

# Realising the right to primary education in Cameroon

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## Summary

*Cameroon is party to all international and regional instruments providing for the right to education, and compulsory and free primary education in particular. The article examines Cameroon's compliance with the right to free education, based on the normative content of the right to education, defined by the United Nations Committee on Economic Social and Cultural Rights as compulsory and free universal access to primary education that is available, accessible, acceptable and appropriately adapted (known as the '4 A's'). The article reviews to what extent primary education is compulsory and free to all children in Cameroon; it focuses on the 4 A's framework and assesses the justiciability of the right. The article concludes that, although primary education is compulsory in the country, it is not yet available, accessible and adaptable, but is largely acceptable when it is available. Furthermore, the justiciability of the right to primary education is hindered by constitutional practices such as the lack of standing in court for private individuals, the lack of constitutional remedies in case of a violation of rights, and weak separation of powers, characterised by the pre-eminence of the executive.*

## 1 Introduction

Education is a basic human right that builds the capacity of individuals to claim other human rights. Primary education is a first step towards ensuring human development. The importance of primary education

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is underscored by the international community that calls for compulsory free primary education. This call is contained in international instruments such as the International Covenant on Economic, Social and Cultural Rights (ICESCR)<sup>1</sup>, which also explains state obligations for a detailed plan of action for the progressive implementation of the right to compulsory education free of charge for all.<sup>2</sup> The Convention on the Rights of the Child (CRC),<sup>3</sup> and the 1960 United Nations Educational and Cultural Organisation (UNESCO) Convention against Discrimination in Education also set out the right to free compulsory primary education.<sup>4</sup> These provisions for free and compulsory primary education are the substance of the political pledges made under the Dakar Framework for Action regarding the national Education for All (EFA) action plan.<sup>5</sup>

This article focuses on Cameroon which is often referred to as 'Africa in miniature',<sup>6</sup> for having all the characteristics of Africa broadly. At the regional level, the right to education is secured in the African Charter on Human and Peoples' Rights (African Charter)<sup>7</sup> and the 1990 African Charter on the Rights and Welfare of the Child (African Children's Charter).<sup>8</sup> Cameroon is party to all these instruments,<sup>9</sup> providing for the right to education which is enshrined in paragraph 23 of its Constitution's Preamble in these words:

The state shall guarantee the child's right to education. Primary education shall be compulsory. The organisation and supervision of the education shall be the bounden duty of the state.

Given that governments hold the primary responsibility to fulfil the realisation of the right to education and primary education, in

<sup>1</sup> ICESCR, General Assembly Resolution 2200A (XXI) of 16 December 1966, entry into force 3 January 1976, arts 13(2)(a) and 14.

<sup>2</sup> Art 14 and ESCR Committee General Comment 11.

<sup>3</sup> Art 28(1).

<sup>4</sup> Art 4(a).

<sup>5</sup> The Dakar goals set at the World Education Forum (2000).

<sup>6</sup> Expression used by the first President of Cameroon in his early speeches, as quoted by C Tamasang 'The right to water in Cameroon: Legal framework for sustainable utilisation' 9, paper prepared for a workshop entitled 'Legal aspects of water sector reforms' organised in Geneva from 20 to 21 April 2007 by the International Environmental Law Research Centre (IELRC) in the context of the research partnership 2006-2009 on Water Law sponsored by the Swiss National Science Foundation (on file with author).

<sup>7</sup> Art 17 African Charter on Human and Peoples' Rights, adopted on 27 June 1981 by the OAU Assembly, OAU Doc CAB/LEG/67/3 Rev 5 (1982) 21 *International Legal Materials* 58; C Heyns & M Killander (eds) *Compendium of key human rights documents of the African Union* (2010) 29, entered into force on 21 October 1986.

<sup>8</sup> Art 11 African Charter on the Rights and Welfare of the Child, OAU Doc CAB/LEG/24.9/49 (1990), entered into force on 2 November 1999.

<sup>9</sup> ICESCR (ratification 27 June 1984); CEDAW (ratification 23 August 1994); CRC (ratification 11 January 1993); African Charter (ratification 20 June 1989); African Children's Charter (ratification 5 September 1997).

particular, the aim of the article is to examine to what extent Cameroon complies with its international obligations related to the right to primary education.

The basic standard used to assess state compliance is the extent to which primary education is compulsory and free for all in the country. In addition, the extent to which primary education is available, accessible, acceptable and adaptable, is considered. This standard is prescribed by the Committee on Economic, Social and Cultural Rights (ESCR Committee) in its General Comment 13, which calls upon state parties to ICESCR to ensure the availability, accessibility, acceptability and adaptability of education or to comply with the '4-A right to education framework'.<sup>10</sup> In the course of this assessment, the extent to which the right to primary education is justiciable will also be considered.

The article is divided into four sections, including this introduction. The second section explains the substance of the right to primary education which entails its compulsory and free character, the need for a plan of action and the '4-As framework'. It investigates the application of each of these elements in the educational system of Cameroon. The third section examines the justiciability of the right to primary education and the final section provides concluding remarks.

## 2 Right to primary education

Primary education, understood as 'the main delivery system for the basic education of children outside the family',<sup>11</sup> is to be compulsory, free of charge and subjected to a detailed implementation plan and comply with the 4 A's.

### 2.1 Compulsory

The compulsory aspect of primary education emphasises the obligatory character of education which is to be given to all children without discrimination. To use the words of the ESCR Committee, 'neither parents, nor guardians, nor the state are entitled to treat as optional the decision as to whether the child should have access to primary education'.<sup>12</sup> The state is duty bound to ensure that all children attend primary school without any consideration based on culture or any other factor. Article 13(2)(a) of ICESCR provides: 'Primary education shall be compulsory and available free to all.' Accordingly, primary education should be

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<sup>10</sup> The right to education, Preliminary Report of the Special Rapporteur submitted in accordance with African Commission Resolution 1998/33, K Tomasevski, UN Doc E/CN.4/1999/49, paras 51-56; also K Tomasevski Human rights obligations in education: The 4-A scheme (2006).

<sup>11</sup> ESCR Committee General Comment 13, para 9.

<sup>12</sup> ESCR Committee General Comment 11, para 6.

mandatory; it should be at the disposal of everyone, free of charge and should include free school supplies.

In Cameroon, there is no legislation allowing children to be absent from primary school for cultural, religious, family or other reasons. On the contrary, all national legislation encourages parents to send their children to primary schools. Primary education is thus compulsory in Cameroon.

## 2.2 Free of charge

Primary education shall be offered to all without fees charged to the children, parents and guardians. This requirement prohibits all fees, including indirect costs such as compulsory charges levied on parents or expenditure uniforms.<sup>13</sup> The imposition of compulsory uniforms to be worn by learners should entail their availability free of charge to learners from poor families.<sup>14</sup> As will be shown under the section allocated to economic accessibility, primary education is far from being free in Cameroon.

