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THE RIGHT TO EDUCATION OF INDIGENOUS
PEOPLES: THE CASE OF CAMEROON

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Abstract

Education is very essential for human development and for the realization of other human rights. The indigenous peoples in Cameroon have suffered discrimination and have been marginalized in many areas. This research assesses the availability, accessibility, adaptability and acceptability of education of the indigenous peoples in Cameroon and exposes various lapses therein. The Cameroon government has certain obligations under the various ratified treaties but has failed woefully to satisfy entirely its obligations. Notwithstanding, no court proceeding has been brought against the government of Cameroon. The existence of weak judicial and quasi-judicial institutions is one of the main reasons for zero judicial enforceability of the right to education in Cameroon. However, at the international level, the indigenous peoples push Cameroon to honour its obligations under the Covenant of Economic, Social and Cultural Rights by submitting shadow or alternative reports to the United Nations' Committees and the African Commission on Human and Peoples' Rights.

TABLE OF CONTENTS

Abstract	ii
List of Acronyms	v
Acknowledgments	vi
CHAPTER 1: INTRODUCTION	1
1.1 Statement of the Problem	1
1.2 Characteristics of Indigenous peoples within the African context	2
1.3 Overview of Indigenous peoples in Cameroon	4
1.3.1 The Pygmies	5
1.3.2 Mbororo	7
1.3.3 Kirdir	7
1.4 Research questions and sub-questions	8
1.5 Methodology	9
1.6 Outline of the thesis	9
CHAPTER 2: AN ASSESSMENT OF EDUCATION OF INDIGENOUS PEOPLES IN CAMEROON	11
2.1 Introduction	11
2.2 Availability of education for indigenous peoples	12
2.3 Accessibility of education for indigenous people	18
2.3.1 Non-discrimination	18
2.3.2 Physical accessibility	21
2.3.3 Economic accessibility	22
2.4 Adaptability of education to indigenous peoples	24
2.5 Acceptability of education by indigenous peoples	25
2.6 Barrier to the enjoyment of the right to education	25
2.7 Conclusion	27
CHAPTER 3: HUMAN RIGHTS OBLIGATIONS OF THE STATE OF CAMEROON	29
3.1 Introduction	29
3.2 State obligations under the ICESCR	30

3.3	State obligations under the Convention on the Right of The Child	32
3.4	The Obligations to request International Interference	34
3.5	Conclusion	37
CHAPTER 4: ENFORCEMENT OF THE RIGHT TO EDUCATION IN CAMEROON		38
4.1	Introduction	38
4.2	Instances of violation of the right to education	39
4.3	Obstacles to the justiciability of the right to education	41
4.3.1	Difficulties to invoke Constitutional rights before a court of law	42
4.3.2	Weak separation of powers	44
4.3.3	Limited powers of the Cameroon National Commission of Human Rights and Freedoms.	44
4.3.4	Ignorance on the part of the population	45
4.4	Conclusion	46
CHAPTER 5: CAMEROON’S POSITION AND PRACTICES AS TO HUMAN RIGHTS BASED STRATEGIES		47
CHAPTER 6: EMANCIPATION OF THE INDIGENOUS PEOPLES IN CAMEROON TOWARDS REALISATION OF THEIR RIGHT TO EDUCATION		54
CONCLUDING OBSERVATION		59
BIBLIOGRAPHY		62

List of Acronyms

CAT	Committee Against Torture
CERD	Convention on Elimination of Racial Discrimination
DHRIC	Directorate for Human Rights and International Cooperation
ESCR	Economic, Social and Cultural Rights
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant of Economic, Social and Cultural Rights
ILO	International Labour Organisation
IMF	International Monetary Fund
MBOSCUDA	Mbororo Social and Cultural Development Association
MINAS	Ministry of Social Affairs
NCHRF	National Commission of Human Rights and Freedom
NGO	Non-Governmental Organisation
ORA	Observe, Reflect and Act
PTA	Parent Teachers Association Fees
SSE	Educational Sector Strategy
UN	United Nations
UNDRIP	United Nations Declaration of the Rights of Indigenous Peoples
UNESCO	United Nations Educational, Scientific and Cultural Organisation.
UNICEF	United Nations International Children Emergency Fund

Acknowledgments

Growing up as a child in Cameroon, I also ridiculed and reacted badly towards the indigenous peoples. The Pygmies most especially look different from the rest of the population and as a child we always scream with surprise when we see them in town. Though I have never been to school with any of the indigenous groups, I can imagine the horrible scenarios that befall them at school. With these scenarios at the back of my mind, I actually develop interest in their right to education because I believe their education will exonerate them from negative stereotyped ideas.

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CHAPTER 1

INTRODUCTION

1.1.Statement of the Problem:

Indigenous peoples are being regarded as ‘primitive’, ‘backward’ and ‘under developed’¹ by their neighbours, their teachers and fellow classmates at school. The realisation of their right to education is seriously hindered by the failure of the government to completely eradicate school fees in primary schools. Also, the discriminatory method in the allocation of resources to remote areas also hinders the realisation of their rights to education and such discriminatory method is very visible with issues of lack of schools within the vicinity of indigenous group, lack of teachers, overcrowding in classroom, lack of teaching material². This obviously contributes to the extremely low educational level of the indigenous peoples in Cameroon which produces a huge inequality as the literacy rate of the country is very high³.

Indeed indigenous peoples have suffered from extreme discrimination, marginalisation and exploitation from the pre-colonial era⁴ until the present date. Obviously, to fight such systematic discrimination, special policies, programmes and measures are needed but these are not feasible in a country that grouped indigenous peoples in a draft law under the same umbrella as “Marginalised Population” as any other marginalised group⁵.

The right to education is not only one of the basic fundamental rights of human beings but it is also a means to promoting and respecting other human rights in general. It is not only a fundamental right but also an empowerment right through which marginalised persons can obtain the means to participate fully in society at large. Consequently, it is essential for the survival of indigenous people as it is a critical element of human development and an essential ingredient for the fulfilment of other aspect of Human Rights. The education of

¹ Belmond Tchoumba, “Indigenous and Tribal People and Poverty Reduction Strategies in Cameroon”. Geneva: International Labor Organization, 2005. PP.14-19.

² Nobutaka KAMEI, “An Educational Project in the Forest: Schooling for the Baka Children in Cameroon”. African Study Monographs, Suppl.26: 185-195, March 2001, P.188. www.africa.kyoto-u.ac.jp/kiroku/asm_suppl/.../13_KAMEI.PDF (Accessed on 29 August 2012).

³ The literacy rate of both men and women is estimated at about 84%. See Country profile – Cameroon, available at www.unfpa.org. (consulted on 2 August 2012).

⁴ UN ECONOMIC AND SOCIAL AFFAIRS, “The state of the world’s indigenous peoples”, Newyork: UN publication 2009.P.6. Available at http://www.un.org/esa/socdev/unpfii/documents/SOWIP_web.pdf . (consulted on 1 August 2012).

⁵ This has been criticised by Committee on the Elimination of Racial Discrimination in their concluding observation of Cameroon report. CERD/C/CMR/CO/15-18, March 2010, P.3, Available at <http://www.unhcr.org>. consulted on 20 July 2012.

indigenous people in Cameroon is vital because in recent times, they have made more contact with other groups. In these relations, they need to be equipped with basic knowledge about their rights and how they can seek redress in cases of violations. Also, to the Pygmies, for example, education will not only mean empowerment, but will break down their inferiority complex and restored a higher self-esteem, and will work against the negative stereotype ideas on the part of the others. This can be achieved only if the state adapts the educational system to their needs; put in place various strategies to eliminate discrimination or better still, comply with the provisions of the United Nation Declaration of the Rights of Indigenous Peoples (UNDRIP).

1.2 Characteristics of Indigenous Peoples within the African Context

The concept of indigenous peoples emerged from the colonial experience, whereby the native occupants of the land were discriminated and marginalized by their colonial master⁶. During the period of colonization, the people already living on the invaded lands were called indigenous people. After the consolidation of power by the colonial master over native land, and the emergence of new states, indigenous peoples were referred to as inferior and backward people⁷. The Covenants of the League of Nations provided new status to the indigenous peoples by requesting that the League members treat them justly⁸. Despite this provision, indigenous peoples were still victims of serious discrimination and violation. During the early years of post-colonial era, indigenousness was used as a concept to refer to non-Europeans in countries where the majority of people are mainly descendant from European settlers⁹. Finally, the indigenous movement was internationalized to cover all marginalized groups¹⁰. However, it is very important to look specifically at the characteristics of indigenous people in Africa because Africans have argued that all Africans are indigenous and that separating Africans from indigenous and non-indigenous groups means separate classes of citizens are being created with two different rights¹¹.

⁶ UN ECONOMIC AND SOCIAL AFFAIRS, "The state of the world's indigenous peoples", Newyork: UN publication 2009.P.6.

⁷ S James Anaya, "The evolution of the concept of indigenous peoples and its contemporary dimensions" P. 31 in Solomon Dersso (editor) , Perspectives on the rights of minorities and Indigenous people in Africa: Cape Town: Pretoria University Law Press, 2010.

⁸ IDEM.

⁹ Felix Mukwiza Ndahinda, Indigenousness in Africa: A Contested Legal Framework for Empowerment of 'marginalized' Communities. The Hague: T.M.C Asser Press, 2011.P. 18.

¹⁰ IDEM.

¹¹ This argument is based on the fact that all Africans are autochtone of the area and they were the first inhabitant of the area before the invasion of the colonial master.

There is no international, regional or national definition of indigenous peoples and this was intended as an attempt not to limit the recognition or qualification as indigenous peoples. To understand the meaning of indigenous peoples, it will be very necessary to quote the descriptive statement made by the UN Special Rapporteur on discrimination against indigenous people: Jose R. Martinez Cobo in his study of the problems against indigenous peoples¹²:

Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing in those territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal systems”

In 2003, the report¹³ of the Working Group on Indigenous Populations/Communities in Africa upheld that a strict definition of indigenous peoples is “neither necessary, nor desirable”, and such definition would risk excluding certain groups. The working group in their report concluded that limiting the characteristic of indigenous peoples to the statement of José Martinez Cobo will make it very difficult to meaningfully use the concept in Africa. Consequently they tried to find some characteristic of indigenous people which will be relevant and constructive for Africa. They said that the term indigenous peoples has meaning that is much wider than the first occupant of the land and acknowledged that the principle of self-identification is a key criterion for identification of indigenous people. They proceeded to provide the following characteristics of African indigenous peoples: They are marginalised, discriminated and are subject to domination and exploitation; More often they live in inaccessible, geographically isolated regions; they are distinct people and their culture and way of life differs from the rest of the population; their culture are under threat or at the verge of extinction and their survival depends on continuous possession of their ancestral land. By so doing, they linked the collective rights of indigenous peoples to the rights of people as spelt out in the African Charter. Unlike all other human right systems, the African has its own

¹² UN Sub-Commission on Prevention of Discrimination and Protection of Minorities, Study of the Problem of Discrimination against Indigenous Populations, UN Doc E/ CN 4/Sub 2/1986/7/Add 4, Para 379 (1986).

¹³African Commission on Human and Peoples’ Rights, “Report of the African Commission’s Working Group of Experts on Indigenous Populations/Communities” Adopted by The African Commission on Human and Peoples’ Rights at its 28th ordinary session, 2005.Copenhagen: IWGIA, 2005. PP. 86-95.

special peculiarity in the fact that it talks of people's right or collective right. This is the reflection of African conception of Human rights and it is so designed to meet the needs of Africans.

The International Labour Organisation Law No 169 talks of 'tribal peoples' and 'indigenous peoples'. It provides a descriptive explanation of peoples to be protected under Article 1(1) as follows:

“(a) tribal peoples in independent countries whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations;

(b) peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonisation or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions.”

Article 1(2)

Self-identification as indigenous or tribal shall be regarded as a fundamental criterion for determining the groups to which the provisions of this Convention apply”.

Now what if a particular group of people possess those other characteristics but refuse to see themselves as indigenous people?

The United Nations Declaration on the Rights of Indigenous Peoples did not also define or state what constituted indigenous people. However, an international definition of indigenous people would conflict with the notion of self-identification as the only reasonable way to prove allegiance with collective entities, such as ethnic groups¹⁴. Article 33 of the UNDRIP gave the indigenous people the right to decide their own identity and procedures of belonging.

1.3 Overview of indigenous peoples in Cameroon

The Pygmies, the Mbororo, and the Kirdir people have been identified both in government reports and by the African Commission as indigenous peoples. They obviously satisfy the characteristics of indigenous peoples above mentioned. This section will begin first by describing the Pygmies, next the Mbororo and Finally the Kirdir people.

¹⁴ Bas de Gaay Fortman, *Minority Rights: A Major Misconception?*. The Johns Hopkins University Press, Human Rights Quarterly 33, P. 265–303, 2011. P. 297.

1.3.1 *The Pygmies*

The Pygmies, also known as forest people are identified as the first occupants of the Congo Basin. They live in the eastern, central and southern regions of Cameroon¹⁵. They are divided into three sub-groups: the Bakola or Bagyeli, Bedzang and Baka who live in the southern part of the coastal region, the centre of the country- North West of Mbam, and the South East of the region, respectively¹⁶. Together they represent around 0.4% of the total population of Cameroon¹⁷. The Baka are the largest group of Pygmies of around 40,000 persons; the Bagyeli or Bakola about 4,000 persons and around 300 Bedzan¹⁸. However, it should be noted that there is no exact figure on indigenous population in Cameroon.

The Pygmies depend completely on the forest which is their source of food, health, medicine; a place for cultural and spiritual celebration; peace and security to them¹⁹. Though the Pygmies are traditionally hunters-gatherers, their lifestyle is changing and progressively they are involved in agriculture: they work at the Bantu farms as a means of survival²⁰. Few Baka still live purely nomadic lifestyles, rather a majority live semi-sedentary life (i.e they spend at least part of the year in their roadside settlements but continue to go for short- and long-term trips to the forest)²¹. The change in their lifestyle is due to the fact that their ancestral land has been taken away from them by logging and mining companies and others as agricultural or agro-forestry land²². They have limited access to basic services such as water, electricity, health care and education and very few have birth certificates and/or national identity cards, which are essential for them to obtain citizenship and enjoy the full range of rights associated with it²³.

¹⁵Centre for Environment and Development et al, "The Situation of Indigenous People in Cameroon- A supplementary Report submitted in connection with Cameroon's 15th-19th periodic Reports to the UN Committee of the Elimination of Racial Discrimination. 27 January 2010. P.9. Available at www.forestpeople.org (consulted on 20 July 2012).

¹⁶Belmond Tchoumba, "Indigenous and Tribal People and Poverty Reduction Strategies in Cameroon". Geneva: International Labor Organization, 2005. P. 13.

¹⁷International Work group for Indigenous Affairs, The Indigenous World 2010. Copenhagen: IWGIA, 2010. P. 534.

¹⁸ IDEM.

¹⁹ Belmond Tchoumba, "Indigenous and Tribal People and Poverty Reduction Strategies in Cameroon". Geneva: International Labor Organization, 2005. PP. 14-19.

²⁰ IDEM.

²¹ Aili Pyhälä, "What future for the Baka? Indigenous' People Rights and Livelihood Opportunitites in South – East Cameroon". Copenhagen: IWGIA, 2012. P 14.

²² IDEM.

²³ IDEM PP. 17-19.

