countries, more than it should. Michael L. Schoenholtz, (2005)<sup>35</sup> shows how after September 11, the United States of America tightened its refugee policies in favour of national security, disregarding the 1951 Convention, causing many asylum seekers to suffer prejudice.

The composition of the different commissions is also a source of preoccupation as the interest of the State seems to override the interest of asylum seekers. Law practitioners, social and humanitarian workers are a minority in the commissions, while political and security officials make up the majority. The compositions of the Commissions do not respect the specifications of the UNHCR as far as the qualifications of RSD agents are concerned<sup>36</sup>. National texts do not specify the qualifications of eligibility agents. The basis on which appointments are made is not stated. In addition, there are no specific provisions for training before and/or refresher in the course of duty.

Moreover, experts and UNHCR representatives are not given important places in the commissions. Though UNHCR's representative shall be present during the works of the eligibility commission as an observer, his participation in the appeals commission shall not be mandatory as he shall have to be invited<sup>37</sup>. It is not clear who shall do the inviting. Their exclusion from this stage of the procedure could lead to mistakes and partiality.

Some shortcomings can also be seen in the procedures and sociological realities of Cameroon. The first procedural shortcoming concerns the specific deadlines set for each operation. While some deadlines are too long, others may be made to become so. For example, possibility is given for the renewal of deadlines for each specific operation. Just the reception of applications at the Technical Secretariat and transmission to the Eligibility Commission, the deadline is two months renewable twice. By this, the deadline can go right up to six months. The risk of delay is a paradoxical situation because it is exactly what the law tried to prevent by setting deadlines. What is worse, the law does not state which authorities are competent to extend deadlines.

The fact that the commissions may deliberate without personally auditioning applicants may be considered as a major setback for the requirement of fairness. In fact, at the level of the commissions, their physical presence is optional.<sup>38</sup> Though their auditioning is assured at the level of the Technical Secretariat, it may be insufficient.

Special protection is provided for certain persons without sufficient precision. The 2011 Decree fails to define who is a child. Even though a definition has been provided for the term "unaccompanied children",<sup>39</sup> a definition of the term "child" was still necessary because Cameroon is party to many international instruments which set different age criteria for the definition.

The functioning of RSD is likely to be greatly affected by social ills. The existence of corruption in refugee management in Cameroon has already been highlighted by Angela BUTEL (2013)<sup>40</sup> who points out this social ill in refugee management in the Eastern Region of Cameroon by government officials.

<sup>34</sup> Article 17.

<sup>35</sup> Michael L. Schoenholtz, 2005, *Refugee Protection in the United States Post-September 11*

<sup>36</sup> These qualifications are found in UNHCR, *Procedural Standards for Refugee Status Determination Under UNHCR's Mandate*, 20Nov 2003, available at: <http://www.refworld.org/docid/42d66dd84.html> [accessed 18 October 2013] p. 4-3.

<sup>37</sup> Articles 2 (2) and 3 (2) of the 2011 Decree

<sup>38</sup> See Articles 10(2) and 13(14) of the 2011 Decree.

<sup>39</sup> *Supra*, p. 29. Also see UN Committee on the Rights of the Child, *General Comment No. 6 (2005)-Treatment of Unaccompanied and Separated Children Outside Their Country of Origin*, CRC/GC/2005/6, Sep. 2005, ("CRC, *General Comment No. 6*"), <http://www.unhcr.org/refworld/docid/42dd174b4.html>, para. 74.

<sup>40</sup> Angela BUTEL(2013), *Humanitarianism and the "National Order of Things": Examining the Routinized Refugee Response in Eastern Cameroon*, Honors Projects, Macalester College., p. 75-78.

## **4.2 RECOMMENDATIONS**

Given the numerous loopholes a number of proposals could be made in view of greater fairness in RSD upon transfer of competence to national authorities.

Concerning the organisational structure of RSD organs, it should be made possible for asylum-seekers to seize national jurisdictions to contest the decisions of the two commissions. This will go a long way to prevent them from seizing international jurisdictions based on the principle of complementary jurisdiction in international human rights law.<sup>41</sup> The State would fully exercise its sovereignty and save money which is always needed in following up cases before international jurisdictions

The composition of eligibility management organs should be reviewed to reflect the interests of asylum seekers. The ratio of political and security officials with that of jurists, social and human rights workers should be balanced. Security prerogatives will no longer override social ones as both will be well protected.

In addition, as far as the qualification of the members of the two commissions is concerned, minimum qualification requirements should be set down on which basis designations would be made. Also such persons should be subjected to compulsory training before and during their mandates. The support of the UNHCR could be sought to this effect.

For greater transparency and efficiency, the UNHCR representatives and experts should play a more important role within the commissions. They may be allowed to vote during deliberations at least for the early years of the transfer of competence. Also, the participation of the UNHCR representative and experts at the Appeals Commission should be made mandatory as with the Eligibility Commission.

With regards to the functioning of eligibility management organs and social ills, there are also recommendations. As a solution to the time problem, there may be a need for extensions to be well regulated in order to prevent abuses. The law should precise under what circumstance and on what grounds each deadline may be extended. It should equally precise the modalities authorities in charge of extending deadlines.

Auditioning of applicants by the commissions should be envisaged. However, in order to ensure total independence and sovereignty, these applicants should be excluded during deliberations. Also, the authorities in charge of ordering for their appearance should be stated. Moreover, the term "child" in this context should be well defined in the legal instruments in force.

As far as corruption is concerned, officials should be schooled on the dangers of practicing it. They may be provided with financial incentives which go beyond session indemnities. At the beginning of the RSD process, applicants should be informed of the procedures to report poor treatment and other forms of misconduct on the part of eligibility officers. Sanctions met out would deter them from getting involved in practices.

## **5 CONCLUSION**

Showing that RSD upon the transfer of competence to the national authorities of Cameroon is likely to suffer some shortcomings does not advocate for the continuous performance of this function by the UNHCR. It is a matter of State sovereignty and the State must conciliate between the security needs and the humanitarian requirement. In 2013, many armed soldiers from the Central African Republic were found hiding amongst refugees in Cameroon. In such cases, the government, the primary stake holder has the final say concerning refugee status.

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<sup>41</sup> *It is a principle of international law according to which an international jurisdiction may only declare itself competent over a matter if internal State remedies have been exhausted. However, the requirement of exhaustion of internal remedies is conditioned by the fact that such remedies exist, are accessible and are efficient.*

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