## 2.3 Plan of action

Under the right to primary education framework, state parties to ICE-SCR are compelled to 'adopt a plan of action'<sup>15</sup> with clear deadlines<sup>16</sup> to give effect to the right. In this regard, the plan of action for the progressive implementation of compulsory education free of charge for all is a 'continuous obligation', compelling states to monitor and improve a plan to have a permanent universal free education for all.<sup>17</sup> Cameroon has endorsed a sector plan for primary education,<sup>18</sup> which will be discussed throughout the article. The following sections investigate the 4 A's.

## 2.4 Availability

According to the ESCR Committee,<sup>19</sup> availability requires that working educational institutions and programmes are available in sufficient quantity. It also entails facilities at schools such as well-equipped classrooms, libraries, sanitation facilities for both sexes, safe drinking water, trained and well-paid teachers and teaching materials.

<sup>13</sup> n 12 above, para 7.

<sup>14</sup> UNESCO *The right to education free of charge for all: Ensuring compliance with international obligations* (2008) 6.

<sup>15</sup> General Comment 11, para 9.

<sup>16</sup> n 15 above, para 10.

<sup>17</sup> UNESCO (n 14 above) 3.

<sup>18</sup> UNESCO EFA Global Monitoring Report 'Reaching the marginalised' (2010) 253; figure 4.17. The Sector plan for primary education is included in the 1998 Cameroon Education Framework Act 633/PJ L./ATN.

<sup>19</sup> General Comment 13, para 6(a).

In the Cameroonian context, primary education consists of ‘the first six grades of compulsory schooling, normally provided to six to 12 year-olds (though with high repetition rates, students up to age 14 are often included)’.<sup>20</sup>

In order to ensure the availability of education, the government uses numerous policies. It started the process of reform and decentralisation of its education system after the World Conference on Education for All held in Jomtien, Thailand, in 1990. This reform undertaken through the Cameroonian decentralisation policy in a context of educational reform and economic crisis was informed by both the principles articulated in Jomtien and by the realities of an economic crisis, the negative effects of which have marked all sectors of national activity, including the education sector.<sup>21</sup>

The Cameroonian decentralisation policy in a context of educational reform and economic crisis entails, among others, the adoption of the Cameroon’s Education Framework<sup>22</sup> which set up the legal framework for the reform; aiming, among others, to universalise free primary education. In addition, the 2000 Dakar Framework for Action promoting education for all<sup>23</sup> gave another impulse to ensure the availability of free primary education. Through this framework, states commit themselves to:

- expanding and improving comprehensive early childhood care and education, especially for the most vulnerable and disadvantaged children;<sup>24</sup>
- eliminating gender disparities in primary and secondary education by 2005, and achieving gender equality in education by 2015, with a focus on ensuring girls’ full and equal access to and achievement in basic education of good quality;<sup>25</sup> and
- improving all aspects of the quality of education and ensuring excellence of all so that recognised and measurable learning outcomes are achieved by all, especially in literacy, numeracy and essential life skills.<sup>26</sup>

Informed by these commitments, and in order to ensure free and compulsory primary education, Cameroon formally adopted an EFA National Plan in 2002. This plan aims to serve both as a strategy

<sup>20</sup> ‘Cameroon — Preprimary and primary education’ <http://education.stateuniversity.com/pages/229/Cameroon-PREPRIMARY-PRIMARY-EDUCATION.html> (accessed 17 February 2011).

<sup>21</sup> UNESCO *Education policies and strategies 7 — Decentralisation in education: National policies and practices* (2005) 25.

<sup>22</sup> Act 633/PJ L/ATN, adopted in 1998 (n 18 above).

<sup>23</sup> The goal of Education for All was adopted in Dakar, Senegal, from 26 to 28 April 2000 through the Dakar Framework for Action.

<sup>24</sup> Art 7(i).

<sup>25</sup> Art 7(v).

<sup>26</sup> Art 7(vi).

document at the national level and as a tool to be used by development partners at continental and international levels. It comprises a decentralisation methodology and an implementation strategy, the time frame for its operationalisation is divided into three stages: short term from 2003 to 2005, medium term from 2006 to 2010, and long term from 2011 to 2015.<sup>27</sup> Still to improve the availability of education, Cameroon uses priority six of Cameroon's Poverty Reduction Strategy Paper (PRSP)<sup>28</sup> aimed at strengthening human resources and the social sector and facilitating the integration of vulnerable groups into the economy to cater for the right to education.<sup>29</sup>

In assessing free primary education, the General State of Education Workshop held in May 1995 in Yaoundé, Cameroon, provided a general consensus calling for free and compulsory basic education for all. As a result, the principle of free primary education was underlined by the government's order of February 1996 that organises education in the country,<sup>30</sup> and was translated into the Finance Law 2000/8 of 30 June 2008.<sup>31</sup> In addition, through Decree 2004/320 of 8 December 2004, to ensure the availability of education, the government created three ministries: one in charge of basic education (nursery and primary schools), the other in charge of secondary education (general and technical) and the last one in charge of higher education.

Against the background of these policies aiming to ensure education for all, Cameroon attempted to ensure the availability of primary education. In this respect, having received the HIPC funds of CFAF 16,66 million, 3 768 primary schools were built from 2001 to 2005, and 1 498 classrooms by development partners (Japan and the African Development Bank). More than a thousand teachers were recruited.<sup>32</sup> The implementation of the education sector strategy was successful through rational management of personnel, and computers were set up in various schools to enhance the quality of services provided.

<sup>27</sup> UNESCO (n 21 above) 26.

<sup>28</sup> The PRSP is the World Bank-IMF-sponsored framework for poverty reduction. It is important to note that attached to the 1996 Heavily Indebted Poor Countries (HIPC) initiative characterised by timelines associated with debt reduction.

<sup>29</sup> The other priorities of the PRSP are: promoting a stable macro-economic framework; strengthening growth by diversifying the economy; revitalising the private sector as the main engine of growth and a partner in delivering social services; developing basic infrastructures and natural resources while protecting the environment; accelerating regional integration in the framework of the Economic and Monetary Union of Central Africa (CAEMC/CEMAC); and improving the institutional framework, administrative management and governance. Also, the Cameroonian government's strategy to fight against poverty as presented by the government of Cameroon in April 2003 at <http://www.imf.org/external/pubs/ft/scr/2003/cr03249.pdf> (accessed 16 June 2008).

<sup>30</sup> Order 20/B1/1464/MINEF/MINEDUC/CAB/ of 13; art 2 of the Order indicates that primary education is free.

<sup>31</sup> Art 11(3) of this law emphasises that primary education is free.