The Bantus are the neighboring tribe to the Pygmies; they are educated and consider the Pygmies as backward people. Several decades ago, the Pygmies settled on land offered to them by the Bantus by virtue of the customary relations between the two groups²⁴. Meaning that the Pygmy communities almost always settle at the outskirts of the Bantu villages, and their camps are considered only in their capacity as attachments or parts of those villages²⁵. Unfortunately, the Bantus consider the Pygmies as their “property” and treat them as such²⁶. As a result of the fact that their villages are considered as attachments, the Baka community for example, lacks representative at the higher level because the government failed to recognize their chiefs. However, just recently two Baka ‘Chefferies’ have been legally recognized²⁷. The recognition of two Baka villages is a big step as these recognized chiefs will represent their communities. The village chiefs who are not legally recognized will not participate in village meetings and play no role in decision-making and consultation, rather the role is performed by the Bantu chiefs. So the Bantus are the ones who negotiate²⁸ with forestry and mining companies. This is actually a serious form of dominance and discrimination. The Pygmies are distinct from the Bantu people and so need to be represented by one of them.

Their right to equality before the law is violated before the customary tribunals, where assessors play a role in decision-making. No assessor of Baka, Bakola/Bagyéli or Bedzang origin is a member of the customary courts; nor do the courts use the traditional languages of the Baka, Bakola/Bagyéli or Bedzang²⁹. In the absence of any interpreting services in these courts, the parties are obliged to express themselves in Bantu languages which many indigenous peoples are not conversant with. Also the Pygmies are completely left out in the sharing of revenue generated by forest exploitation or conservation of biological diversity and no project has been carried out to benefit them³⁰. As opposed to the Bantu population

²⁴ Belmond Tchoumba, “Indigenous and Tribal People and Poverty Reduction Strategies in Cameroon”. 2005. P. 19.

²⁵ IDEM.

²⁶ IDEM.

²⁷ Aili Pyhälä, “What future for the Baka? Indigenous’ People Rights and Livelihood Opportunities in South – East Cameroon”. Copenhagen: IWGIA, 2012. P 16.

²⁸ African Commission on Human and Peoples’ Rights, “Report of the African Commission’s Working Group of Experts on Indigenous Populations/Communities” Adopted by The African Commission on Human and Peoples’ Rights at its 28th ordinary session, 2005. Copenhagen: IWGIA , 2005. P. 47.

²⁹ Forest People Programme, CED and RACOPY, Indigenous peoples’ rights in Cameroon. Supplementary Report Submitted in Connection with Cameroon’s Second Periodic Report. Submitted to the ACHPR. May 2010, P.2. Available at <http://www.forestpeoples.org> (Consulted on the 28 July 2012).

³⁰ Belmond Tchoumba, “Indigenous and Tribal People and Poverty Reduction Strategies in Cameroon”. Geneva: International Labor Organization, 2005. P. 52.

who have greater access to community forest, only one community forest was allocated to the Pygmies of Bosquet in Lomie sub-division and unfortunately, the management of the community forest did not suitably work-out and has brought a lot of conflict between the beneficial communities³¹.

1.3.2 *The Mbororo*

Another group of indigenous people living in Cameroon are the Mbororo'en (the plural form of Mbororo). They are about one million in number and make up about 12% of the population³² and belong to the group of Fulani. They can be divided in three sub-groups: the Wodaabe, Jafun, and the Galegi (also known as Aku), found in different regions in the Cameroon territory³³. About 120,000 to 130,000 Mbororo'en live in the grass field plateau of Bamenda in the North West Region³⁴. As nomadic herdsmen their lives depend on cattle rearing and grazing hence they move from one place to the other depending on the seasons. During the Christmas season they flood the whole area selling their cattle which is usually used as meat for the celebration.

They have a distinct lifestyle and identity and they cannot be separated from their cattle. However due to the reduction of grazing grounds, agriculture is gradually gaining ground as a source of income and survival³⁵. Just like the Pygmies, they have very little access to social infrastructure and have to cover long distances to reach the nearest health centers or schools. They are always considered as foreigners on the same land they have occupied for many decades and their grazing areas are invaded and converted into farming areas by the farmers, which will lead to reduction in herd sizes of the Mbororo'en³⁶.

1.3.3 *The Kirdir*

Finally, the Kirdi or « Montagnards » live at Mount Mandara situated at the Extreme North Region , precisely at the Mayo-Sava and du Mayo-Tsanaga Division. The Kirdi comprise of

³¹ IDEM.

³² International Work group for Indigenous Affairs, *The Indigenous World 2010*. Copenhagen: IWGIA, 2010. P. 534.

³³ IDEM.

³⁴ Belmond Tchoumba, "Indigenous and Tribal People and Poverty Reduction Strategies in Cameroon". Geneva: International Labour Organisation, 2005. PP. 20-22.

³⁵ IDEM.

³⁶ IDEM.

the Mafa, Mofou, Hide, Tourou, Poloko, Mora people and others³⁷. Their exact number is not known. The term « Kirdi » is a Fulani word for « pagan » that applied to people who had not been converted to Islam at the time of colonization. They are not traditionally Hausa, Fulani or Kanuri. They have the same predicament like the other indigenous groups.

The above explained groups have suffered from extreme discrimination; marginalization and exploitation which can be drastically reduced by providing them education. The education of indigenous people does not only empower them but will increase tremendously their self-esteem. If they believe in themselves and strongly believe that they are human beings equal to any other human being, they will mobilize themselves and say no to some exploitations such as low payment of salary, bullying and humiliation at school by teachers and other students rather than just accepting it. The Mbororo'en acknowledged the importance of education, and the need to solve the problem of illiteracy. That was one of the issues that provoked the creation of an organization called the Mbororo Social and Cultural Development Association (MBOSCUDA). This is a recognized organization created to defend the individual and group rights of the Mbororo people both at the national and international level. One of the key objectives for the creation of MBOSCUDA was to improve the educational level of the Mbororo'en. They achieve their objective by sensitizing the Mbororo'en on the need of education, mobilize and support enrolment of youth in schools³⁸.

1.4 Research question and sub-questions:

In order to achieve its objectives, this study will tackle two major research questions and each with sub-questions. The research questions are:

- a. What is the situation of indigenous peoples both in general and vis à vis their right to education? Are they subject to discrimination? What are the reasons for their lack of education both absolutely and in proportion to the population in general?
- b. Does Cameroon have a human rights-based strategy in general and in respect of quality education for all and particularly for indigenous peoples? What are the international stipulated obligations of Cameroon in respect of education for all citizens? Has the government attempted to accomplish these obligations and if so with

³⁷ Samuel Nguiffo et Nadine Mballa, « Les Dispositions Constitutionnelles, Legislatives Et Administratives Relatives Aux Populations Autochtones Au Cameroun ». South Africa : Pretoria University. www.chr.up.ac.za/.../cameroon/ (consulted on 19 July 2012).

³⁸ MBOSCUDA: Census report 2004/2005. Available at [www. Mboscuda.org](http://www.Mboscuda.org) (consulted on 22 July 2012).

what effect? Has there been interference on the part of the international community and if so, to what effect? What is the role of the civil society?

1.5 Methodology

This will be a qualitative research that will trace and analyze the secondary data and information in respect to both discrimination and education of the indigenous peoples and their rights based remedies. Special emphasis will be on the right to education and the entitlement this right entails. International legislation adopted by Cameroon will be used to find answers to the research questions. I will explore international and Cameroonian legal instrument, reports from international, regional and local non-governmental organization, anthropologic and linguistic sources.

This research will be limited by the fact that there exist no data from the state or renown source on the education of indigenous peoples. As a result of that, I will have to be quite descriptive, presenting a more general picture of the situation of education of indigenous people. I shall also seek refuge on data provided by MBOSCUDA. Though MBOSCUDA is a non-governmental organization and not specialized in statistic and figure gathering, their methodology indicated a very high probability that the figures provided reflected the reality on the ground³⁹.

1.6 The Outline of the thesis

Following this introductory chapter, the next chapter will focus on the assessment of education of indigenous peoples in Cameroon. In Chapter two, I shall assess the availability, accessibility, acceptability and adaptability of the right of education of indigenous peoples in Cameroon. This assessment will be conducted with the use of the provisions of ICESCR and UNDRIP. The second part of this chapter will present the various barriers to the realization of the right to education. Chapter three will explain State obligations under the ICESCR, and the International Convention on the Right of a child and it will move further to discuss State obligation to request for international interference. This will enable us to assess if the State has violated its obligation under the International ratified treaties. Chapter four will deal with

³⁹ MBOSCUDA: Census report 2004/2005. Available at www.Mboscuda.org (consulted on 22 July 2012).

the enforcement of the right to education. This chapter will expose the various instances where the right to education can be violated and analyze its level of justiciability. The chapter ends with a discussion on the various factors that hinder the enforcement of the right to education in Cameroon. The next chapter will analyze the human rights based strategy of Cameroon, paying more attention to the remarks of Committees in the UN Treaty-based. Here I intend to critically analyze the various human right institutions available in Cameroon and the role of civil society. Finally, this research will end with critical analyses of the level of emancipation of indigenous peoples towards the realization of their rights to education and finally ends with concluding observations.

CHAPTER 2

AN ASSESSMENT OF EDUCATION OF INDIGENOUS PEOPLES IN CAMEROON

2.1. Introduction

One of the major factors contributing to the deplorable plight of indigenous peoples is the lack of quality education. Millions of indigenous children around the world are deprived of the right to education⁴⁰. The predicament of indigenous peoples as concerns their education is pathetic because their education is organised as a form of assimilation to the culture of the rest of the community. This is one of the reasons for low school enrolment, high school dropout and the overall low rate of literacy. In Cameroon, the rate of enrolment at primary school is only about 1.31% of the Baka children in the District of Salapoumbé⁴¹. The abandonment of native language has presented a huge risk to the disappearance of many languages and contributes enormously to discourage indigenous people to go to school. Generally, the quantity and quality of education is very poor with respect to infrastructure, human resources, availability of teaching materials, salaries for teachers, and overcrowding⁴². In addition to that, their indigenous institution or perspective, language and culture are not integrated in the mainstream educational system. The indigenous peoples have a kind of education called the “ORA” (Observe, Reflect, Act) that suits their culture and way of life but receives very little support from the government⁴³. The schools are built out of mud or raffia palms and the roof covered with raffia palms that allow drops of rain water during the rainy season⁴⁴. More so, Children of “ORA 1” and “ORA II” sit in that same classroom and both levels are taught by one teacher. The teachers are not well trained and are not regularly paid⁴⁵.

⁴⁰ International Labour Organisation, “Indigenous and Tribal Peoples’ Right in Practice: A Guide to ILO Convention No 169”. Geneva: International Labour Organisation publication. 2009. P.30.

⁴¹ UN ECONOMIC AND SOCIAL AFFAIRS, “The state of the world’s indigenous peoples”, Newyork: UN publication 2009.P.133.

⁴² Republic of Cameroon, Plan de Developpement des Peuples Pygmee. January 2009. P.6 Available at www.pndp.org/.../51-plan-daction-du-plan- (accessed on 8th September 2012).

⁴³ Nobutaka KAMEI, “An Educational Project in the Forest: Schooling for the Baka Children in Cameroon”. African Study Monographs, Suppl.26: 185-195, March 2001, PP.186-195. www.africa.kyoto-u.ac.jp/kiroku/asm_suppl/.../13_KAMEI.PDF (Accessed on 29 August 2012).

⁴⁴ Republic of Cameroon, Plan de Developpement de Peuples Pygmees. P.6 www.pndp.org/.../51-plan-daction-du-plan- (accessed on 8th September 2012).

⁴⁵ IDEM.

General Comment Number 13 of UN Committee on Economic, Social and Cultural Right (ESCR)⁴⁶ provides the normative content of the right to education such as: availability, accessibility, acceptability and adaptability which will be used to present the situation of indigenous peoples in respect to their right to education. In the course of examining the right of indigenous peoples under the normative element, the provisions of UNDRIP will also be used as guidelines. This chapter will present the normative content of education of indigenous peoples and various barriers faced in the provision of education to indigenous peoples.

2.2.Availability of education to indigenous peoples

According to the Committee of Economic, Social and Cultural Right (ESCR)⁴⁷, operational educational institutions and program have to be available in sufficient quantity. This means that, schools have to be available with well-equipped classrooms, library, sanitation facilities for both sexes, safe drinking water, trained and paid teachers and teaching materials. To ensure the availability of education, the government uses various policies and plans such as: decentralisation of its educational system; the adoption of the 2000 Dakar Framework, adopted the United Nations Educational, Scientific and Cultural Organisation (UNESCO) concerns relating to inclusive education, and included education for all in its Millennium Development Goals⁴⁸.

One of the main goals of the Dakar Framework is to ensure access to free and compulsory education to all children in difficult circumstances (particularly girls) and those belonging to ethnic minorities by 2015⁴⁹. All State parties to the framework are expected to set their own goals, intermediate targets and deadlines⁵⁰. Secondly, Cameroon adopted the Inclusive policy of UNESCO which provides guidelines in addressing exclusion and promoting inclusion. In promoting inclusive education, UNESCO meant the inclusion of the most vulnerable

⁴⁶ The UN Committee on Economic, Social and Cultural Rights, General Comment No 13- The Right to Education (Art 13 of the ICESCR), Index: E/C.12/1999/10, 12 August 1999, Para 50. Available at <http://www.unhchr.ch/tbs/doc>. (consulted on 7 august 2012).

⁴⁷ ESCR Committee, General Comment 13, Para 6(a).

⁴⁸ Republic of Cameroon, Second Periodic Report on Cameroon within the Framework of the African Charter on Human and People's Rights, 2003-2005. Submitted to the African Commission on Human and Peoples' Right on 12TH May 2010. PP. 79-105. Available at http://www.achpr.org/english/state_reports/Cameroon (consulted on 19th November 2012).

⁴⁹ The Dakar Framework of Action adopted by the World Education Forum Dakar, Senegal, 26-28 April 2000. Available at <http://unesdoc.unesco.org> (consulted on 22rd September 2012).

⁵⁰ IDEM.

populations such as people with disabilities and indigenous people⁵¹. UNESCO preaches that trying to include those groups of people in education does not simply entail the building of schools but involves identifying barriers and obstacles to education and providing solutions to those obstacles⁵².

Cameroon also drafted and adopted a ten year educational policy document with the goal to achieve universal primary education⁵³. In the quest to achieve universal primary education this Educational Sector Strategy (SSE) included as priority areas: the Construction and equipping of many primary schools; the hiring of contract teachers trained in public schools and the improvement of their working conditions; improving capacity building of teaching staff ; strengthening of the teacher supervision system; establishment of a national commission for the approval of textbooks, teaching materials, school libraries, and the issuing of textbooks to students in priority education zones⁵⁴. Luckily, SSE was approved by development partners and aid was allocated to building of schools and hiring and training of teachers⁵⁵. Priority education zones include parts of Adamawa and North East Region of Cameroon. The indigenous peoples do not fall within that zone and the reasons for such exclusion are not available. Presumably, however, the zones were allocated taking into consideration the huge number of population involved.

In addition to the available policies, ministries were created to implement the educational policies of the state. In Cameroon, the Ministry of Basic Education was established with the aim of promoting access to fundamental knowledge for children and of guaranteeing equal access to quality education for learners in non-formal settings. Other ministries were created including: The Ministry of Secondary Education; and Ministry of higher education whose objective is to manage and improve the educational system. The Ministry of Social Affairs (MINAS) has the duty to ensure national solidarity and socio-economic integration of the marginalised population (the indigenous people fall under the same heading as “marginalised population”).

⁵¹ UNESCO, “Addressing Exclusion: Street Children in Cambodia”. Available at www.unesco.org/new/en/education/...education.../inclusive-education/ (Consulted on 24th September 2012).

⁵² IDEM.

⁵³ Statement from the Government of Cameroon in the Pledging Conference, Copenhagen, Denmark, 8th November 2011. Available at http://www.globalpartnership.org/media/Replenishment/Cameroon_english.pdf (consulted on 12th September, 2012).