<sup>32</sup> IMF Country Report 06/260 of July 2006, para 213.

Furthermore, to ensure the continuation of education in rural areas, the government adopted a circular on rationalising the management of national education staff.<sup>33</sup> Accordingly, teachers remain in their working posts and may be transferred only after at least three academic years in the initial school, and five years for administrative personnel, except in case of transfer to join one's family or for health reasons where the submission of proof is required.

In spite of these measures, many schools still lack teachers, especially in rural areas where conditions do not attract them. In fact, most rural areas have no electricity or infrastructure and, consequently, teachers are reluctant to settle in such areas. Most of those employed there are trained teachers waiting to be on the government pay roll and are paid by the pupils' parents.<sup>34</sup> In such schools, teachers are very often absent or late due to the bad quality of roads and bridges.<sup>35</sup>

In this regard, on 27 February 2006, there were reports on schools without teachers in the country. For instance, in Balepipi Government Primary School, made up of three old huts, located around 300 kilometres northwest of Douala, there was a 'chronic shortage of teachers' because teachers of the school who were paid by the pupils' parents had gone on strike after 30 months without receiving their monthly salary of 10 000 FCFA (US \$23,60).<sup>36</sup>

Ironically, the Balepipi Primary School is located only 300 kilometres from Douala, the economic capital of the country. What about schools in the rural areas located thousands of kilometers from towns? Kodo, a statistician involved in the School Charter Project, answers in these terms:<sup>37</sup>

When you leave the town and travel into the country side in any direction, you will be able to gauge the extent of the disaster: one-room schools (with a single teacher responsible for six different levels), twinned courses taught by individuals with no appropriate training, establishments where more than 85% of teachers are unpaid volunteers, etc. Reading today's official statistics, you might think the government is mocking the educational community.

<sup>33</sup> Circular Note B1/1464/MINEDUC/SG/DESG/DRH/ of 2 July 2003.

<sup>34</sup> Telephone conversation with Maurice Kamga who worked as a teacher and primary school headmaster in rural areas for more than 30 years and is now on pension (3 March 2011).

<sup>35</sup> More insight on the accessibility of education in Cameroon will be provided in section 3 of this article (section 3.2 below).

<sup>36</sup> Education International '[2006-02-27] Cameroon: School without teachers, teachers without schools' <http://www.ei-ie.org/en/article/show.php?id=33&theme=educationforall> (accessed 9 June 2008). It is important to note that this happened in spite of the adoption of Decrees 2000/048, 2000/049 and 2000/050 of 15 March 2000 and, most importantly, Decree 2002/041 of 4 February, which improves teachers' working conditions such as the increase of retirement age in the higher education sector as well as an increase in salaries.

<sup>37</sup> As above.

Sustaining this view, the Cameroonian Millennium Development Goals (MDGs) Progress Report at Provincial Level indicates the need to build more classrooms and school infrastructures in order to reduce the number of learners per classroom.<sup>38</sup>

In the same vein, it is argued that classes are overcrowded, teachers are in short supply and inadequately trained, and school hygiene and sanitation facilities are inadequate.<sup>39</sup> A study by the Ministry of Education and the Ministry of Youth and Sports in 2004 found that elementary schools only had sufficient seats for 1,8 million students, whereas 2,9 million students went to school.<sup>40</sup> The study also showed that the northern provinces were severely neglected. This was reflected in the fact that teachers appointed in the three provinces (Adamawa, North and Extreme North) of that region represented only 5,7 per cent of all teachers working throughout the 10 provinces in the country. In addition, several schools in the region had no water or sanitation.<sup>41</sup>

In these schools, teachers ended up becoming volunteers because they were not paid for 10 to 40 months. In the meantime, 4 000 qualified teachers were jobless.<sup>42</sup> The precarious situation of teachers which is characterised by difficult working conditions<sup>43</sup> was acknowledged by Cameroon which linked such conditions to the effects of the economic crisis.<sup>44</sup> There is an urgent need to ameliorate teachers' conditions and employ many more teachers to ameliorate the availability of primary education.<sup>45</sup>

Notwithstanding the official attachment of Cameroon to international human rights standards,<sup>46</sup> as demonstrated by the adoption of a plan of action and several other policies, the presence of schools without teachers, the lack of school buildings for all grades, the lack of proper sanitation at school and the neglect of schools in rural areas, show that primary education is not yet available for all in the country.

<sup>38</sup> December 2003 Cameroon MDGs Progress Report at Provincial Level, 6.

<sup>39</sup> 'The right to education in Cameroon' <http://www.gcicameroon.org/education.htm> (accessed 31 March 2011).

<sup>40</sup> As above.

<sup>41</sup> As above.

<sup>42</sup> As above.

<sup>43</sup> Cameroon's second periodic report (2006) para 299, [http://www.achpr.org/english/\\_info/statereport\\_considered\\_en.html](http://www.achpr.org/english/_info/statereport_considered_en.html) (accessed 17 May 20011).

<sup>44</sup> As above.

<sup>45</sup> MDGs Progress Report (n 38 above) 5.

<sup>46</sup> Para 5 of the Preamble of the Cameroonian Constitution reads: '[We] affirm our attachment to the fundamental freedoms enshrined in the Universal Declaration of Human Rights, the Charter of the United Nations and the African Charter on Human and Peoples' Rights and all duly ratified international conventions relating thereto.'



## 2.5 Accessibility

According to the ESCR Committee,<sup>47</sup> an accessible education system has three features:

- a non-discriminatory education system where everybody is allowed in the classroom;
- physical accessibility. School institutions should be within a safe physical reach, or via modern technology such as a 'distance learning' programme; and
- an economic accessibility characterised by an affordable education for all at secondary and tertiary level and a free education at primary level.

### 2.5.1 Non-discriminatory accessibility

Every state party to ICESCR must afford equal access to primary education for all children of school-going age residing in their territory, including foreign nationals and irrespective of their legal status in the country.<sup>48</sup>

The Cameroonian Constitution guarantees the right to equality and the right not to be discriminated against in these terms: 'All persons shall have equal rights and obligations.'<sup>49</sup> The right to equality and the prohibition of discrimination apply to all sectors, including education. Thus, everyone, boys and girls, should have equal access to school and should not be discriminated against on any ground at school.

Free universal access to primary school was one of the main objectives of the decentralisation policy echoed in the 1998 Cameroon's Education Framework Act.<sup>50</sup> One of its main objectives was to facilitate access to school for all children, specifically in the most disadvantaged communities.<sup>51</sup> As noted earlier, the country committed itself to 'eliminating gender disparities in primary and secondary education by 2005, and achieving gender equality in education by 2015, with a focus on ensuring girls' full and equal access to and achievement in basic education of good quality'.<sup>52</sup>

However, the statistics are not encouraging. In the Adamawa Province, for example, it is reported that 'girls' enrolment, attendance and completion rates are of particular concern due to increased burdens in the home and lack of girl-friendly environments in schools'.<sup>53</sup> Nev-

<sup>47</sup> General Comment 13, para 6(b).

<sup>48</sup> ESCR Committee General Comment 13, para 34.

<sup>49</sup> Preamble of the Constitution, para 6.

<sup>50</sup> Act 633/PJ L./ATN (n 22 above).

<sup>51</sup> UNECSO (n 21 above) 27.

<sup>52</sup> Art 7(v).

<sup>53</sup> UNICEF Humanitarian Action Update, Cameroon, 4 June 2008.

ertheless, to enhance the inclusiveness of girls, since 2000-2001, the government introduced several pedagogic innovations, including:

- School, Friend of Children, Friend of Girls: This initiative emphasises a respect for the rights of the child, a healthy school environment which considers the health of the child, promotes gender equality in an environment where the right to participation of learners, families and communities matters;<sup>54</sup>
- 'Big Sister' initiative. Accordingly, based on the African culture, the eldest of the girls take care of the very young ones, especially little girls who are beginners at school;<sup>55</sup>
- Community Pre-school Centre which is a pre-school set up for boys and girls aged between three and five years old.<sup>56</sup>

Although these initiatives should be commended, so far only 77 per cent of girls eligible to attend primary school are in fact enrolled, whereas 88 per cent of eligible boys are enrolled in primary schools.<sup>57</sup>

As far as the schooling of children with disabilities is concerned, these children are not included as nothing or very little is done to accommodate them at schools. Consequently, children with disabilities are unable to access education.<sup>58</sup> The government should strive towards the reasonable accommodation of learners with disabilities. In this respect, there is a need to equip primary schools with Braille for blind learners, to set up ramps to facilitate access for wheelchairs and to have lifts to ensure that physically-impaired learners access classrooms and offices. The first step in accommodating persons with disabilities in primary schools is the ratification of UN Convention on the Rights of Persons with Disabilities, which provides guidance on how to ensure the rights to education for learners with disabilities.

Overall, though Cameroon strives to ensure non-discriminatory access to primary education, a lot more needs to be done to enrol more girls in primary schools and to give equal access to learners with disabilities, hence the conclusion that access to primary education is still discriminatory in the country.

### 2.5.2 Physical accessibility

Physical accessibility of schools entails a location of schools within a short distance or the use of appropriate distance-learning methods.<sup>59</sup>

<sup>54</sup> Cameroon's second periodic report (n 43 above) para 309.

<sup>55</sup> As above.

<sup>56</sup> As above.

<sup>57</sup> Cameroon's third report (2010) para 281 (see overview of primary education in 2008); [http://www.achpr.org/english/\\_info/statereport\\_considered\\_en.html](http://www.achpr.org/english/_info/statereport_considered_en.html). (accessed 17 May 2011).

<sup>58</sup> 'Cameroon — Disabled children' <http://www.helpfornonprofit.com/harbour-center-cameroon.html> (accessed 15 March 2011).

<sup>59</sup> ESCR Committee General Comment 13.

This subsection focuses on the following questions: To what extent are schools physically accessible or to what extent are modern technologies such as distance-learning schemes used to bring school closer to those who are not within the physical reach of the school?

The 1998 Cameroon's Education Framework Act,<sup>60</sup> referred to earlier, also aims to ensure physical access by bringing the schools to the local community. However, in some parts of the country, rural schools, specifically, are still located far from people's houses and pupils have to walk several kilometres to school. Furthermore, as alluded to earlier, learners who are physically impaired cannot access school premises. The government should ensure that primary schools are close to people's homes and provide a system for those who are unable to reach schools. This can be done by putting emphasis on distance learning which is yet to be a reality at primary school level.

### 2.5.3 Economic accessibility

At the primary level, the education for all is yet to be a reality<sup>61</sup> in a country where several families are bogged down by the price of learning materials, uniforms and other school-related expenses, as well as the payment of teachers' salaries by learners' parents.<sup>62</sup> In her 2006 Global Report on education, the UN Special Rapporteur on the Right to Education, Tomasevski, located Cameroon in the group of countries without free education.<sup>63</sup> Her argument was based on Cameroon's report to CRC, clearly highlighting the cost paid by learners' parents:

- (a) parents of pupils, 80 per cent of whose required contribution goes to fund school operating costs;
- (b) decentralised local communities (communes), through programmes for the construction and equipment of schools and anti-malaria prophylaxis or 'nivaquinisation' for pupils;
- (c) parents' associations, which make an appreciable contribution to the outfitting and running of schools.<sup>64</sup>

In the same vein, while analysing Cameroons' report, the ESCR Committee clearly expressed its concern about 'the requirement of a parental contribution in the form of compulsory fees levied by primary schools which, in view of high levels of poverty, greatly restrict access to primary education, particularly for girls'.<sup>65</sup> Similarly, the CRC Committee,

<sup>60</sup> Act 633/PJ L/ATN (n 22 above).

<sup>61</sup> African Commission 31st ordinary session (n 43 above) para 3(a).

<sup>62</sup> Education International (n 36 above).

<sup>63</sup> K Tomasevski 'The state of the right to education worldwide free or fee: 2006 Global Report' 23.

<sup>64</sup> UN Doc CRC/C/28/Add 16 (2001) para 217; also Tomasevski (n 63 above).

<sup>65</sup> Concluding Observations of the ESCR Committee: Cameroon, 8 December 1999.

when considering the Cameroonian Report under article 44 of CRC,<sup>66</sup> noted the lack of free primary education as a matter of concern.<sup>67</sup> It consequently called upon Cameroon to '[i]ncrease its budgetary allocations for basic and secondary education; [but also to guarantee] that primary school is free by addressing indirect and hidden costs of basic education'.<sup>68</sup> In other words, Cameroon was called upon to implement its commitment to ensuring free primary education as provided for by the 1996 Government Order and the 2008 Financial Law.

In spite of several governmental commitments<sup>69</sup> to ensure free primary education, several charges, including fees 'for medical examinations and certificates as well as for examinations'<sup>70</sup> are still paid by learners' parents. Wilson argues that 'translating policy and legislative change that abolishes fees into the practice of free [primary] education has proved difficult'.<sup>71</sup> This observation clearly applies to Cameroon that is yet to translate its commitments on EFA into reality.