⁵⁴ IDEM. See also The Republic of Cameroon, The Ministry of Basic Education from 1960 – 2012, 9th May 2012, P 2. Available at <http://www.cameroon50.cm/en/component/content/article/252-education-de-base-1960-2010>.

⁵⁵ Supra, footnote No 46.P.85-86.

Also special ministries were created such as the Ministry of Women and Family Affairs and Ministry of Social Welfare to handle specifically women's problems and they try to integrate women in the educational sector, implementing measures in respect of women's rights, eliminating all forms of discrimination against women and provide rehabilitation courses for those who failed to complete basic education. One of the measures taken in the formal educational system to reduce the gap between the number of girl and boy children at school is the creation of a "School Textbooks and Teaching Materials Accreditation Council" whose duties, among others, are to analyse discriminatory stereotypes⁵⁶. Cameroon therefore has functional institutions to handle specific problems at each level in the educational system and these ministries exist at divisional level and so the failure by the government to handle specifically the problem of the indigenous peoples may arise from the fact that the personnel are not adequately trained or there is no money to deliver appropriate solution.

Law No. 98/4 of 14 April 1998 on the orientation of education in Cameroon reaffirms the state's obligation to guarantee education to all citizens without any discrimination. Thereafter, on the 10 February 2000, the head of state decided to cancel fees in government primary schools⁵⁷. That was later incorporated in Finance Law No. 2000/8 of 30 June 2000. This was good news to many Cameroonians especially to parents in rural areas who could not afford to pay school fees for their children. However, this news is not really good as it sounded because the primary schools were not actually free since parents still needed to pay Parent Teachers Association fees (PTA) that ranges from 1500 (€2,30) to 3000 FRS CFA (€4,60). This is money paid by parents to help in the management of the school. The money is usually used to buy teaching materials and pay supplemental teachers employed by the PTA (called PTA teachers). This is quite a lot of money for the rural masses that depend solely on subsistence agriculture. Complaints about this PTA money have been brought to the attention of the government,⁵⁸ yet nothing significant has been done to stop it as pupils are still compelled to pay it.

In order to solve this problem of availability of education, government allowed the establishment of private schools. According to Law No. 2004/022 of 12 July 2004

⁵⁶ Republic of Cameroon, Second Periodic Report on Cameroon within the Framework of the African Charter on Human and People's Rights. 2010, P. 80.

⁵⁷ Republic of Cameroon, Cameroon Initial Report to the African Commission of Human Right 1989 -2000. Submitted to the African Commission on Human and Peoples' Right on 1st June, 2004.P.81. Available at http://www.achpr.org/english/state_reports/Cameroon (consulted on 13 August 2012).

⁵⁸ Republic of Cameroon, Second Periodic Report on Cameroon within the Framework of the African Charter on Human and People's Rights. 2010, P. 79.

establishing rules governing the Organisation and functioning of private education, private institutions must ensure the same equal opportunities and treatment in education as those enforced in public institutions. Hence the principle of non-discrimination also applies in private schools. In the past years, Cameroon government provided subsidies to the private schools in order to sustain their existence and keep down the high fees. However this subsidy dropped from 7.305 billion FRS CFA (€11,136,400,709) in 1996/97 to 3.15 billion FRS CFA (€480,214,404) in 1999/2000⁵⁹. This reduction of over 50% can be attributed to the harmful effects of the economic crisis that hit Cameroon since the 80s⁶⁰. At the end of the day, the State could not afford the subsidies and so revised its policy of Law No. 87/22 of 17 December 1987, and consequently, granted full financial responsibility in respect of private establishments to their shareholders⁶¹. This of course led to skyrocketed school fees especially in catholic (mission) boarding schools and private schools in general. There are now so many private schools in the country but they are very expensive and hence available only to the rich. Since the private schools are mainly for businesses, it cannot really help the situation of the Mbororo or the pygmies whose incomes are very low.

It can be concluded from the above that private schools cannot solve the problem hindering the full realisation of the right to education. Although private schools are trying to attract student by hiring the best teachers and by producing good results, the number of registration of pupils and students at government school over the years has increased tremendously. This is obviously because fees for government schools are cheaper than private schools. Generally, in the year 2000 to 2008, the access rate to kindergartens was 16.5% and 95.6% for primary schools⁶². What then is the number of school registration of the indigenous people? Unfortunately, there is no data specifically on the indigenous people hence it is difficult to assess whether they are inclusive in this high result.

In order to provide education to its population by the year 2006, 2007 and 2008, 1442 new classrooms were constructed and equipped with table benches at the public primary schools; 105 classrooms were also rehabilitated in public schools; 12 public primary schools benefitted from the construction of hedges; 162 schools benefited from the construction of latrine

⁵⁹ Supra, Footnote No 55, P.86 . Para 343.

⁶⁰ IDEM.

⁶¹ IDEM.

⁶² Republic of Cameroon, Second Periodic Report on Cameroon within the Framework of the African Charter on Human and People's Rights. 2010, p. 79.

blocks; and 10 kindergartens were built⁶³. In 2006, 13,300 teachers were recruited and in 2008, 5,525 teachers in primary schools were recruited⁶⁴. In spite of these recruitments, many schools especially in the rural and inaccessible areas still lack teachers. There is no information whether the indigenous peoples benefited from those projects. However, indigenous peoples live in inaccessible area and so most of the teachers frequently sent to those areas are newly recruited teachers waiting to be on government pay lists. In such schools, teachers are always absent due to the lack of incentive or the bad road condition. Furthermore, classes are overcrowded and the school hygiene and sanitation facilities are poor.

Despite the fact that teachers were recruited in previous years, the shortage of teachers is still a problem. Moreover, overcrowding at primary schools till the university level is a huge problem. At the University of Yaoundé II for example, the classrooms are usually crowded and some students sit outside during lectures. The lack of school materials especially in the rural areas is also a serious problem because government supplies either do not reach the area or deliveries are always delayed. That is the reason why the parents and authorities of the public schools need the PTA money. Today many schools do have computers but that can only be available in urban areas and it is not yet a dream for the schools in rural areas. In fact, educational facilities in indigenous areas are more often underfunded, or of low quality and poorly equipped⁶⁵. Indigenous children more often attend the worst schools with the least educated teachers and the smallest amount of resources⁶⁶.

The requirement of a birth certificate before registration even at primary school level is a serious factor that reduces the number of Pygmies registered at school. This is because many of them do not have birth certificates or national identity cards due to the financial constraint involved in acquiring one. The difficulty in obtaining identity card for the pygmies is not limited to the financial constraint but extend to the fact that they are being discriminated by the authorities in charge⁶⁷. They are discriminated in the sense that they are not treated the

⁶³ IDEM 85-86.

⁶⁴ IDEM 86.

⁶⁵ UN Expert Mechanism on the Rights of Indigenous Peoples, "Study on Lessons Learned and Challenges to Achieve the Implementation of the Right of Indigenous Peoples to Education", Index: A/HRC/EMRIP/2009/2, 26 June 2009, Para 112, available at www2.ohchr.org/english/issues/.../A_HRC_EMRIP_2009_2.pdf (consulted on 31 August 2012).

⁶⁶ IDEM.

⁶⁷ Kai Schmidt-Soltan, Republic of Cameroon, Indigenous People (Pygmies) Development Plan for the Participatory Community Development Program, June 2003. P. 17-18. Available at

same or given the same right like any other Cameroonian by the authorities in charge. This is usually because they are uneducated and do not know their rights so they often fall prey to exploitation. And without those documents, they cannot exercise their rights as citizens. In order to tackle this problem, MINAS organised a sensitisation campaign in 32 Baka communities on the importance of and procedure on the acquisition of official documents; 24 Baka resource persons trained in the use of birth declaration; and 467 Baka children received their birth certificates⁶⁸. However, there are other Baka communities who are definitely hoping that this project should reach their communities.

According to the census on education of the Mbororo'en conducted by the MBOSCUDA, the number of Mbororo'en in the Northwest region is 85,280 in the year 2005 out of the total population of 2,041,030. The results from the census revealed that the total enrolment of Mbororo'en in all identified educational institutions is 12,751 out of the 85,280 Mbororo'en in the North West region while that of non-Mbororo'en in the same region amounted to 442,345. Out of 12,751 Mbororo'en at school in 2005, 7,921 are males while 4,830 are females giving an enrolment rate of 15%. The figure clearly indicated a huge disparity between the number of female and male Mbororo'en children at school. Why such a disparity? Is it the girls who do not want to go to school or it is the culture that prohibits the education of the girl child?

Luckily the census provided the answers to these questions by indicating that the main reason for disparity in education between male and female is the cultural and religious barriers. It is rather unfortunate that even at this modern age, culture and religion still hinder the progress of women. The idea of women as the weaker sex whose place is in the kitchen; and incidents of early and forceful marriages of girls are those practices that limit the education of the girl child. On a brighter side, the number of Mbororo'en at school has increased over the years and that is clearly as a result of the works of MBOSCUDA. The highest rates of enrolment is at primary schools with 7,976; followed by Arabic schools with 3,916 and then the census indicated a drastic drop at the secondary education to 657 students and 39 students at the university (at the university level, it is important to mention that, the census also included Mbororo'en studying in and out of the region and even out of the country). This improvement

<http://info.worldbank.org/etools/docs/library/41153/IPDP%20Cameroon%20CDD.pdf> (accessed on 8th September 2012).

⁶⁸ Republic of Cameroon, Second Periodic Report on Cameroon within the Framework of the African Charter on Human and People's Rights. 2010. P. 121.

of the educational level of the Mbororo'en is due to the programs and projects carried out by MOSCUDA. Since the creation of the organisation, they carried out a lot of programs to mobilize and sensitize the Mbororo community on the importance of education. They built schools and provided didactic materials to schools in their communities; and also granted scholarship to many Mbororo youths in the different educational institutions.

However, despite this improvement, a lot still has to be done because the census also indicated that there are still a good number of Mbororo'en who do not have basic education. This is actually a serious problem because primary school is supposed to be compulsory at a particular age and the government had to compel parents to send their children to school. The census also provided reasons for the deficiency in education such as: unavailability of school within their vicinity; cultural and religious barriers; and economic or financial barrier.

2.3. Accessibility of education for indigenous peoples

As spelt out in General Comment 13 of the UN Committee on Economic, Social and Cultural Rights (ESCR)⁶⁹, an accessible educational system has three features such as: non-discrimination; physical and economical accessibility. In order to ensure the fulfilment of its core obligation, the government must ensure that at least basic education is accessible to all in law and in fact without discrimination.

2.3.1. *Non-discrimination*

The International Covenant on Economic, Social and cultural Rights (ICESCR) deals with non-discrimination in education in its Art 2(2). Art 2(2) stipulates that States Parties undertake to guarantee the economic, social and cultural rights of individuals without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. On a clearer note, Article 1 of the Convention on the Elimination of Racial Discrimination (CERD) states that: "racial discrimination shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin". Article 2(1)(a) of CERD requires State not to engage in any act of racial discrimination.

⁶⁹ ESCR Committee General Comment 13, Para 6(b).

Discrimination can either be direct or indirect. Direct discrimination refers to a disadvantage that is based on the law (de jure) while indirect discrimination refers to the rule which is neutral on the face of it but nevertheless has a disadvantage effect on a group of people (de facto)⁷⁰. The principle of non-discrimination has acquired the status of customary law and *jus cogens*⁷¹. The reasoning behind direct discrimination is that indigenous people deserve special measures through which the state can redress past and present injustice and inequalities and lift them to a level where they can exist on an equal footing with the rest of the population. Neglect or inaction by the government can be seen as indirect discrimination in instances where there exist no legislation to uphold the rights of indigenous people⁷². The Committee in its general comments stated: *“the adoption of temporary special measures intended to bring about de facto equality for men and women and for disadvantaged groups is not a violation of the right to non-discrimination with regard to education, so long as such measures do not lead to the maintenance of unequal or separate standards for different groups and provided they are not continued after the objectives for which they were taken have been achieved”*⁷³

Unfortunately, the indigenous people in Cameroon do not generally benefit from any special measures and they are compelled to the same educational system as the rest of the population. However the special admission⁷⁴ in December 2010 (special admission came as a result of the decision of the Minister of Forestry) of four pygmies into the National school of Water and Forestry Cameroon in the year 2010-2011, can be construed as a special measure used to give opportunity to the forest people (pygmies) to work in the forest areas and to fight against social exclusion.

The prohibition of discrimination is the key element of the principle of equality and it is an essential element in the protection of minorities, specifically the protection of indigenous people. The elimination of discrimination against indigenous people and the elimination of conditions that cause such discrimination are preconditions to enable the inclusion of indigenous people in education. The preamble of the Cameroon Constitution prohibits discrimination and spelt out that every person shall have equal rights and obligations.

⁷⁰ International Work group for Indigenous Affairs, *The Indigenous World- 2009*. Copenhagen: IWGIA, 2009. P.30.

⁷¹ IDEM P.29.

⁷² IDEM P.35.

⁷³ ESCR Committee General Comment 13, Para 32.

⁷⁴ Cameroon, *Quatre Pygmée Admis A L' Ecole Nationale Des Eaux et Forêts de Mbalmayo*. Available at <http://www.yaoundeinfos.com/article-cameroun-quatre-pygmees-admis-a-l-ecole-nationale-des-eaux-et-forets-de-mbalmayo-62641092.html> (accessed on 3 September 2012).

Meaning everyone whether male or female, indigenous or non-indigenous have the equal rights to attend school and equally enjoy the public services. There is actually no discriminatory legislation against the indigenous people but that does not conclude that they are not discriminated. It cannot be ignored that the treatment of the indigenous people by the teachers and fellow student or pupil are discriminatory⁷⁵. For example referrals such as backward, good for nothing people are quite discriminatory⁷⁶ and discourages the indigenous peoples to attend classes. Also the insult and ridicule of Mbororo girls at school push them to be absent from classes⁷⁷. These practices ought to be eradicated and under Article 2(2), Cameroon as a State party to UNDRIP is obliged to remove gender and other stereotyping which impedes the educational access of girls, women and other disadvantaged groups.

Apart from the strange language and strange systems they are compelled into, they are not welcome and do not feel comfortable in the academic milieu. This is because others look at them as inferior human being and they have this inferiority complex which can be destroyed if they are actually educated and then their self-esteem will increase and others will look at them differently. The state is also discriminatory as concerns the allocation of resources to education of the indigenous people. This is very visible with shortages of classrooms, teaching material and teachers in those areas and the indigenous people need to always leave their camps or settlement to attend school kilometres away⁷⁸.

The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) strongly prohibit discrimination in Article 14 (2) and proclaims that indigenous children particularly, have the right to education without discrimination. The State has the duty to ensure that the above provision is satisfied. This therefore means that the state has a duty to ensure that the indigenous people can attend school without being bullied, insulted, humiliated, and regarded as backward and less human both by the teachers and the other students. The state can achieve this by implementing certain rules in school to curb down such occurrences and some other activities to boost –up the morals of the indigenous people. For example: the teaching of

⁷⁵ African Commission on Human and Peoples' Rights, "Report of the African Commission's Working Group of Experts on Indigenous Populations/Communities" Adopted by The African Commission on Human and Peoples' Rights at its 28th ordinary session, 2005. Copenhagen: IWGIA, 2005. p. 55-56.

⁷⁶ This kind of discrimination is known as Horizontal discrimination and this fate befalls the pygmies group in Cameroon. See IWGIA, "The Indigenous World- 2009". Copenhagen: IWGIA, 2009. p.33. www.iwgia.org.

⁷⁷ IDEM P. 33.

⁷⁸ Nobutaka KAMEI, "An Educational Project in the Forest: Schooling for the Baka Children in Cameroon". African Study Monographs, Suppl.26: 185-195, March 2001, P.188. www.africa.kyoto-u.ac.jp/kiroku/asm_suppl/.../13_KAMEI.PDF (Accessed on 29 August 2012).

indigenous culture and encouraging the dancing of indigenous traditional dances during inter-school competitions.

As already observed, there still exist a significant disparity between the number of boys and girls at school. Male children especially in the rural areas have always benefited the privilege of attending school and the female children more often kicked out from school because of cultural, economic and social reasons. Indigenous families prefer girls to stay at home and perform household chores or follow their mothers to the rivers or farms to take care of the children while others give their daughters in marriage at a very young age. The government have carried out some measures to reduce this disparity which are: sensitisation campaign; the granting of scholarship based on a 40% quota for girls⁷⁹; and the creation of Ministry of Women and Family Affairs that looks specifically into the problems of the women. These measures are available generally to the public and not specifically for the indigenous people.

2.3.2. *Physical accessibility*

Physical accessibility of schools requires that schools have to be built within the neighbourhood or provide appropriate distance learning⁸⁰. This is generally not a reality in Cameroon where many people always need to trek for long distances to attend public schools. The situation is therefore worst for the pygmies who more often live in geographically inaccessible areas. Most schools are built outside Baka's settlement and camps⁸¹. They have to trek for long distances to attend school and there are no buses to carry them to school. In fact it will be much cheaper to build schools at close proximity than to make available public transportation for the pygmies considering their location and bad road conditions.

In poor countries like Cameroon, distance learning is a luxurious, expensive form of education available to the rich and to those mostly at university level. This form of learning is yet to be a reality for many Cameroonian so emphasis needs to be place on traditional form of education that is cheaper and more accessible. However, the government has conducted a

⁷⁹Republic of Cameroon, Second Peroidic Report on Cameroon within the Framework of the African Charter on Human and People's Rights. 2010. P 80.

⁸⁰ ESCR Committee General Comment 13.

⁸¹ Nobutaka KAMEI, "An Educational Project in the Forest: Schooling for the Baka Children in Cameroon". African Study Monographs, Suppl.26: 185-195, March 2001, P.188. www.africa.kyoto-u.ac.jp/kiroku/asm_suppl/.../13_KAMEI.PDF (Accessed on 29 August 2012).

study on how to build computer centres in state-owned universities for e-learning or distance education⁸².

2.3.3. *Economic accessibility*

Economic inaccessibility is a serious barrier to education for many people. That is one of the reasons why states were compelled to make basic education free. Free and compulsory so as to enable the basic education of the poorest. The problem has not been solved because parents still need to pay PTA contribution and added to that they need to buy uniforms, school items, and provide food for their children. The income of indigenous people is still very low, some of them are still struggling to feed their families and so the children will prefer to go hunting or work at the Bantu plantation for survival rather than go to school. So those Baka families who have attained the level of self-satisfaction in respect of availability of food are able to prioritise the education of their children⁸³. How can the government encourage a hungry family to send the child to school? Unfortunately, scholarships from primary until university level are available but granted only to the best students and not to the student in need. Apparently, the indigenous people are in some kind of disadvantage situation because they do not have any motivation.

Article 17 of UNDRIP provides that the States shall in consultation and cooperation with indigenous peoples take specific measures to protect indigenous children from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education. This prescribes a duty on the State to take measures with the cooperation of the indigenous people to ensure that the child is at school and not working at cocoa plantation of the Bantu. This provision is very important because the indigenous children are more often absent from school because they are working or hunting for survival with their parents.

⁸² Republic of Cameroon, Second Periodic Report on Cameroon within the Framework of the African Charter on Human and People's Rights. 2010. P 103.

⁸³ Aili Pyhälä, "What future for the Baka? Indigenous' People Rights and Livelihood Opportunities in South – East Cameroon". Copenhagen: IWGIA, 2012. P 30.

2.4. Adaptability of education to indigenous peoples

Education has to be flexible and adaptable to the specific needs, culture, language and lifestyle of the indigenous people concerned⁸⁴. For example mobile school can be introduced because of their nomadic life style, or they get school holidays during harvest period or are being provided evening primary schools etc. Under the ICESCR, the Committee explains that States should ensure the adaptability of education by designing and providing resources for curricula which reflect the contemporary needs of students in a changing world⁸⁵. The best interest of the indigenous people may not at all circumstances be the best interest of non-indigenous people because they all hold different values. In this respect, in order to ensure that the education conforms to the needs of the indigenous people, Article 4 of UNDRIP allows indigenous peoples to establish and control their own educational systems and institutions providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning. And that being done, their dignity and diversity of their cultures, traditions, histories and aspirations shall appropriately be reflected in their education⁸⁶.

Furthermore, Article 18 of the UNDRIP, prescribes the right of the indigenous people to participate in decision-making in matters which affect their right. Hence the indigenous people have a right to participate in the formation of the school curriculum and the whole educational system because the right to education is one of their rights. They need to participate in decision as discussed above because they have a right to use, develop and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems and literatures⁸⁷ and because they have a right not to be subjected to force assimilation⁸⁸. This is not the case in Cameroon because the country has a central system that decides on curriculum, means of education and any other issue relating to the nature of education. However, there exist indigenous institutions.

⁸⁴ UN Expert Mechanism on the Rights of Indigenous Peoples, “Study on Lessons Learned and Challenges to Achieve the Implementation of the Right of Indigenous Peoples to Education”, Index: A/HRC/EMRIP/2009/2, 26 June 2009, Para 26, available at www2.ohchr.org/english/issues/.../A_HRC_EMRIP_2009_2.pdf (consulted on 31 August 2012)

⁸⁵ The UN Committee on Economic, Social and Cultural Rights, General Comment No 13- The Right to Education (Art 13 of the ICESCR), Index: E/C.12/1999/10, 12 August 1999, Para 50. Available at <http://www.unhcr.ch/tbs/doc>. (consulted on 7 august 2012).

⁸⁶ Article 15(1) of the UN Declaration of the Rights of Indigenous People, 13 September, 2007.

⁸⁷ Article 13 (1) of UNDRIP, 2007.

⁸⁸ Article 8(1) of UNDRIP, 2007.

The UNESCO plan relating to inclusive education for all adopted by Cameroon since 2004 geared to the inclusion of the most vulnerable set of people⁸⁹. This idea of inclusive education promotes education in the national language taking into account the specific needs of the population to be trained. This idea was aimed at adjusting the present educational system to suit everybody especially the excluded. It is with great relief that the promotion of the teaching of national language at school has taken a more promising dimension. There is now an ongoing project in the teaching of the Kom language in some primary schools in the North West region⁹⁰ and unlike before, the Cameroon government is more involved in its development. Hopefully, this new innovation will reach the indigenous peoples because they have found it difficult to follow classes taught in another language other than their mother-tongue.

It is quite pathetic because the indigenous community does not take any decision in relation to the kind of education they are subjected to. They are being subjected to mainstream educational system wherein the teaching method and the curricula is provided by the Ministry of Education based on government policy. So their education does not reflect their culture, respect their tradition, suit their livelihood and needs or provided in their language. In the 1990s, catholic missionaries called “Frères des Ecoles Chrétiennes” (F.E.C.) were preoccupied with the above mentioned plight of the indigenous peoples. On this premise, they started a project called “Projet Pygmées,” in Malapa in the East region of Cameroon⁹¹. This project was intended to adapt the school according to the culture, lifestyle and language of the Baka children in order to incorporate them in to the educational system. In order to achieve their objectives, schools were built within the Baka settlement; the curriculum was adjusted to reflect the culture of the Baka; Baka teachers were recruited and trained; and in “ORA 1”, the Baka language was used while in “ORA 2”, French language was used⁹². Those who graduated from “ORA 2” are expected to be admitted in the second grade of public schools in the centre of Nguilili. The text books provide illustration on hunting; trapping an animal; building a traditional hut; and the most important spirit of the Baka⁹³. Notwithstanding, subject like: Reading, writing and arithmetic were taught⁹⁴. This actually sounded very

⁸⁹ Republic of Cameroon, Second Periodic Report on Cameroon within the Framework of the African Charter on Human and People's Rights. Date, p. 99

⁹⁰ IDEM P.90.

⁹¹ Nobutaka KAMEI, “An Educational Project in the Forest: Schooling for the Baka Children in Cameroon”. African Study Monographs, Suppl.26: 185-195, March 2001, P.188. www.africa.kyoto-u.ac.jp/kiroku/asm_suppl/.../13_KAMEI.PDF (Accessed on 29 August 2012).

⁹² IDEM.P.189

⁹³ IDEM.P.189-190

⁹⁴ IDEM

interesting for the Baka because it was an attempt to integrate indigenous perspectives and language into mainstream education system. In addition, a study⁹⁵ on the non-formal education (ORA) in the Baka community (the town of Mbang, Cameroon) revealed that, an education that takes into consideration the cultural specificities, “in particular indigenous languages, bolsters community cohesion, breaks down discrimination prejudices and strengthens inter-ethnic dialogue”.

2.5. Acceptability of education by indigenous peoples

An acceptable education requires that the form and substance of education, including curricula and teaching methods must be culturally appropriate and acceptable to indigenous people in the light of international human rights standards⁹⁶. The Committee explained that State should ensure that education is acceptable by taking positive measures to ensure that education is culturally appropriate for minorities and indigenous peoples⁹⁷. The state needs to ensure that general human right provisions on the right to education conform with standard that specifically address the rights of indigenous peoples. The indigenous peoples are willing to be educated but they do not agree with what and how is currently taught⁹⁸. Moreover, they prefer to have a Baka school with Baka teachers and the use of Baka language⁹⁹. All indigenous people will definitely prefer to have their own school, their own teacher and the use of their own language plus one official language because they will feel more comfortable in that setting and get greater chance of succeeding.

2.6. Barrier to the enjoyment of the right to education

Cameroon has featured so many times as one of the most corrupt countries in the world in Transparency International's Corruption Index¹⁰⁰ and so it will not be wrong to suspect that

⁹⁵ International Labour Organisation, “Indigenous and Tribal Peoples’ Right in Practice: A Guide to ILO Convention No 169”. Geneva: International Labour Organisation publication. 2009. P.36-37.

⁹⁶ UN Expert Mechanism on the Rights of Indigenous Peoples, “Study on Lessons Learned and Challenges to Achieve the Implementation of the Right of Indigenous Peoples to Education”, Index: A/HRC/EMRIP/2009/2, 26 June 2009, Para 25, available at www2.ohchr.org/english/issues/.../A_HRC_EMRIIP_2009_2.pdf (consulted on 31 August 2012).

⁹⁷ ESCR Committee, General Comment No 13, Para 50.

⁹⁸ Aili Pyhälä, “What future for the Baka? Indigenous’ People Rights and Livelihood Opportunities in South – East Cameroon”. Copenhagen: IWGIA, 2012. P 30.

⁹⁹ IDEM

¹⁰⁰ After the 2007 Transparency International Corruption Perception Index, Cameroon for the third time was identified as the most corrupt country. However, since then, the perception of corruption in the country has

some of those resources allocated for the improvement of education were not used for their rightful purposes but rather embezzled by corrupt nationals coordinating the project. This of course will add mismanagement of resources to the problem of lack of resources. However, the barrier to education of the indigenous people is far more serious than the lack of schools, teachers and reading material because that is a general reality in the country. There have been outcry of lack of schools within the locality and overcrowding in the classroom in other parts of the country yet their level of school enrolment, school attendance and educational progress is higher than that of the indigenous peoples. In order for Cameroon to achieve the goal of education for all, the country needs to find a solution to tackle these factors that obstruct the enjoyment of the right to education of the indigenous peoples. These factors include: physical distance, psychological distance, languages, economy, values and nomadic lifestyle¹⁰¹.

Physical distance was clearly explained in respect of the accessibility of education to the indigenous peoples. The lack of schools within their neighbourhood compels them to walk for long distances to school. Another factor is financial barrier which plays a greater role. As was explained in the previous subheading, individual families in Cameroon spend a lot of money to ensure basic education for their children. This therefore means that children from rich families do not have any problem while those from poor families will be sent out of school because they cannot pay the PTA contribution, or buy school uniforms for their children. This is a very serious problem because the income level of the indigenous peoples is very low. Most indigenous people who are not self sufficient in food will prefer to have their children in the forest hunting or gathering food than to go to school which requires the buying of books, pencil, pen and report card. It even becomes more complicated because they do not have a birth certificate which must be presented before the registration of a child even in primary school. To acquire a birth certificate, everybody is required to present a birth attestation from the hospital or any health centre within fifteen days after the delivering of the baby, if not then you will be asked to go through the High Court in order to get a birth declaration which will enable the issuance of a birth certificate. The situation becomes more difficult when the baby is not delivered at the hospital rather at home or in the forest. This will obviously be a very

reduced though it is still very high. See the Transparency International Corruption Perception Index available at www.transparency.org.

¹⁰¹ These barriers were thoroughly explained by the Special Rapporteur, Kishore Singh in his report: The promotion of equality of opportunity in education, Index: A/HRC/17/29, 18 April 2011, available at <http://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A-HRC-17-29.pdf>

complicated procedure for the illiterate and poor Pygmies. However, the NGOs are working so hard to help the Pygmies gain citizenship and enjoy their right as Cameroonian.

It is quite a pity that when the indigenous parents finally break this financial wall and succeed to send their children to school, their children get to discover that they have been sent to a different world. The pygmies are easily identified in class because more often, they wear torn cloths, and often barefoot¹⁰². They are being humiliated and insulted by the children of the powerful Bantus neighbours who have always felt superior to them. They sit in class to get lessons in a strange language (French) and can neither get help nor encouragement from their parents who may have never been to school at any point in their life. Studies have shown that education become much easier when the parent of the children is educated¹⁰³. They have to sit in a four squared - built classroom which is very different from the fresh, musical, solemn and interesting catch he/she would have been doing hunting in the forest. In addition, the teacher will be teaching values which are very much different from indigenous values and aiming at assimilating them into the culture of the rest of the population. Moreover, the school program does not take into consideration their nomadic lifestyle. For example: in the dry season, the Baka move their camps into the forest where they can build traditional hut out of tree leaves and stay there to fish, hunt and gather wild food from the forest¹⁰⁴. During that period (January to March) their children will be absent from school because they accompany their parents to the forest¹⁰⁵.

2.7 Conclusion

In a nutshell, the indigenous peoples now accept the need to get education because they believe that it will permit their children get a better job and earn money to buy food stuff like fish, salt, oil etc¹⁰⁶ but they cannot afford the cost of obtaining basic education and more to that, they do not receive any incentive from the government (for example the special awards of scholarships specifically to the pygmies to keep them at school); nor do they appreciate the

¹⁰² Sarah Tucker, *Integration by Education: A study of Cameroon's Bakola-Bagyeli*. Journal of Politics and society, Vol 21, Columbia university Academic Commons, 2011. P.105. Available at <http://academiccommons.columbia.edu>. (consulted on 13th November 2012).

¹⁰³ United Nations Economic Commission for Africa (UNECA) "Investing in education as a means and as an end: exploring the micro foundations of the Millennium Development Goals", UNECA, Research Report 2008, P. 7.

¹⁰⁴ Nobutaka KAMEI, "An Educational Project in the Forest: Schooling for the Baka Children in Cameroon". African Study Monographs, Suppl.26: 185-195, March 2001, P.191. www.africa.kyoto-u.ac.jp/kiroku/asm_suppl/.../13_KAMEI.PDF (Accessed on 29 August 2012).