## 2.6 Acceptability

An acceptable education entails an education of which the 'form and substance, including curricula and teaching methods, [are] acceptable to students and in some cases to their parents; it should be relevant, culturally appropriate and of good quality'.<sup>72</sup> It should uphold the advancement of the child's other rights.<sup>73</sup>

Apart from the 1998 Cameroon's Education Framework Act<sup>74</sup> 633/PJ L./ATN which has the effectiveness of primary education as an objective, a presidential decree aiming to ensure greater quality of education

<sup>66</sup> Art 44(1) of CRC reads: 'States Parties undertake to submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have adopted which give effect to the rights recognised herein and on the progress made on the enjoyment of those rights.' The report mentioned above is the second periodic report of Cameroon (CRC/C/CMR/2) considered by the CRC Committee at its 1464th and 1466th meetings (see CRC/C/SR 1464 and CRC/C/SR 1466), held on 14 January 2010, and adopted, at the 1501st meeting, held on 29 January 2010.

<sup>67</sup> Concluding Observations of the CRC Committee: Cameroon CRC/C/CMR/CO/2 (2010) para 65.

<sup>68</sup> n 67 above, paras 66(a) & (d).

<sup>69</sup> In his annual message to the youth of the country, in 2000, President of Cameroon Paul Biya announced that public primary education would be free; also *Discours de son excellence Monsieur A Kontchou Kouomegni, ministre d'état chargé des relations extérieures du Cameroun, 56ème session de la Commission des Droits de l'Homme*, Geneva, 22 March 2000; and Tomasevski (n 53 above) 23.

<sup>70</sup> Tomasevski (n 53 above) 23.

<sup>71</sup> WD Wilson 'Human rights: Promoting gender equality in and through education' background paper for the Education for All Global Monitoring Report 2003/4 – Gender and education for all: The leap to equality 11 <http://unesdoc.unesco.org/images/0014/001469/146974e.pdf> (accessed 20 June 2010).

<sup>72</sup> General Comment 13, para 6(c); also Tomasevski 1999 Report (n 10 above).

<sup>73</sup> UNESCO (n 14 above) 3.

<sup>74</sup> Act 633/PJ L./ATN (n 22 above).

beyond mere revision of the curriculum was issued in 2002.<sup>75</sup> This piece of legislation aims to provide acceptable education from primary to tertiary level by 'ensuring better controlled distribution of roles, functions and actions'.<sup>76</sup>

However, the implementation of this policy is questionable because when Cameroon had 11 000 state primary schools, it had 55 266 primary school teachers in charge of three million pupils. This is an average teacher/student ratio of 1:54. The minimum standard set by UNESCO is one teacher per 45 students.<sup>77</sup>

Nevertheless, seeking an acceptable primary education, the country adopted a decision<sup>78</sup> laying down the procedures for the advancement of primary school pupils with a view to improving the efficiency of primary education. In this context, an order<sup>79</sup> was passed to reorganise the First School Leaving Certificate Examination in the English and French-speaking parts of Cameroon; it also comprised calls for further reflection and understanding of the learner rather than his memory. Through these measures, Cameroon attempts to ensure that curricula and teaching techniques are adequate to meet basic learning needs such as literacy, oral expression, or numeracy and individual rights of learners, use of language, parental preference and discipline of learners.

However, Chia, a former secondary school teacher and teacher's trainer, is of the view that the government is not doing a good job as far as the appropriateness of education is concerned. According to him,<sup>80</sup>

[t]he problem that exists in the Cameroonian education system, especially in elementary and secondary education, is the problem of quality teaching and that of quality learning. The basic problems in the elementary schools are related to language skills acquisition. Such skills include inability to write, spell, speak and understand. Students on entry to secondary school class cannot write their notes, cannot speak and understand even what they may read. They are very much unable to read a printed text to a level of understanding and response. Because of this problem, the students are only interested in playing as they face learning difficulties. Play is an alternative to learning the curriculum.

In fact, as correctly observed by UNICEF:<sup>81</sup>

<sup>75</sup> Presidential Decree 2002/004 of 14 January 2002 on the organisation of the Ministry of National Education.

<sup>76</sup> UNESCO (n 21 above) 28.

<sup>77</sup> Education International (n 36 above).

<sup>78</sup> Decision 315/B1/1464/MINEDUB of 21 February 2006.

<sup>79</sup> Order 64C/84/MINEDUC/CAB.

<sup>80</sup> K Chia 'Improving quality of education in Cameroon' *Rudea's Vision* May 2008 <http://www.kabissa.org/about> (accessed 25 March 2010).

<sup>81</sup> UNICEF Humanitarian Action Update, Cameroon, 4 June 2008 'UNICEF responds to a child survival and education crisis in Eastern and Northern Cameroon' (n 53 above).

Children's right to quality education is compromised by overcrowded and insufficiently equipped classrooms, lack of learning materials and teachers who must manage as many as 100 to 200 children per class and often without basic teaching materials or training.

The government of Cameroon, however, targets human rights education to render primary education acceptable. In this regard, it prohibits corporal punishment in schools.<sup>82</sup> In 1998, Cameroon was criticised by the ESCR Committee on the grounds that not only was there no indication that issues of human rights education were incorporated into school curricula, but there was no evidence to show how school teachers were trained in matters of human rights at school.<sup>83</sup>

However, these shortcomings are remedied by efforts to improve the appropriateness of education, including measures such as 'the addition of human rights to the primary curriculum, a teacher's guide to human rights education at all levels (primary, secondary and higher) has been prepared at the suggestion of the National Commission on Human Rights and Freedoms'.<sup>84</sup> Since the 2008/2009 academic year, human rights education, supported both by the Ministry of Basic Education (through a committee) and the National Commission on Human Rights and Freedoms, is a reality in primary schools.<sup>85</sup>

In addition, in addressing the right to health at school, since 2009, the government has begun the integration of HIV/AIDS education into the country's primary school curriculum, making it compulsory for children from six to 12 years of age.<sup>86</sup> Furthermore, in improving the quality of education, the government also designed educational programmes in line with the Information Communication Technology (ICT) which, among others, entails equipping classrooms and offices with ICT materials.<sup>87</sup>

Despite the above, a lot more needs to be done to empower visually-impaired students through the provision of computers with Braille. It may be argued that primary education is in general acceptable.

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<sup>82</sup> This is the content of the Law of Cameroon National Educational Guidelines 98/004 (1998); also art 35, corporal punishment in schools is explicitly prohibited in the draft Child Protection Code.

<sup>83</sup> ESCR Committee Pre-Sessional Working Group 7-11 December 1998, List of Issues: Cameroon. 17/12/98; E/C.12/Q/CAMER/1 para 53.

<sup>84</sup> Human Rights Council Working Group on the Universal Periodic Review, 4th session, Geneva, 2-13 February 2009, National Report submitted in accordance with para 15(a) of the Annex to Human Rights Council Resolution 5/1\* Cameroon, UN Doc A/HRC/WG.6/4/CMR/1 para 46.