¹⁰⁵ IDEM

¹⁰⁶ Supra , footnote number 102.

means and content of their education. The Cameroon government has failed to fulfil its entire obligations under the four normative elements on the right to education. The shortages of classrooms, teachers, teaching materials and lack of water, sanitation facilities for both boys and girls and the existence of other educational cost are the factors which hinder the realisation of the right to education of indigenous peoples. Also the fact that indigenous education does not reflect their values and lifestyle plus the discrimination and marginalisation suffered by them play a negative role towards the realisation of their right to education. UNESCO inclusion doctrine preaches that the inclusion of indigenous peoples does not only entail the building of schools but identifying the various obstacles and providing solutions thereto. Cameroon still has a lot of work to do and the goal to achieve education for all can only be achieved if Cameroon's obligations under international treaties are executed.

CHAPTER 3

HUMAN RIGHTS OBLIGATIONS OF THE STATE OF CAMEROON

3.1. Introduction

As seen in the previous chapter, the realisation of the right to education of the indigenous peoples in Cameroon is far fetched. There is a lot of work to be done to satisfy the requirement of the four normative elements of the right to education. Obviously, in order to ensure the full realisation of this right to education, the Cameroon government needs to carry out its obligations under international legal instruments duly ratified. What then are the obligations of the Republic of Cameroon?

Before diving into the various obligations of the government, the various international instruments duly ratified will be presented. The right to education was first proclaimed in the Universal Declaration of Human Rights 1948, Article 26. This is a declaration hence does not establish any immediate legal obligation. However, in 1966 this right was incorporated in the ICESCR which is a treaty establishing legal obligations to all ratifying States. Fortunately, Cameroon has ratified both the ICESCR and the Convention on the Rights of the Child 1989 but not the International Labour Organisation (ILO) Convention No 169. Cameroon has also adopted the UN Declaration of the Rights of Indigenous People (UNDRIP) but unfortunately, it does not have any direct binding force. Cameroon has also ratified the African Charter on Human and Peoples' Rights: Article 17 of that Charter states that everyone shall have a right to education. It therefore prescribes that States have to ensure education of everyone on equal basis. Normally, these international legal instruments should have a powerful impact in Cameroon, because hierarchically, international law stands above national law and the constitution is supreme to other national laws¹⁰⁷.

The ICESCR and the Convention on the Rights of the Child impose certain obligations on States. Although traditionally, States are the primary actor for the protection of human rights of its citizens, the Committee concluded that the adoption of a human right-based approach by some agencies and programs will greatly facilitate the implementation of the right to

education¹⁰⁸. The Committee therefore calls upon other actors such as UNESCO, the United Nations Development Programme, UNICEF, ILO, the World Bank, the regional development banks, the International Monetary Fund (IMF) and other relevant bodies within the United Nations system to enhance their cooperation for the implementation of the right to education at the national level. Particularly, the international financial institutions, notably the World Bank and IMF, were called upon to pay greater attention to the realisation of the right to education in their lending policies, credit agreements, structural adjustment programmes and measures taken in response to the debt crisis. This was absolutely a positive involvement because the World Bank and IMF used to request for the reduction of government expenditure on education and that will obviously be a disaster if they ask for privatisation of the educational sector in the country. Fortunately, in recent times, the improvement of education was included in the poverty reduction strategic plan (PRSP) of Cameroon.

Under the Vienna Convention, the principle of “*pacta sunt servanda*” prescribed that “every treaty in force is binding upon the parties to it and must be performed by them in good faith”¹⁰⁹. Cameroon is therefore bound to respect the provisions of those conventions and any breach will constitute a violation. What are States responsibilities under those conventions mentioned above? The first part of this chapter will look specifically at the obligations provided by the conventions ratified by Cameroon: The International Covenant on Economic, Social and Cultural Rights and The Convention on the Right of the Child. Lastly, the international interference to provide assistance for the fulfilment of the right to education shall be discussed.

3.2.State obligations under the ICESCR

In discussing the obligations of the States in respect to economic, social and cultural rights, it is very essential to begin with the minimum core obligation of the State. This obligation requires States to satisfy the minimum essential levels of each obligation under the Covenant. The “minimum essential level” under Article 13 includes: free primary education; non-discrimination in the access of public educational institutions; education must be compatible with the objective of education prescribed by Article 13; secondary, higher and technical education must be included in the educational strategy; and the choice of education must be

¹⁰⁸ The UN Committee on Economic, Social and Cultural Rights (ESCR), General Comment No 13- The Right to Education (Art 13 of the ICESCR), Index: E/C.12/1999/10, 12 August 1999, Para 60. Available at <http://www.unhchr.ch/tbs/doc>. (consulted on 7 august 2012).

¹⁰⁹ Art 26 of the Vienna Convention on Treaties 1969. Entered into force on 27 January 1980.

free from interference by the State or third party¹¹⁰. Notwithstanding, the financial constraint, Cameroon is expected to satisfy these minimum core obligations.

Article 13 of the ICESCR recognizes the right to education of everyone. It proclaims an immediate obligation of the State to make primary education compulsory and available free to all; and secondary and higher education available, accessible and progressively made free to all. From the foregoing, there is an immediate obligation of the state to provide free and compulsory primary education without discrimination and an obligation to take steps to ensure full realization of the enjoyment of higher education. Despite the possibility that the right to education may be achieved progressively as a result of financial constraint, the Committee requires that, States must take deliberate, concrete and targeted steps towards that goal¹¹¹. Taking further steps means, taking appropriate measures for example: the adoption of legislation¹¹².

States have the obligations to protect, provide and fulfil the essential features of availability, accessibility, acceptability and adaptability of education¹¹³. The obligation to respect requires States to delete or avoid any measure that may prevent the realisation of the right to education. Fortunately, there is no legislation in Cameroon that hinders the realisation of the right to education. As concerns the obligation to protect, States are required to take measures to prevent third parties in interfering with the enjoyment of the right of others. In the case under review in this study, Cameroon would be obliged to take measures to stop the discrimination of indigenous people at school and to remove gender and other stereotyping which impedes the educational access of girls, women and other disadvantaged groups. Finally, the obligation to fulfil involves both an obligation to facilitate and to provide¹¹⁴. This obligation requires the taking of positive measures that will enable and assist individuals or groups to enjoy their right to education. Under this obligation, Cameroon is expected to carry out sensitisation campaigns on the need to education, or provide scholarships to the indigenous peoples or to take special measures to facilitate the acquisition of birth certificates or national identity cards.

¹¹⁰ The UN Committee on Economic, Social and Cultural Rights, General Comment No 13, Para 57. It is important to remember that the main objective of the general comments is to provide guidance on how to implement the obligations of States under the Covenant.

¹¹¹ The UN Committee on Economic, Social and Cultural Rights, General Comment No 3: The Nature of States Parties' Obligations (Art 2, Para 1, of the Convention), Index: E/1991/23, 14th December, 1990, Para 2. Available at <http://www.unhchr.ch/tbs/doc> (consulted on 7 August 2012).

¹¹² *IDEM*.

¹¹³ The UN Committee on Economic, Social and Cultural Rights, General Comment 13. Para 47.

¹¹⁴ The UN Committee on Economic, Social and Cultural Rights, General Comment No 13. Para 55.

Interestingly, States parties have specific legal obligations to ensure that educational curricula at all levels are directed to the objectives identified in Article 13. The aim and objective of education under this Article 13, is to enable the full development of the human personality and the sense of its dignity; strengthen the respect for human rights and fundamental freedoms; enable effective participation by all in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups. Consequently, the educational system must abide to those objectives above mentioned¹¹⁵. In the quest to achieve these objectives, in 2008/2009 the teaching of human rights education at the primary school level was introduced¹¹⁶. The Ministry of Basic Education created a committee which designed an educational notebook and related textbook that were made available to teachers for the teaching of oral and civic education¹¹⁷. This notebook or manual was distributed to 50 pilot schools: 9 English- speaking, 34 French - speaking, and 7 bilingual schools to effectively teach as from 16th January, 2009¹¹⁸. Given the fact that human right education is something very new in the curriculum and it is not taught at secondary school and not even a compulsory course at university level, the teachers might not have any sound idea about the topic¹¹⁹. Consequently, it can only yield some fruits if the teachers are trained in that domain.

3.3. State obligations under the Convention on the Right of the Child.

The Committee on the rights of the child in its General Comment No 11 gives an explanation of the provisions of the Convention on the Rights of the Child in respect to the protection it provides to indigenous children¹²⁰. As per Article 2 of the Convention, indigenous children have the right to be free from discrimination. In this respect, States have to ensure that the principle of non-discrimination is included in all domestic legislation. Cameroon enacted the 1998 Act which is the general legal framework on education in Cameroon. Article 6 and 7

¹¹⁵ The UN Committee on Economic, Social and Cultural Rights, General Comment No 13: The Right to Education (Art 13 of the ICESCR), Index: E/C.12/1999/10, 12 August 1999, available at <http://www.unhchr.ch/tbs/doc>. (consulted on 7 August 2012).

¹¹⁶ Republic of Cameroon, Second Periodic Report on Cameroon within the Framework of the African Charter on Human and People's Rights. 2010.P. 88.

¹¹⁷ IDEM.

¹¹⁸ Ministry of Justice, Report by the Ministry of Justice on Human Right in Cameroon in 2009. Yoaunde: Ministry of Justice, October 2010. P 157. Available at http://www.spm.gov.cm/uploads/media/Rapport_Minjustice_Ang_2009.pdf (consulted on 24th September, 2012).

¹¹⁹ This was one of the difficulties encountered in the implementation of the syllabus and this was in raised in the meeting. See IDEM

¹²⁰ Un Committee On The Rights Of The Child, General Comment No. 11: Indigenous children and their rights under the Convention. Index: CRC/C/GC/11, 12 February 2009. Available at <http://www.un.org/esa/so>.

proclaim that the State shall ensure the enjoyment of the right to education of a child and shall guarantee to all, equal access to education without any discrimination on gender, political, philosophy, religion, opinion, social, cultural, linguistic, or geographical origin. Despite the existence of this legislation, as explained in the previous chapter, indigenous children still suffer from discrimination. The Committee on the right of the child in its comment said that addressing discrimination may require changes in legislation, administration, resource allocation, and educational measures to provoke changes in attitudes¹²¹.

This Convention also prescribes the obligation on States parties to ensure that all children are registered immediately after birth and that they acquire a nationality. As explained in the previous chapter, access to primary school is limited because of the lack of birth certificates of indigenous people in Cameroon. Making birth registration free and universally accessible will obviously solve the problem. In order to ease the registration of birth certificates of indigenous children especially those living in remote areas, the Committee request States parties to take special measures such as creating mobile units for establishing birth certificates, or establishing periodic birth registration campaigns or the designation of birth registration offices within indigenous regions¹²².

Article 28 of the Convention sets out that States parties shall ensure that primary education is compulsory and available to all children on the basis of equal opportunity. As previously explained, free education is far fetched as there still exist direct and indirect costs of education, insufficient educational facilities, inaccessibility of schools as well as a lack of culturally adjusted and multilingual curricula. In response to this problem, the Committee prescribed that States parties should allocate targeted financial, material and human resources for the implementation of policies and programmes specifically geared towards the improvement of the access to education¹²³. States parties should carryout campaigns on the value and importance of education; use radio broadcasts and long distance education programmes; adjust educational programs to the culture and agricultural seasons of the indigenous people and establish mobile schools to suit their nomadic lifestyle¹²⁴. Article 30 of the Convention establishes the right of the indigenous child to use his or her own language. In

¹²¹The UN Committee on the Right of the Child, General Comment No 11. Para 24.

¹²² The UN Committee on the Right of the Child , General Comment No 11. Para 42.

¹²³ IDEM. Para 60.

¹²⁴ IDEM. Para 61.

order to realise the fulfilment of the right to education, the Committee emphasized that education in the child's own language is essential¹²⁵.

3.4.The Obligation to request International Interference.

The state has a minimum core obligation to ensure the satisfaction of the most basic forms of education. Article 2 (1) obliges each State party to ensure the realisation of the right to education “to the maximum of its available resources”. The state must demonstrate that every effort has been made to use all resources that are at its disposition in an effort to satisfy, as a matter of priority, those minimum obligations. The Committee¹²⁶ notes that the phrase “to the maximum of its available resources” refers both to the resources existing within a State and those available from the international community through international cooperation and assistance. International assistance for the achievement of the rights entails the furnishing of technical assistance. Hence Cameroon has an obligation to move as expeditiously and effectively as possible within its available resources and resources provided by international cooperation to satisfy the right to education. Moreover, any deliberate retrogressive measures in the satisfaction of the right to education are not allowed. However such a measure would need full justification by reference to the totality of the rights provided for in the ICESCR and in the context of the full use of the maximum available resources¹²⁷.

Where the available resources are demonstrably inadequate, Cameroon still has the obligation to ensure the widest possible enjoyment of the right to education. Similarly, in times of severe resource constraints whether caused by a process of adjustment, of economic recession, or by other factors, the vulnerable members of society must be protected by the adoption of relatively low-cost targeted programmes¹²⁸. The government has definitely requested for funding and has equally received some funding and technical assistance to enable the improvement of education in Cameroon.

Generally, aid directed to basic education for low-income countries increased from \$1.6 billion in 1999 to \$5 billion in 2006¹²⁹ but it is still below the estimated \$11 billion aid

¹²⁵ IDEM. Para 62.

¹²⁶ ESCR Committee General Comment 13, Para 13.

¹²⁷ IDEM Para 9.

¹²⁸ IDEM Para 12.

¹²⁹ UN Expert Mechanism on the Rights of Indigenous Peoples, “Study on Lessons Learned and Challenges to Achieve the Implementation of the Right of Indigenous Peoples to Education”, Index: A/HRC/EMRIP/2009/2, 26 June 2009, Para 98, available at www2.ohchr.org/english/issues/.../A_HRC_EMRIP_2009_2.pdf (consulted on 31 August 2012).

required annually to reach universal primary education by 2015. This lack of sufficient funding is a main reason for no or low educational facilities in every part of the country especially in rural areas. Information and figures provided in this paragraph are those provided in the IMF country report 2006¹³⁰. According to the report, Cameroon experienced a decrease in economic growth rate from 3.7 percent in 2004 to 2.6 percent in 2005. However, there was an increase in public finance revenue from CFAF 1279 thousand million (€1950,492,738.51) in 2004 to CFAF 1555 thousand million (€2371,396,566.37) in 2005. Indicating growth rate of 21.6 percent in the year 2004/2005. During the same period of time, there was a downward trend in expenditure from 1335 thousand million (€2,035,194,380) to 1278 thousand million (€1948,967,724.64). Poverty-reduction expenditure which stood at more than CFAF 620 thousand million (€945,183,906) was allocated to priority sectors such as education, health and basic infrastructure. Precisely, the budget for the educational sector dropped from CFAF 300.2 thousand million (€4,576,519,497) in 2004 to CFAF 264.1 thousand million (€4,026,178,545) in 2005. Highly Indebted Poor Country (HIPC) funds amount to CFAF 16.66 thousand million (€2540,673,105.83). These budgetary allocations were in priority earmarked for: (i) the construction and equipment of 3,768 primary school classrooms from 2001 to 2005, and 1,498 classrooms by development partners such as Japan, African Development Bank, and Islamic Development Bank; (ii) the rehabilitation of 358 secondary school classrooms and construction of 216 new classrooms.

According to a government report¹³¹, the funding of basic education is essentially the responsibility of the family. The family bears 44 percent of the total expenditure for primary education. Contrary to the prescription of the ICESCR, the family carries some financial responsibility in the satisfaction of the right to basic education. Expenditure on education is 15 percent of the budget. There is an increment in the budget for education from 125.368.000.000 CFAF (€191,122,283) in 2008 to 153.102.000.000 CFAF (€230,402,494) in 2009. Looking at the budget for defence in the country, which is 162.085.000.000 CFAF (€247,096,989)¹³², one would hold that the state directs more money to defence than to education. This will leave a lot of doubt whether the government prioritises education and if it uses its maximum available resources in the satisfaction of the right to education.

¹³⁰ International Monetary Fund, Cameroon: Poverty Reduction Strategy Paper Third Annual Progress Report. Washington DC: International Monetary Fund, February 2006. Para 3-5 and Para 213-223. IMF Country Report No. 06/260. Available at <http://www.imf.org>.

¹³¹ Republic of Cameroon, Second Periodic Report on Cameroon within the Framework of the African Charter on Human and People's Rights. 2010, p. 85.

¹³² Cameroon 2009 budget. Available at <http://www.postnewsline.com/2008/11/cameroons-2009-budget> (consulted on 4 September 2012).

Funding was also received from external donors. Funds obtained from the “fast-track initiative” were used to recruit teachers and improve the situation of part-time teachers; and there was also another funding called the deleveraging and development contract (C2D) also directing to improve the quality of education¹³³. Many cooperation programmes and actions were undertaken such as: Education reform support program (PARE); the Educational System Support Program (PASE) or the Support of Guidance of early childhood in the Northern Province under the auspices of UNICEF; and the infrastructural development grant (such as the educational project II, the Japanese grant, the FCB grant, plan Cameroon grant)¹³⁴. All these co operations and grants were directed to the improvement of the quality of education.

Despite these co operations and grants provided by foreign parties, the government still complains that the available resources for the provision of education are insufficient in respect to the problems identified within the sector¹³⁵. The indigenous peoples often do not benefit on equal basis from the available resources designed for education. This is so because general spending on indigenous people is always inadequate or lower than the spending on the rest of the population and the financial support for teaching materials, building of schools, testing of curriculum, and incentives for teachers to teach in the rural areas are limited and sometimes unavailable¹³⁶. It is more advantageous for the indigenous people when aid is directed specifically to their development project. The monetary contribution by Belgium of 497, 765,000 CFAF (€758921.750073) in the implementation of the Economic and Social Development Assistance Project of the Bakas (PADES – BAKA) (contributed in partnership with Cameroon) in the Djoum, Mintom and Oveng Districts of the South region helped to provide the following results: sensitisation of 32 Baka communities and provision of birth certificates to 467 Baka children, improvement in the access of social services such as: vaccination of women and children, provision of antenatal care and training of traditional birth attendants, equipment of health centre and building a communication platform of the

¹³³ Supra, footnote no 128.

¹³⁴ Supra , footnote no 128.

¹³⁵ Supra, footnote no 128, P. 84.

¹³⁶ UN Expert Mechanism on the Rights of Indigenous Peoples, “Study on Lessons Learned and Challenges to Achieve the Implementation of the Right of Indigenous Peoples to Education”, Index: A/HRC/EMRIP/2009/2, 26 June 2009, Para 101 , available at www2.ohchr.org/english/issues/.../A_HRC_EMRIIP_2009_2.pdf (consulted on 31 August 2012).

Baka and Bantu with the involvement of administrative authorities during the dialogue forum¹³⁷.

3.5 Conclusion

The ICESCR and the Convention on the Rights of the Child prescribe some obligations to Cameroon vis-à-vis the provision of education to the public and to the indigenous peoples. It is also obvious that the realisation of those obligations cannot be possible without sufficient financial resources. The Cameroon government has complained about the lack of sufficient resources to tackle the problems in the educational sector and has requested international aid. The international community has responded by providing both financial and technical resources to enable the provision of certain educational facilities but those resources are still insufficient to accomplish full realisation of the right to education. Can an individual enforce his or her right before a competent body if the government fails to protect, respect and fulfil their right to education?

¹³⁷ Republic of Cameroon, Second Periodic Report on Cameroon within the Framework of the African Charter on Human and People's Rights. 2010, PP.121-122

CHAPTER 4

ENFORCEMENT OF THE RIGHT TO EDUCATION IN CAMEROON

4.1 Introduction

Normally, the existence of a right directly imposes an obligation on the State to ensure the enjoyment of such a right and in order to ensure the full realisation of that right, the State is obliged to create a means to enforce such a right in case of violation. Justiciability is essential for upholding any entitlement to the right to education and promoting its realization. There have been a lot of discussions on the difficulties of enforcing the right to education. In that respect, the Committee in their comment held that there are a number of other provisions in the ICESCR, amongst which is Article 13 (2) (a)¹³⁸, (3) and (4) “which would seem to be capable of immediate application by judicial and other organs in many national legal systems. Any suggestion that the provisions indicated are inherently non-self-executing would seem to be difficult to sustain”¹³⁹.

Like any human right, the violation of the right to education must be capable of being invoked before national courts, tribunals or administrative authorities. Justiciability means the ability to seek redress before an independent or impartial court when one’s right has been violated or is likely to be violated¹⁴⁰. As a result of a legal action against the violation of one’s human right, various remedies are available such as: preventive measures; injunction; monetary compensation; administrative penalty or criminal punishment¹⁴¹.

A violation of the right to education will occur when the minimum core content of the right has clearly not been fulfilled. As explained in the previous chapter, the minimum core content of the right to education is an obligation by the State to provide compulsory and primary education without any discrimination. The provision of compulsory and free primary education is of immediate effect and such steps must be “deliberate, concrete and targeted” while secondary and higher education should be provided progressively but also as

¹³⁸ The State shall ensure that Primary education shall be free and compulsory.

¹³⁹ ESCR Committee, General Comment No 3 Para 5.

¹⁴⁰ International Commission of Jurists, Courts and Legal Enforcement of Economic, Social and Cultural Rights: comparative experience of justiciability. Geneva: International Commission of Jurist, 2008. P. 6. Available at [www. icj.org](http://www.icj.org) (consulted on 19th November 2012).

¹⁴¹ IDEM.

expeditiously and effectively as possible¹⁴². Directly after ratification, States are required to take immediate steps to adopt measures towards the realisation of the right to education and to prohibit discrimination. It is irrefutable that the right to education is enforceable but the most difficult aspect of it is to determine at what point the violation of the right to education can be invoked. This will obviously depend on the context of the specific case. This section will explain the obligation of the state and indicate at what point there is a violation; expose the judicial and quasi-judicial mechanisms and finally the obstacle to enforce the right to education.

4.2 Instances of violation of the right to education:

The most difficult aspect in the realisation of economic, social and cultural rights is the fact that its fulfilment depends heavily on the available resources of the State. The availability of sufficient financial resources is indispensable armour needed by the state to carry out its obligation to respect, protect and fulfil the right to education. Can the State be held liable for the lack of school infrastructure when its available resources are not sufficient to build a school? Definitely it will be very difficult to hold the State liable especially if the State has taken targeted steps to draft policies and programmes and have applied for international interference¹⁴³.

There can only be a right where there is a law that prescribes to that effect. As explained above, the right to education is a right prescribed by law in Cameroon. In case of violation of the right to education and denial of equality of opportunity, recourse before courts or administrative tribunals must be possible. Individuals should be able to seek redress on the basis of international legal obligations of the State as well as the existing constitutional provisions on the right to education. The preamble of the Cameroon Constitution 1996 states that “the state shall guarantee the child’s right to education. Primary education shall be compulsory and the organisation and supervision of the education shall be the bounded duty of the state”. Violation of the right will definitely occur when the state fails to fulfil its obligation under the Cameroon constitution, the Convention on the Right of the Child, and the ICESCR.

According to the General Comment number 13 on ICESCR, violations of Article 13 include:

¹⁴² ESCR Committee, General Comment No 13 Para 43-44.

¹⁴³ Katarina Tomasevski, Strengthening pro-poor law: Legal enforcement of economic and social rights. ODI: January 2005. P 5-6. <http://www.odi.org.uk/resources/docs/4355.pdf> (accessed on 10th September 2012).

1. the introduction or failure to repeal legislation which discriminates against individuals or groups;
2. the failure to take measures which address de facto educational discrimination;
3. the use of curricula inconsistent with the educational objectives set out in Article 13 (1);
4. the failure to maintain a transparent and effective system to monitor conformity with Article 13 (1);
5. the failure to introduce free and compulsory primary education;
6. the failure to take deliberate, concrete and targeted measures towards the progressive realization of fundamental secondary, and higher and education in accordance with Article 13 (2) (b)-(d);
7. the prohibition of private educational institutions;
8. the failure to ensure that private educational institutions conform to the "minimum educational standards" required by Article 13 (3) and (4); and
9. the denial of academic freedom of staff and students.

In respect of this list, Cameroon has violated the provision of the ICESCR by failing to take special measures to eradicate the horizontal discrimination faced by the indigenous people; failing to stop the payment of PTA contributions; and failing to make education completely free rather than just fee-free. The educational curriculum does not contradict the main objectives of education as spelt out in ICESCR but it failed to promulgate tolerance and friendship amongst the Bantus and the Pygmies or the Mbororo'en and their neighbours. Also, actions such as: the closure of universities or high schools because the professors or teachers have challenged the government or the non-recognition of diplomas issued by a recognised institution¹⁴⁴, the refusal to register the indigenous child in primary school because she or he does not have a birth certificate, or the refusal to register or admit an indigenous child in primary school because she did not pass her exams or dismissed because she or he failed the exams more than two times, can be construed as a breached of his or her right to free and compulsory education. As mentioned above, under the Convention on the Right of the Child,

¹⁴⁴ Free Legal Assistance Group, Lawyers' Committee for Human Rights, Union Inter-Africaine des Droits de l'Homme, Les Témoins de Jehovah v. Zaire (now Democratic Republic of Congo), Communication. No. 25/89, 47/90, 56/91, 100/93; 1 October 2005. Heard before the African Commission on Human and Peoples's Right on the right of violation of the right to education under the African Charter. In this case university and secondary schools were closed. The Commission heard that the case is admissible despite the fact that the applicant had not exhausted domestic remedies because Zaire made it impracticable for domestic court to adjudicate the matter.

the State has the obligation to facilitate the acquisition of birth certificate of indigenous children.

Normally the right to education as spelt out in ratified international treaties can be invoked in domestic court and they take precedence over national law¹⁴⁵. This means that individuals can go to court to claim whatever they may be due as protected by their right to education. Individuals can also seek administrative measures by writing a complaint to Divisional Delegate of education in their own division. However, complaints on unavailability of teaching materials and payment of PTA contribution have been channelled to the Ministries in charge but nothing substantial has been done because the government claims that the financial resources are extremely insufficient to handle problem within the educational sector¹⁴⁶.

No case has been brought before any competent court for any breach of the right to education. This cannot be interpreted as an indication that no breach has occurred because the educational facilities for indigenous people are very poor. What can be the reasons for this lack of litigation? Could it be because the litigation is against the state of Cameroon and no one dares to win a case against the state or is it because people are ignorant of the fact that they have economic, social and cultural rights that can be enforceable before a law court.

4.3 Obstacles to the justiciability of the right to education

A claim can be enforceable only when there is legislation on the issue and the courts exist to interpret the text and apply the text to the circumstances brought before its jurisdiction. No case in Cameroon has been recorded to have been dismissed in court due to lack of jurisdiction to hear the matter. What then is the reasoning behind enforceability of rights? Apparently, it is very important to ensure that a right enshrined as law does not end on a piece of paper; and that a victim has the right to petition a court, apply for a remedy and actually obtain a remedy from the court. The court definitely has to be neutral, separate from the hands of the executive power and the judgement of the court must be apt of being enforced¹⁴⁷. There

¹⁴⁵ Art 45 of the Cameroon Constitution 1996.

¹⁴⁶ Republic of Cameroon, Second Periodic Report on Cameroon within the Framework of the African Charter on Human and People's Rights. 2010. P. 79-84.

¹⁴⁷ International Commission of Jurist, Courts and the legal enforcement of economic, social and cultural rights: Comparative experience of justiciability (2008) P. 8.

can really be no justice if that cannot be done¹⁴⁸. What therefore can hinder the right to seek justice in case of a violation of the right to education? Barriers that can be identified are: difficulties to invoke the Constitutional rights before a court of law, weak separation of powers, limited powers of the Cameroon National Commission of Human Rights, and Ignorance on the part of the population.

4.3.1 Difficulties to invoke Constitutional rights before a court of law

The preamble of the Cameroon Constitution contains bill of rights and pledges adherence to the Universal Declaration of Human Rights, the African Charter on Human and Peoples' rights and all ratified human rights treaties within which the right to education is proclaimed. Though Art 65 of the Constitution recognises that the preamble is part and parcel of the Constitution, the enforcement of constitutional right is still a myth because only the Constitutional Council has jurisdiction in Constitutional matters¹⁴⁹ and the Constitution is silent about human rights remedies. Things become even more complicated as that Council exists only on paper. However, according to the Cameroon Constitution, in the absence of the Constitutional Council, the Supreme Court shall perform its duties¹⁵⁰.

Things get really complicated when for example, the term torture can be found only in the Constitution whereas the Penal Code of the country talks of various forms of assaults (assault occasioning death and assault occasioning grievous harm and assault occasioning harm). Because of the difficulties to invoke one's Constitutional right in an ordinary court, victims who have suffered from torture will be forced to use the charge assault under the criminal law in court. This can be seen in the case of *The People of Cameroon v. Stephen Ngu*¹⁵¹ whereby Bernard Afuh Weriwo (the victim), was burnt till death by a police officer (Stephen Ngu). No claim could be brought as a violation of the victim's constitutional right (prohibition of

¹⁴⁸ The acid test of democracy, as Geoffrey Robertson once put it, "is a justice system where there is at least a chance, a possibility of beating the state at its own game", quoted in Bas de Gaay Fortman, *Political Economy of Human Rights. Rights, Realities and Realization*, London/New York: Routledge 2012, p. 52.

¹⁴⁹ Art 46 Of the 1965 Cameroon Constitution. Law No. 96-06 of 18 January 1996 to amend the Constitution of 2 June 1972.

¹⁵⁰ According to Article 67 (4), The Supreme Court shall perform the duties of the Constitutional Council until the latter is set up.

¹⁵¹ The case was heard at the Kumba High Court - Cameroon. See: Olive Ejang Tebug, "Police Inspector Testifies: I Doused Victim With Kerosene...". Up Station Mountain Club, 14 June 2005. Available at http://www.postnewsline.com/2005/06/strongpolice_in.html

torture); rather the case was brought under the criminal offence of assault occasioning harm¹⁵². Why then should there exist constitutional rights but not a means of enforcement? This is just a clear indication that as long as a human rights violation cannot be traced in Penal Law provisions, judicial means of enforcement might be impossible. The victim will have no option but to write a complaint to the Ministry in charge or to the Human Right Commission.

As concerns administrative matter (for example: the execution of an administrative order), only the administrative bench of the supreme court has jurisdiction to hear cases on violations caused by the execution of an administrative order. For example: an administrative order from the ministry ordering for the closure of a particular school. Their powers are derived from Section 9(1) of Ordinance No. 72/6 of 26 August 1972 fixing the organisation of the Supreme Court, as amended which confers the jurisdiction to hear cases of an administrative nature against the state or public authorities to the Administrative Bench of the Supreme Court. Creating a single administrative court for the whole country did not actually provide expeditious justice because there is always overcrowding of cases. In order to reduce this problem of overcrowding of cases, the lower courts were granted the jurisdiction to hear administrative matters though that function is still not operational¹⁵³.