<sup>85</sup> Cameroon second periodic report (n 57 above) para 274.

<sup>86</sup> 'Cameroon trains teachers on HIV education in primary schools' [http://www.unicef.org/infobycountry/cameroon\\_51320.html](http://www.unicef.org/infobycountry/cameroon_51320.html) (accessed 15 March 2011).

<sup>87</sup> Cameroon third report (n 57 above) para 276.

## 2.7 Adaptability

In terms of adaptability, 'education has to be flexible so it can adapt to the needs of changing societies and communities and respond to the needs of students within their diverse social and cultural settings'.<sup>88</sup> In other words, states should adapt the education to the needs of the learners, the needs of society and the job market. Adaptability entails mobile schools for nomadic groups.

At the primary school level, education should be adapted to communities and respond to the needs of learners within their diverse social and cultural environment. In attempting to adapt education to the environment, learners may be taught in their local languages. This call was also made by Fonlon,<sup>89</sup> Njock,<sup>90</sup> Tadadjeu,<sup>91</sup> Chumbow<sup>92</sup> and Essono,<sup>93</sup> who all believe that local languages could be used alongside English and French in education. Currently, English and French are the official languages of education in the country. No education is provided in children's mother tongues. Cameroon has two main education systems established by France and Great Britain, the former colonial masters:

- a French francophone Cameroon education system tailored after the French francophone system; and
- an English anglophone Cameroon education system tailored after the British anglophone system.

In fact, bilingualism in Cameroonian schools is not yet a reality 'as individuals only master their colonial master's system with little cross-interaction with the other system even when both systems are on the same campus'.<sup>94</sup> Nevertheless, Cameroon is still considering the possibility of teaching national languages at school. It should even emulate Namibia's action in adapting education to the San indigenous group's cultural environment. In this case, Namibia implemented the Nyae-Nyae Village School Project, which integrated the traditional

<sup>88</sup> ESCR Committee General Comment 13 para 6(d).

<sup>89</sup> B Fonlon 'A case for early bilingualism' (1963) 4 *ABBIA: Cameroon Cultural Review* 56-94; B Fonlon 'The language problem in Cameroon' (1969) 22 *ABBIA: Cameroon Cultural Review* 5-40.

<sup>90</sup> BB Njock 'Le problème linguistique au Cameroun' (1966) 73 *L'Afrique et L'Asie* 3-13.

<sup>91</sup> M Tadadjeu 'Language planning in Cameroon: Toward a trilingual education system' in RK Herbert (ed) *Patterns in language, culture, and society: Sub-Saharan Africa* (1975) 53-75; M Tadadjeu (ed) *L'enseignement des langues au Cameroun - Language education in Cameroon* (1981).

<sup>92</sup> EA Anchimbe 'Socio-pragmatic constraints to native or indigenous language education in Cameroon' in F Olaoba *et al* (eds) *Selected proceedings of the 36th annual conference on African linguistics* (2006) 133-141.

<sup>93</sup> JM Essono 'De l'enseignement des langues nationales dans le secondaire: Les problèmes d'organisation' in Tadadjeu (n 91 above) 104-118.

<sup>94</sup> See 'Education in Cameroon The Cameroon education system' <http://www.cameroon-today.com/education-in-cameroon.html> (accessed 27 February 2009).

and culturally-appropriate mother tongue education with formal education. This effort brought the right to education to marginalised groups.<sup>95</sup> Furthermore, still in Namibia, the Gquaina Primary School encourages cultural diversity and employs teachers who speak the Ju'hansi language and provide mother tongue education for Ju'hansi students in grade 1.<sup>96</sup> In copying these best practices, Cameroon should adapt the education system to the culture in areas where people stay away from school for cultural and religious values. For instance, Cameroon should strive to have a system of mobile schools for nomadic people. To use the words of the Cameroonian MDG report, it is imperative to 'adapt the school syllabus to suit the climate in the Far-North, North and Adamawa provinces and encourage Informal Basic Education'.<sup>97</sup>

The other challenge facing Cameroon remains adapting the school environment to children with special needs, such as children with disabilities who must be included in mainstream schools.

Overall, the changes in primary education are yet to be finalised as the country is to bring education to children where they are (nomadic children); the country is still considering the possibility to have education in local languages and need to adapt the system to disabled learners' needs.

### 3 Justiciability of the right to primary education in Cameroon

Justiciability means 'the ability to claim a remedy before an independent and impartial body when a violation of a right has occurred or is likely to occur'.<sup>98</sup> This section argues that, in principle, the right to primary education is justiciable, but that this does not happen in practice.

<sup>95</sup> RK Hitchcock & D Vinding 'Introduction' in RK Hitchcock & D Vinding (eds) *Indigenous people's rights in Southern Africa* (2004) 11; also SA Djoyou Kamga *Promotion of indigenous and tribal peoples' rights through the implementation of the principles of ILO Convention No 169 and the African Charter on Human and Peoples' Rights: Namibia Desk Review* (2007) 32; ILO project under the auspices of the Centre for Human Rights, University of Pretoria (on file with author).

<sup>96</sup> IWIGIA briefing on Namibia, July 2005; also Djoyou Kamga (n 95 above).

<sup>97</sup> MDGs Progress Report (n 38 above) 5.

<sup>98</sup> International Commission of Jurists *Courts and the legal enforcement of economic, social and cultural rights: Comparative experience of justiciability* (2008) 6.



### 3.1 Constitutional guarantee of the justiciability of the right to primary education

The Preamble and articles 45 and 65 of the Cameroonian Constitution clearly provide for the justiciability of the right to primary education. According to the Preamble:<sup>99</sup>

The state shall guarantee the child's right to education. Primary education shall be compulsory. The organisation and supervision of the education shall be the bounded duty of the state.

Accordingly, the right to primary education is not optional and the state should comply with its obligation to provide it and can therefore be taken to court if the right is not made available. The Cameroonian Supreme Court, however, subscribing to Bhagwan and Bhushan's views,<sup>100</sup> emphasises that the Preamble provides contextual guidance and contains mere principles, and therefore not justiciable.<sup>101</sup> Nonetheless, this view cannot stand because the Constitution, itself, is unequivocal on the legal status of the Preamble. The Constitution, in article 65, clearly states that the Preamble 'is part and parcel of the Constitution' and is as such justiciable. This view is strengthened by article 45 of the Constitution, which provides as follows:

Duly approved or ratified treaties and international agreements shall, following their publication, override national laws, provided the other party implements the said treaty or agreement.