As concerns the Constitutional Council, private persons or a group of persons do not have the right to bring a case before the council. Article 47 of the 1996 Cameroon Constitution states that: “Matters may be referred to the Constitutional Council by 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. Presidents of regional executives may refer matters to the Constitutional Council whenever the interests of their Regions are at stake”. This means that, even when the said Council is operational, private individuals cannot assert their constitutional rights before it. This therefore reflects a serious problem because not only does this Council have exclusive jurisdiction on all constitutional rights, it also have exclusive jurisdiction in matters pertaining to constitutionality of laws, treaties and international agreements¹⁵⁴.

¹⁵² Under section 278 of the Cameroon Penal Code.

¹⁵³ Art 40 of the Cameroon Constitution grant jurisdiction of lower courts to hear administrative matter. Furthermore, 2006 Amendment of Law 72/4 of 26 August 1972 on judicial organisation expanded the composition of judicial organisation to include: lower courts of administrative litigation.

¹⁵⁴ Art 47 of the Cameroon 1996 Constitution.

4.3.2 Weak separation of powers

Though Article 37(2) of the Cameroon Constitution 1996 prescribes that the judiciary shall be independent from the executive and the legislative power, paragraph three of the same article also provides that the President of the Republic shall guarantee the independence of the judiciary and shall appoint members of the bench and of the legal department. The appointment of members to the legal department is not unusually but the question is: does this appointment follow due procedure? Is it not an appointment of stooges? Furthermore, Article 37 goes further to state that: the President shall be assisted in this task by the Higher Judicial Council which shall give him its opinion on all nominations for the bench and on disciplinary action against judicial and legal officers. This clearly indicates that the control of the executive extends to disciplinary action against the members of the judiciary. Notably then, the judiciary can never be independent under these circumstances and will always pay allegiance to the executive power. Justice cannot be achieved when the judiciary is not independent but rather acts as part of the executive power. They do not act according to the law and their conscience but according to orders from above.

4.3.3 Limited powers of the Cameroon National Commission of Human Rights and Freedoms

The creation and functions of the Cameroon National Commission of Human Rights and Freedoms¹⁵⁵ (NCHRF) is not in accordance with the Paris Principle relating to the Status of National Institutions¹⁵⁶. Though it is clearly stated that the commission shall be independent, the chairman of the Commission shall be appointed by the President of the Republic¹⁵⁷. This appointment can be influenced by political inclination rather than competence. The Chairman

¹⁵⁵ Created by Act No. 2004/016 of 22 July 2004 on the establishment, organization and functioning of the National Commission on Human Rights and Freedoms and its Implementing Decree No. 2005/254 of 7 July 2005.

¹⁵⁶ Adopted by General Assembly Resolution 48/134 of 20 December 1993. Available at <http://www2.ohchr.org/english/law/parisprinciples.htm>.

¹⁵⁷ Decree 90-1459 of 8 November 1990. Para 4. This Decree also clearly states that the Commission has the mandate to protect and promote human rights. It further provides a list of action that the Commission can undertake.

(Divine Chemuta Banda) of the NCHRF in a Press Release in 2009¹⁵⁸ said that the Human Rights Commission has properly stated objectives but it is severely limited by its ability to execute its mandate. This limitation is due to the fact that the Commission is solely accountable to the President of the Republic; it has neither the power to search and seize; nor financial autonomy nor the power to petition the court in cases of serious human rights violations. A lot of complaints are being channelled to the Commission but the Commission can neither rectify the situation nor take significant steps to provide a remedy. As a response to complaints, the Protection officer usually writes a letter to the relevant government officer pleading for a change. The Commission and the judiciary is often useless especially when it involves a complaint against the government. That explains why local NGOs report more to the international community than to national institutions. Chapter 5 provides detailed information about the NCHRF.

4.3.4 Ignorance on the part of the population

The population of Cameroon is very much aware of their civil and political rights because in primary school, civic education teaches the rights and duties of citizens amongst which are their civil and political rights. Moreover, there is collective empowerment on the right to vote and irregularities in electoral procedures whereas the processes of emancipation on the rights to housing, health or education are at an infant stage. Many people do not know that they have an inherent right to enjoy education. Parents actually do not protest strongly against the payment of PTA fee because the PTA amount is smaller than the amount they previously paid for school fees and furthermore, government schools are cheaper than private schools. The situation of vulnerable groups like indigenous people is worst because they do not know their rights, and can be exploited and discriminated easily. They are often helped by local NGOs to get admitted to schools or obtain their national identity cards or birth certificate. These NGOs¹⁵⁹ can only work effectively depending on the finances they have at their disposal. Indeed lack of finances is also a barrier to the enforcement of the right to education.

¹⁵⁸ Cameroon Centre for Democracy and Human Rights (CCDHR), The National Commission on Human Rights and Freedoms of Cameroon: An Epitome of Government's Contempt for Human Rights. CCDHR, 20 August 2009. Available at <http://www.ccdhr.org/press-releases/2009/08-20-CameroonHumanRightsCommission.htm>.

¹⁵⁹ For example: there are local NGOs like FONDAF, Association des Baka de l'Est Cameroun (ASBAK) etc.

4.4 Conclusion

The enforcement of a right before a neutral court is an essential element needed to ensure the respect, realisation and promotion of human rights. Every State must put in place an effective means to redress wrongs. The law becomes worthless in the absence of an independent judiciary. Cameroon has ratified the treaties and went further to adopt domestic laws to that effect but failed to provide a clear-cut medium for judicial remedies. National legislation needs to state clearly the possibility for an individual to invoke the provision of Article 13 of ICESCR before a domestic court and the available remedies for such a breach.

CHAPTER 5

CAMEROON'S POSITION AND PRACTICES AS TO HUMAN RIGHTS BASED STRATEGIES

To the indigenous people, Cameroon is still a disabling environment for the realisation of their human rights in general and their right to education in particular. The issue at hand is how to combat that adverse environment. This research will focus on the human right based strategies. What does it entails? Human rights-based strategies require the introduction of human rights standards and principles into the government systems, policies, and programmes¹⁶⁰. Cameroon took a significant turn in the 1990s with the proliferation of human rights laws. During that period, there was the enactment of a series of laws amongst which was the law on multi-partyism¹⁶¹, freedom of social communication¹⁶², freedom of association and assembly¹⁶³, and the law on public meetings and demonstrations¹⁶⁴. In 1996, there was the amendment of the Cameroon Constitution which contains a bill of rights and declares its adherence to the Universal Declaration of Human Rights and to the African Charter on Human and Peoples' Rights. Subsequently, Cameroon ratified a lot of treaties.

Unfortunately, Cameroon still has a lot of work to do as those developments do not reflect the reality on the ground. However, on a brighter side, as noted by the UN committee on Economic, Social and Cultural Rights, the periodic reports of Cameroon are generally in line with the committee's guidelines¹⁶⁵. This chapter will provide a brief analysis on human rights-based strategies in general and specifically on the human rights-based strategy in regard to education. The recommendations of the various human rights committees will be analysed alongside Cameroon's human rights-based strategy. This research will not limit itself to merely the concluding observations of the ICESCR Committee as that body discussed the right to education in Cameroon generally, but failed to place emphasis specifically on the

¹⁶⁰ United Nations Scientific, Educational and Cultural Organisation (UNICEF), Human Rights- Based Approach to Education for All. Newyork: UNESCO, 2009.

¹⁶¹ Act No. 90/056 of 19 December 1990 on political parties.

¹⁶² Act No. 90/052 of 19 December 1990 on freedom of social communication, as amended by Act No. 96/04 of 4 January 1996 on administrative censorship.

¹⁶³ Act No. 90/053 of 19 December 1990 on freedom of association

¹⁶⁴ Act No. 90/055 of 19 December 1990 on public meetings and demonstrations

¹⁶⁵ UN Committee on Economic, Social and Cultural Rights, Consideration of reports submitted by State Parties under Art 16 and 17 of the Covenant. Concluding Observations: Cameroon, E/C.12/CMR/CO/2-3. 23rd January 2012. P. 1.

right to education of the indigenous people as opposed to the concluding observation of the Committee on the Rights of the Child. Also to understand the strength of the civil society of Cameroon, the ICCPR concluding observations will be used and other concluding observations of any of the UN committee will be used where appropriate.

In order to illustrate the general human rights position of Cameroon, let us begin with the 2009 country report on torture. The concluding observations of the human rights country report of the Committee against Torture (CAT) indicated a very high rate of human right violations committed by State organs. Instances of arbitrary arrest, murder and torture committed by law enforcement officers were at an alarming rate. In order to deter those practices, Cameroon reacted on the recommendations of the UN Committee by eliminating the functional immunities of many police, gendarme and prison administration officers, consequently, facilitating the investigation, trial and conviction of many of them.¹⁶⁶.

Also as a response to the CAT Committee's recommendation, a new law on the functioning of the National Commission on Human Rights and Freedoms (NCHRF) was enacted with the intention to strengthen the operational capacities of this institution which is highly necessary in the implementation and promotion of human rights in general. Act No. 2004/016 of 22 July 2004 replaced the National Committee on Human Rights and Freedoms, established by an earlier decree. The Act does not only change the name from committee to commission but also improves its compliance with the Paris Principle by giving it a consultative role. The powers of the commission were expanded to include *“(a) Handles all complaints regarding cases of violations of human rights and freedoms; (b) Conducts all necessary inquiries and investigations into cases of violations of human rights and freedoms and reports those to the President of the Republic; (c) Notifies all authorities of cases of violations of human rights and freedoms; (d) Carries out visits to prisons, police and gendarmerie stations, as required, in the presence of the State Prosecutor or his/her representative; (e) Suggests measures to be taken in connection with human rights and freedoms to the public authorities; (f) Liaises, as appropriate, with the United Nations Organization, international organizations, foreign committees or associations pursuing similar goals; (g) Call upon any party or witness and notify the minister in charge of the Ministry of Justice of any offence; (h) Intervene in the*

¹⁶⁶Fourth Periodic Report of Cameroon, The UN Committee against Torture, Consideration of reports submitted by States parties under article 19 of the Convention. CAT/C/CMR/4, 5th August 2009. P.8-10

*defence of victims of human rights violations*¹⁶⁷”. Though voluminous, these functions are actually not powerful because no one is compelled to respect the invitation of the commission and they do not have any power to take a case directly to court. They are actually not very useful to the public because they cannot solve their problems and may be useful to the government in the sense that their reports on the prison situation helps the government in the organisation and management of the prisons. They simply receive complaints and react by sending a plea letter to the authority concerned. On a positive light, in order to ensure a prompt intervention, their work load was reduced by the creation of three more human rights centres, each in different regions.

As stated under Art 1 of the Act¹⁶⁸ establishing the NCHRF, NCHRF shall be an independent body and it shall have legal personality and financial autonomy. This financial autonomy is questionable as the budget adopted by the NCHRF needs to be submitted to the Prime Minister for approval. This is no autonomy as they can be controlled through the refusal to endorse their budget. In 2010, the Human Rights Committee (UN Committee for the International Covenant on Civil and Political Rights (ICCPR)), after congratulating Cameroon for the adoption of the new law creating the NCHRF, recommends that Cameroon should further guarantee the independence of the NCHRF by providing it with adequate resources to carry out its mandate effectively and that reports publicized by the NCHRF should be widely disseminated and made easily accessible¹⁶⁹. Also, a Directorate for Human Rights and International Cooperation (DHRIC) was established by Decree No. 2005/122 of 15 April 2005 on the organization of the Ministry of Justice. This institution has the duty to follow-up the implementation of the human rights conventions and human rights issues in general. Unlike the NCHRF which provides human rights training to the public as a whole, the DHRIC raises awareness among personnel of the judiciary and prison administrators on human rights standards¹⁷⁰.

As concerns freedom of the press and assembly, the 1990 law opened the door for the creation of a lot of non-governmental organizations and private radio, television and newspapers. These developments are very necessary for the creation of a strong civil society. A strong civil society is needed to advance democracy, discipline the government, protect the rights of

¹⁶⁷ IDEM, P. 26-27.

¹⁶⁸ Act No. 2004/016 of 22 July 2004.

¹⁶⁹ICCPR, Consideration of reports submitted by States parties under article 40 of the Covenant. Concluding Observations: Cameroon, ICCPR/C/CMR/CO/4, 4th August 2010. P. 2.

¹⁷⁰ Fourth Periodic Report of Cameroon ,Supra, footnote No 167, P. 7.

citizens and emancipate citizens of their constitutional rights. It is rather unfortunate that Cameroon does not have a strong civil society. Despite the fact that the 1990 laws provided for freedom of press and the constitution upholds the right of freedom of expression, the general public is afraid to express itself against the government. This is because of the government's usual habit of harassing the press and other media on certain grounds under the Cameroon Penal Code. For example, Journalists can be prosecuted under the provisions of the Penal Code for the crime of defamation¹⁷¹ and spreading false news¹⁷² as a consequence of their reporting. In addition, government reports are not available to the general public. In order to obtain a particular government report, an application must be submitted to the ministry in charge. The civil society cannot be active when it does not have a means to control the government. On this basis, the Committee recommends that Cameroon should review its legislation and practices to ensure that Journalists can express their view freely without fear of any prosecution and such restriction on the freedom of press must be compatible with Art 19 (3) of the ICCPR¹⁷³. The Committee also expressed concern about the small number of officially recognized NGOs. The Committee found the number of NGOs to be too small for a big country like Cameroon and recommends that Cameroon should ensure that any restriction on association is compatible with Art 22 of the ICCPR¹⁷⁴.

As raised under the previous heading, the inappropriate allocation of resources for the education of the child and the lack of transparency in budget allocation are serious factors impeding the realization of the rights of the child. In this respect, the committee on the rights of the child urges Cameroon to increase its budget allocation for investment on children and ensure that the national education receives enough finances, human and technical resources to implement activities directed to children¹⁷⁵. Specifically, the committee urges Cameroon to “define strategic budgetary lines for disadvantaged or particularly vulnerable children and for those situations that may require affirmative social measures (such as birth registration) and make sure that those budgetary lines are protected even in situations of economic crisis,

¹⁷¹ Section 305 of the Cameroon Penal Code.

¹⁷² Section 113 of the Cameroon Penal Code.

¹⁷³ Fourth Periodic Report of Cameroon, Supra , Footnote No 167, P.7.

¹⁷⁴ IDEM.

¹⁷⁵ UN Committee on the Right of the Child, Consideration of reports submitted by States parties under article 44 of the Convention. Concluding Observations: Cameroon, CRC/C/CMR/CO/2, 29th January 2010. P. 4.

natural disasters or other emergencies”¹⁷⁶. This means that Cameroon is expected to define a specific budget line for indigenous people to ensure for example, their birth registration and the budget line will be protected even in times of crisis.

The Cameroon government has established many ministries as previously discussed whose duties is to ensure equality between boys and girls, and to tackle the problems of discrimination suffered by the indigenous people (for example: the ministry of social affairs). Despite this innovation, the committee still acknowledges the persistent discrimination suffered by the indigenous people and the girl child. In this respect, the committee urges Cameroon to strengthen efforts to eradicate all discriminatory practices against all children¹⁷⁷.

As concern birth registration of indigenous children, the committee congratulates Cameroon for the effort made to ensure registration of the Mbororo, Baka, Bakola and Mafa children. However, despite these measures the level of birth registration remains very low and affects seriously the rights of the children to citizenship and access to basic education. On that basis, the Committee urges Cameroon to strengthen its national system in order to ensure that indigenous children are registered, especially those in the remote areas. In order to obtain an effective birth registration, the Committee advised the following: “(a) *create institutional structures with adequate human, technical and financial resources at all levels that allow compulsory, accessible and free birth registration especially in rural and remote areas and refugee camps; (b) extend the time period during which obtaining birth registration is free from 30 to 120 days and establish easily accessible registration centers and mobile units for remote and rural areas, giving priority and resources to placing centers in underserved regions which have low rates of birth registration; and (c) seek technical assistance, inter alia, from UNICEF.*”¹⁷⁸

The national educational strategy of Cameroon encourages access to every one without discrimination to education. As already explained in chapter 2, this strategy made primary education free and as a result there was an increment in the number of children at primary school. Despite this improvement, the committee was concerned about the payment of PTA contribution, the refusal of admission for children without birth certificates, high number of school dropouts, the insufficient number of trained teachers, the poor quality of education, and the lack of learning materials and equipments as well as the lack of water and sanitation

¹⁷⁶ IDEM.