This provision shows that, in terms of domestication of treaties, Cameroon subscribes to the monist approach, according to which international agreements automatically become part of domestic law as soon as they are entered into. From a monist perspective, any treaty provision is self-executing if it is directly applicable and does not require 'further implementing action for it to be legally binding at national level'.<sup>102</sup> The provision should be given effect immediately at the local level. Therefore, the justiciable right to free and compulsory primary education, as contained in ICESCR, CRC and the African Charter, all ratified by Cameroon, is directly applicable and self-executing in Cameroonian domestic law. However, the justiciability of the right to primary education is hindered by several obstacles.

<sup>99</sup> Para 23.

<sup>100</sup> V Bhagwan & V Bhushan *Comparing constitutions* (1987) 12.

<sup>101</sup> Rapport de la Cour Suprême du Cameroun (2000), as quoted by GZ Sebenzile *The Treatment Action Campaign (TAC) case as a model for the protection of the right to health in Africa, with particular reference to South Africa and Cameroon* (2005) 41.

<sup>102</sup> E Denza 'The relationship between international and national law' in MD Evans (ed) *International law* (2006) 437; also M Dixon *Textbook on international law* (2007) 88.

### 3.2 Obstacles to the justiciability of the right to primary education

The obstacles to the justiciability of the right to primary education are four-fold: private individuals' lack of standing in constitutional matters; the lack of remedies in case of a violation of human rights; a weak separation of powers; and the inability of the Cameroonian Commission on Human Rights to ensure the justiciability of the right.

#### 3.2.1 Lack of standing in constitutional matters

Although arguably the Preamble and article 65 cater for a bill of rights, not only does the Cameroonian Constitution formally not contain a bill of rights, it does not have 'constitutional provisions which enable private individuals to petition the court in case of an alleged violation'<sup>103</sup> of the right to primary education. This raises the question of standing in court.

Even though the High Court is competent to deal with numerous matters, including non-administrative ones,<sup>104</sup> only the yet-to-be-established Constitutional Council is competent to consider 'the constitutionality of laws, treaties and international agreements'.<sup>105</sup> More importantly, only the President of the Republic, the President of the National Assembly, the President of the Senate, one-third of the members of the National Assembly or one-third of the Senators can bring a case to the Constitutional Council,<sup>106</sup> except cases concerning election disputes. In other words, individual Cameroonians do not have standing to challenge the constitutionality of laws. This is a clear hindrance to access to justice in general and to litigate the right to primary education in particular. Cameroon should revise its Constitution to ensure that everyone has standing in constitutional claims.

#### 3.2.2 Lack of constitutional remedies for a violation of human rights

The Cameroonian Constitution is silent about remedies in cases of human rights violations. The country fails to enact judicial measures needed for the enforceability of human rights and the right to primary education in particular. In her 2006 Global Report on the State of the Right to Education Worldwide, the UN Special Rapporteur on the Right to Education, Tomasevski, correctly observes that Cameroon kept away from the human rights language and used the expression 'equality

<sup>103</sup> MD Afuba 'The constitutional protection of civil and political rights in Cameroon' (2006) *University of Botswana Law Journal* 68-69.

<sup>104</sup> Law 89/019 of 29 December 1989.

<sup>105</sup> Constitution, para 47(1).

<sup>106</sup> Constitution, para 47(2).

of opportunity for access to education'.<sup>107</sup> This approach shows that Cameroon does not view education as an entitlement or as a claimable right. In the same vein, during the examination of the 1998 Cameroon report, the ESCR Committee raised its concern 'about the legal status of the Covenant in the Cameroonian legal system'.<sup>108</sup> The Committee 'regrets that the delegation [of Cameroon] has not been able to clarify the position of the Covenant in Cameroonian law, nor provide any specific references to cases in which the Covenant has been invoked in national courts of law'.<sup>109</sup> This remark led Chofor Che to argue that 'Cameroon should clearly and unequivocally integrate socio-economic and political rights in its Constitution, as well as adopt definite measures for their enforcement by state organs'.<sup>110</sup>

The country should revise its Constitution with specific attention to the incorporation of a bill of rights, and the provision of remedies in cases of human rights violations. In this vein, Cameroon should act to institutionalise the justiciability of socio-economic rights and the right to primary education, in particular, in line with the call by the High-Level Group to governments in the developing world to 'ensure that free and compulsory primary education is a right reflected in national legislation and in practice'.<sup>111</sup> In fact, as correctly observed by Arbour, 'it is through action at the national level that international human rights obligations can be translated into reality'.<sup>112</sup>

### 3.2.3 Weak separation of powers

Cameroonian constitutionalism is characterised by the pre-eminence of the executive power. The President of Cameroon appoints members to the bench and the legal department.<sup>113</sup> In addition, the President 'shall be assisted in this task by the Higher Judicial Council which shall give him its [non-binding] opinion on all nominations for the bench and on disciplinary action against judicial and legal officers'.<sup>114</sup> This provision turns judges into mere civil servants who aspire to nominations and promotions and will therefore not contradict the executive that takes

<sup>107</sup> Tomaveski global report (n 10 above) 23; also UN Doc CRC/C/28/Add.16 (2001) paras 192-193.

<sup>108</sup> Concluding Observations of the ESCR Committee: Cameroon 8 December 1999 E/C12/1/Add.40 para 11.

<sup>109</sup> As above.

<sup>110</sup> CA Chofor Che 'Challenges of incorporating and enforcing a bill of rights in the Cameroonian Constitution' (2008) 2 *Cameroon Journal of Democracy and Human Rights* 1 <http://www.cjdh.org> (accessed 20 March 2011).

<sup>111</sup> High Level Group on EFA (Abuja, Nigeria, November 2002), as quoted by UNESCO (2008) 4.

<sup>112</sup> L Arbour *The Plan of Action of the Office of the United Nations High Commissioner for Human Rights in Protection and Empowerment* (2005); also Rights and Democracy Annual Report 2005/2006 1.

<sup>113</sup> Art 37(3) of the Constitution.

<sup>114</sup> As above.

decisions in terms of their careers. These magistrates will not stand for public interests when their personal interest is at stake.

Furthermore, the interference and domination of the judicial power by the executive reaches the Constitutional Council where the President of the Republic appoints 11 members for a non-renewable term of office of nine years 'from among personalities of established professional renown' and 'of high moral integrity and proven competence'.<sup>115</sup> In addition, all 'former Presidents of the Republic shall be *ex officio* members of the Constitutional Council for life',<sup>116</sup> even if they lack expertise in terms of law and human rights. According to Nguélé, a term of office of nine years ensures the independence of the Constitutional Council.<sup>117</sup> However, it is worth noting that an appointed judge of nine years' service could serve his or her employer's interest to the detriment of fundamental freedoms. An elected judge is much more prone to serve the interest of justice through which the right to primary education may be litigated.

As mentioned above, the review of the constitutionality of laws has been conferred by article 47 of the Constitution to the Constitutional Council. Nevertheless, since the latter has never been established, section 67(4) of the Constitution, dealing with transitional and final provisions, states that the Supreme Court shall perform the duties of the Constitutional Council until the latter is set up. The Supreme Court can therefore exercise such powers as have been conferred on the Constitutional Council.<sup>118</sup> These powers are extremely restricted in two ways: First, under article 47, it can only entertain disputes on a number of issues. With respect to the most important issue concerning unconstitutional laws, its jurisdiction is limited to an abstract pre-promulgation review of laws only. Secondly, as mentioned above, only a few individuals have *locus standi* to bring a case before the Supreme Court. This effectively renders the process meaningless because the very people who usually initiate laws are the only people competent to challenge the constitutionality of laws. This is unlikely to happen. Hence, there is an urgent need to establish a strong separation of powers, an independent Constitutional Council, and to ensure that private individuals have standing to challenge the constitutionality of laws as this will enhance respect for human rights and the prospects for the justiciability of the right to primary education in the country.

Having observed that the justiciability of the right to free primary education is hindered by the pre-eminence of the executive on the

<sup>115</sup> Art 51(1) of the Constitution.

<sup>116</sup> Art 51(2) of the Constitution.

<sup>117</sup> M Nguélé Abada 'L'indépendance des juridictions constitutionnelles dans le constitutionalisme des Etats francophones post guerre froide: L'exemple du conseil constitutionnel Camerounais' <http://www.droitconstitutionnel.org/congresmtp/textes5/ABADA.pdf> (accessed 25 March 2011).

<sup>118</sup> CM Fombad *International encyclopaedia of laws: Constitutional law* (2003) 125.

judiciary domain, the following section will examine whether the National Commission on Human Rights and Freedoms of Cameroon (Cameroonian Commission on Human Rights) can ensure the justiciability of the right to primary education.

### 3.2.4 The inability of the Cameroonian Commission on Human Rights to ensure the justiciability of the right to primary education.

National human rights commissions are institutions established to check human rights abuses in countries. They also have a promotional and protective mandate as provided for by the Principles Relating to the Status of National Institutions (Paris Principles).<sup>119</sup>

In terms of its mandate, the Cameroon Human Rights Commission is competent to promote and protect human rights. The promotion of human rights is conducted through workshops, seminars and awareness-raising campaigns. The protective mandate consists of recording and investigating complaints of human rights violations, visiting detentions and incarceration centres<sup>120</sup> and reporting on them. The Commission is a mere observer that cannot entertain difference.

In order to enhance the prospect of having a justiciable right to primary education in the country, the government shall, among others, vest the institution 'with quasi-jurisdictional competence';<sup>121</sup> the Cameroonian should cease to be 'an observer'<sup>122</sup> and should be empowered<sup>123</sup>

[t]o hear and consider complaints and petitions concerning individual situations. Cases may be brought before it by individuals, their representatives, third parties, non-governmental organisations, associations of trade unions or any other representative organisations.

The Cameroonian Commission on Human Rights should be given the opportunity to improve 'the legality and fairness of public administration as well as providing a mechanism for the domestic implementation of international human rights obligations'.<sup>124</sup> It must

[a]ctively protect and promote human rights and not exist simply as an investigative mechanism which reacts to human rights violations [with a report]. The institution must work systematically and holistically towards

<sup>119</sup> Adopted by General Assembly Resolution 48/134 of 20 December 1993.

<sup>120</sup> Decree 90-1459 of 8 November 1990, para 2.

<sup>121</sup> See Paris Principles, paragraph allocated to 'Additional principles concerning the status of commissions with quasi-jurisdictional competence'.

<sup>122</sup> Banda, the Chairperson of the Cameroonian Commission of Human Rights, as quoted by CCDH Press Release (n 119 above).

<sup>123</sup> n 21 above.

<sup>124</sup> J Klaaren 'South African Human Rights Commission' in S Woolman *et al* (eds) *Constitutional law of South Africa* (2010) 24-c12.

the attainment of internationally-recognised human rights<sup>125</sup> in general and the right to primary education in particular.

Overall, the limited protective mandate of the Cameroonian Commission on Human Rights hinders its ability to ensure the justiciability of the right to primary education.

#### 4 Concluding remarks

The aim of this article is to investigate to what extent Cameroon complies with its obligations pertaining to the right to primary education. Put differently, to what extent is primary education compulsory, available, accessible, acceptable, adaptable and justiciable.

As to whether it is compulsory, the article shows that all national policies related to primary education compel the state and parents to send children to primary school. Sending children to primary school is not optional, but mandatory, therefore primary education that is sustained by an action plan is compulsory.

As far as the availability of education is concerned, notwithstanding the enactment of numerous policies and the building of classrooms and additional school buildings, the availability of primary education is hindered by a lack of teachers, sanitation facilities at schools, and the lack of school buildings in rural areas where learners from different grades are taught in the same classroom at the same time.

Regarding the accessibility of primary education, focusing on non-discriminatory access, the article shows that national policies to ensure equal access to primary education are yet to bring girls' enrolment to the same level as that of boys. In addition, learners with disabilities are excluded from primary education which has no mechanism to ensure their reasonable accommodation. In terms of physical accessibility, this is yet to be a reality as several primary schools are still located miles away from children's homes, and learners have to walk long distances away from school while those with a mobility problem have to stay behind without any possibility of receiving distance education. As far as economic accessibility is concerned, an analysis of the economic accessibility of education shows that children are bogged down by indirect fees such as books and uniform costs, levies and other fees paid through parent associations. These fees amount to education costs which illustrate the lack of free primary education in the country.

On the issue of acceptability, in spite of the shortcomings in operationalising appropriate curricula at the primary level, as well as challenges related to the acceptance of disabled learners, the institution of human rights education, the integration of HIV/AIDS education in the curricula as well as the incorporation of ICT education at the

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<sup>125</sup> As above.

primary level sustain the argument that primary education is acceptable when it is in fact available.

However, the conclusion is not the same as far as the adaptability of primary education is concerned because Cameroon is yet to provide education in local languages, and is yet to bring education to nomadic students. In addition, the accommodation of children with special needs at schools remains an aspiration.

On the final point of justiciability, the article shows that the Preamble which, according to article 65, is part and parcel of the Constitution, renders the right to primary education justiciable. In addition, article 45 of the Constitution, which indicates the monist approach to the domestication of international law, renders the right to primary education self-executing and subject to immediate application.

The article shows, however, that the justiciability of the right is hindered by constitutional practices such as the lack of standing in court for private individuals, the lack of constitutional remedies in case of a violation of rights, and a weak separation of powers characterised by the pre-eminence of the executive. The justiciability of the right is also hindered by the inability of the Cameroonian Human Rights Commission to protect the right because of its lack of jurisdictional competence.