¹⁷⁷ IDEM P. 7.

¹⁷⁸ IDEM P.8.

facilities. To solve these problems, the Committee recommends the following: (a) ensure that primary school is free by addressing indirect and hidden costs of basic education; (b) increase its budgetary allocations for basic and secondary education; (c) ensure access to education of all children, especially indigenous children without birth certificates; (d) undertake impact assessments of educational programmes and strategies and take corrective measures where necessary to redress disparities between children, in particular gender and regional disparities; (e) intensify efforts to ensure that schools are safe places for children and that they are free from sexual, physical and psychological violence; (f) increase the number of teachers and ensure at the same time that teachers are well-trained and that they receive adequate salaries; (g) provide quality vocational training and education especially for children who drop out of schools; (h) improve water and sanitation facilities, including separate sanitary facilities for boys and girls¹⁷⁹.

The government of Cameroon expressed its political will to promote human rights standards by ratifying the ICESCR and rank it above national laws. The government also moves ahead by adopting certain laws to make primary education free and to allow the operation of private schools. Despite these, something seems lacking when it appears that the Covenant has never been invoked in court. Fortunately, the Committee expresses concern that ICESCR has never been invoked in court and made some recommendation to that direction. It recommended that Cameroon should do the following: (a) take appropriate steps to give effect to the Covenant in the domestic legal system and if necessary adopt legislation to that effect; (b) take steps to spread knowledge about the covenant to the judiciary and the general public; and (c) take steps to spread information about the justiciability of the ICESCR¹⁸⁰.

From the foregoing, one can conclude that Cameroon has ratified a good number of human rights treaties and has created many structures or institutions to foster the building of a human rights-based environment but that is seriously hindered by the difficulties to apply the existing human rights standards. So far Cameroon adheres generally to the recommendation but fails to make substantial changes. This is very visible from the fact that it respects the UN Committee's recommendation to improve the compliance of the Human right commission to the Paris Principle, goes ahead to enact new laws in that respect, declares the Commission independent but still reserves some powers with the executor to approve the budget of the

¹⁷⁹ IDEM, P.18.

¹⁸⁰ UN Committee on Economic, Social and Cultural Rights, Supra, Footnote No 166, P. 2.

Commission. This is not an exhibition of a strong will to provide a human rights-based environment. The situation becomes worst when the government shuts down the civil society.

CHAPTER 6

EMANCIPATION OF INDIGENOUS PEOPLE IN CAMEROON: TOWARDS REALISATION OF THEIR RIGHT TO EDUCATION

As explained above, education of indigenous peoples is neither free nor compulsory and the available education is not appropriate to their needs and culture. Despite these circumstances that hindered the enjoyment of the right to education of indigenous peoples, no case has been taken to court in that respect. This of course triggers a lot of questions and so this research moved further to analyse the human rights orientation in current strategies with a special focus on education and indigenous people. In concluding, this study exposed the fact that though there are institutions created to foster the respect of human rights, they actually do not produce substantial change to the human rights disabling environment. In addition, the civil society is very weak though declared by free by Law because the Cameroon government put in place certain laws to censor their activities. Thus, to round up this research, it will be necessary to look at the various strategies which can be employed by the indigenous people to actually participate in shaping their plight.

This chapter will analyse the level of inclusion or participation of indigenous peoples in regard to their education. The various objectives and obstacles to the inclusion of indigenous peoples will be discussed and finally we shall tune to the operation of various strategies to participate in the realisation of their right to education. Discussing this, input will be taken from the previous chapters.

Emancipation of indigenous peoples in this research includes the ability of indigenous peoples to participate as an individual or a group directly in the activities of the government in general and in decision making concerning their education in particular. Obviously, the main objective of emancipation of the indigenous peoples is to facilitate their participation in decision making on issues which affect their wellbeing.

This objective of emancipation (inclusion) is not feasible in a country like Cameroon which as previously said, does not officially recognise the rights of indigenous peoples as a group in the country but simply grouped them in the draft law on 'marginalised population'. Though the Cameroon Constitution mentions the rights of indigenous peoples, there is doubt whether it referred to the indigenous peoples as the first occupant of the land or to indigenous peoples

within today's understanding. Recognising indigenous peoples in the country will mean the recognition of their collective rights which must be enforced.

Political empowerment is very important for the participation of indigenous peoples in political processes as in doing so, they can address issues which affect them from above. Though all citizens have the right to participate in the government of their own country, this participation on the part of the indigenous peoples is very limited because they are not represented in the legislature, or in political structures in Cameroon. Even at the local level, their encampments are not recognised as villages but as attachments to the Bantu villages and so their chiefs cannot be represented in village meetings; consequently, they cannot participate directly in the arrangements with logging companies¹⁸¹. This therefore substantiates the fact that even at the local level the Pygmies do not directly participate in issues that affect their rights. The lack of citizenship is another obstacle in the participation of indigenous peoples. Citizenship is a very vital pre-requisite for participation in the government of Cameroon. Casting a vote is also another means to participate in politics and in shaping the policy of the country but that requires citizenship. As explained in chapter 2, many Pygmies do not have a birth certificate and consequently cannot benefit from their rights as citizens. On a positive side, there are Pygmies working as primary school teachers, nurses and other jobs within that threshold. But why are the indigenous peoples not employed at higher level?

The lack of education of indigenous peoples is the main reason for their absence at the legislature or political sphere. Education is the door that leads to greater participation and leadership. The lack of education is the main reason for the underrepresentation of indigenous people in every sphere of life. Lack of education is indeed the main reason for the very low self-esteem of the Pygmies who are regarded by their neighbours as inferior human beings.

However, networking between civil society organisations provides an important platform for greater participation of indigenous peoples. Indigenous peoples in Cameroon are increasingly advocating for their rights, both nationally and internationally. For example: MBOSCUDA is very active and intervenes nationally by using the various judicial mechanisms in case of violation of their right to land and always sends letters to the African Commission on Human and Peoples' rights in that respect. However, they have not sent any complaint in respect of

¹⁸¹ African Commission on Human and Peoples' Rights, "Report of the African Commission's Working Group of Experts on Indigenous Populations/Communities" Adopted by The African Commission on Human and Peoples' Rights at its 28th ordinary session, 2005. Copenhagen: IWGIA, 2005.P.33.

their right to education; yet they take the bull by the horn by taking certain measures within their community to ensure the realisation of the right to education. One of the measures taken by them as explained in chapter 1, is the organisation of sensitisation campaigns.

As seen so far, NGOs are the main organisations that fight for indigenous rights in Cameroon. Apparently, the local NGOs are the voice of the indigenous peoples but unfortunately, the movement lacked coordinated voice and action¹⁸². Apart from the activities of the NGOs, there is no strong social movement on the right of indigenous people neither in politics nor academia¹⁸³.

As concerns individual participation, the indigenous people can ensure the realisation of the right to education by initiating court proceedings. This is a judicial means to compel the government to satisfy its responsibility under the law but as discussed in chapter 4, no case has been brought before any court of Law as yet. In this respect, the CESCR as explained in chapter 5, requested the Cameroon government to take all possible steps to ensure that the Convention can be invoked in court. Without this possibility, the right to education cannot be enforceable.

On a brighter side, the indigenous peoples can participate in the realisation of their right to education by submitting shadow or alternative reports before the various UN Committees and the African Commission. Shadow reports are reports presented by an NGO which directly comments on and criticise Cameroon's report while an alternative report is written independently from Cameroon's report¹⁸⁴. The participation of NGOs in the sessions of the Committees helps to expose the reality on the ground and facilitates changes which in normal circumstances would not have been possible. For example, in 2010, a joint report was made by the Centre for Environment and Development, *Réseau Recherches Actions Concertées Pygmées* and the Forest Peoples Programme which was submitted to the African Commission on Human and Peoples' rights in connection to Cameroon's second periodic report. This report outlined the various violations of the rights of indigenous people and recommendation thereto and it played a vital role in further discussions and in the concluding statement of the

¹⁸²Aili Pyhälä, "What future for the Baka? Indigenous' People Rights and Livelihood Opportunites in South – East Cameroon". Copenhagen: IWGIA, 2012. P 17 .

¹⁸³ IDEM.

¹⁸⁴Forest People Programme, CED and RACOPY, Indigenous peoples' rights in Cameroon. Supplementary Report Submitted in Connection with Cameroon's Second Periodic Report. Submitted to the ACHPR. May 2010, P. 11.

Commission. Also, reports can be forwarded to the NCHRF but unfortunately their yearly reports are not made public. Consequently, it deprives the public from vital information.

The indigenous peoples can involve in direct confrontation with the government in order to ensure the realisation of the indigenous right to education. Polarisation or confrontation is mostly visible within the African community in instances of political campaign and in press conferences. In instances of political debate, just like the case of election debates in the USA, the parties can confront each other with certain issues. In Cameroon, at the moment, none of the indigenous peoples is a political candidate and in political discourse; the parties talk of general projects and hardly on projects for a particular community. Moreover, the Pygmies represent just a very small percentage of the Cameroonian population; consequently, as a minority, their issues hardly hit the political agenda at the national level. On the other hand, the confrontation can be by means of protest. So far no public protest has been carried out by indigenous peoples; notably, in Cameroon, they will need an authorisation from the government in order to organise a peaceful walk.

Under the domain of collective action, the indigenous peoples can use conscientisation campaigns to ensure the realisation of their right to education. Conscientisation campaigns entail spreading information and knowledge about their right to education and the various means of enforcement. At the higher level, many workshops are organised by the African Union or the UN or other international NGOs. For example: in November 2002, a Consultation and Training Workshop for Pygmy Communities on Human Rights, Development and Cultural Diversity was organised by the UN in Cooperation with ILO and UNESCO, in Yaoundé¹⁸⁵. That was the first time the UN organised a workshop for the Pygmies from Burundi, Rwanda, the Central African Republic, Gabon, the Democratic

¹⁸⁵ United Nations Economic and Social Council, Review Of Activities Undertaken Under The international decade of the world's indigenous people: Consultation and Training Workshop for Pygmy Communities on Human Rights, Development and Cultural Diversity in Cooperation with ILO and UNESCO, 11-15 November 2002, Yaoundé and the Dja Biosphere Reserve, Cameroon. Index: E/CN.4/Sub.2/AC.4/2003/11. UN Publication. 27 May 2003.

Republic of the Congo, and Cameroon to meet, share their experiences and concerns, and make recommendations. The Pygmies Community at the local level might not be informed of such eventualities and consequently do not benefit from them. At the local level, however, the Cameroon government as explained before carried out some sensitisation campaign on the acquisition of birth certificates or identity cards of some Pygmies communities. For conscientisation to actually produce a substantial effect, it has to be done at the local level using their indigenous means of transmitting information and using their indigenous language. In this way, they will understand the need to participate in the realisation of their right to education and by so doing; they can take further steps to push the government to honour its obligations.

To conclude, it is very obvious that the indigenous peoples are ignorant of their inherent rights. Sensitisation will play a vital role to eradicate ignorance but that is still at an infant stage. The indigenous peoples cannot participate in the realisation of their right to education because they are not represented at the higher level and due to their lack of citizenship, they cannot even vote. The most visible way in which indigenous peoples are vibrant is at the international level. The submission of shadow or alternative reports and their representation at workshops actually gives room for the indigenous peoples to voice out the reality on the ground and provide possible recommendations.

CONCLUDING OBSERVATIONS

It is irrefutable that the indigenous peoples in Cameroon have suffered from discrimination in respect to the enjoyment of their right to education. The education of the indigenous peoples does not correspond to their lifestyle and culture and it is just a form of enforced assimilation to the lifestyle of the rest of the population. The availability of education is hindered by the shortages of class rooms and the lack of teachers. Things become worst when the education of the indigenous peoples cannot be made completely free and the government cannot redress the problem. Indigenous parents are obliged to buy school uniform, pen, pencil and other school items when they cannot afford to feed their children yet the government claims that primary education is free. Indigenous children who are willing to go to school are expected to trek far away to attend school because there is no school around their camps. After trekking for such a long distance, they arrive at a school environment wherein people look at them as inferior human beings and refer to them as backward persons. This human rights disabling environment plus the fact that they do not receive any motivation from the government to attend school contributes to keeping indigenous people away from school.

The government claims that the fulfilment of the four normative elements under the right to education is difficult because of lack of resources. It has requested financial aid in that respect and it has received quite a huge amount; yet this is still not sufficient to tackle all the problems. This is not strange because the country has a bad reputation in respect to incidents of corruption. Corruption is wide spread in the country and it will not be surprising if part of money allocated for a project was embezzled by the public officials coordinating the project. The government has ratified many international treaties which impose some obligations to take appropriate measure to ensure that indigenous people can enjoy their right to education without discrimination and that primary education is made free. Failure to carry out these responsibilities should trigger court proceedings against the government. However, at the national level, no court action has been brought against the government and this is partly because the lower courts does not have jurisdiction on Constitutional matters and the Constitution does not provide any remedy to human right violations. In addition, there is uncertainty on whether the ICESCR can be invoked before the local courts.

Apart from the use of judicial mechanisms, indigenous people can participate to ensure the realisation of their rights through political confrontation, submission of shadow or alternative reports or organising sensitisation campaigns. Apart from the sensitisation campaigns

organised by the government, MBOSCUDA has organised sensitisation campaigns geared at encouraging Mbororo to attend school and they provided financial aid to Mbororo students. The non-representation of indigenous peoples in strategic positions of government can be construed as a denial to participation in the functioning of the government. However, the participation of indigenous people is more vibrant at the international level. The indigenous peoples participate in the realisation of their right to education by submitting shadow or alternative reports at the UN Committees and at the African Commission on human and peoples' rights which of course transmit their opinions and recommendations. But to conclude, the level of participation of indigenous peoples is quite limited and there is need for greater participation of the indigenous peoples which can be achieved through sensitisation campaigns.

In the 1990s, Cameroon introduced human rights and freedoms laws in its legal system. Many institutions were created to promote the respect of human rights and the building of human right enabling environments. But unfortunately, the functioning of those institutions are limited by the same power that created them. Also the civil society which is very important in the breeding of human rights principles is very weak. This is obviously due to the fact that the media is seriously censored by the government. Also the small number of officially recognised NGOs in a large country like Cameroon is an indication of a lapse within the civil society.

Finally, the government of Cameroon has attempted to carry out its obligations as spelt out in the various ratified international treaties but that has been done superficially. The government still needs to touch specifically the various obstacles. The various UN Committees in their concluding statements have provided valuable suggestions to eliminate obstacles against the realisation of the right to education of the indigenous peoples. The Committee on the Rights of the Child dealt deeply with issues that affected specifically the indigenous child in Cameroon and provided in their concluding observations very interesting recommendations. Dealing with finances on education, they requested that more budgets should be allocated to education and that the government should define strategic budget lines for indigenous people which shall be protected even in times of economic crisis. This is very important because money is absolutely needed for the realisation of the right to education of indigenous peoples. The Committee also deliberated on specific issues hindering the education of the indigenous child such as discrimination, lack of birth certificates, lack of teachers, lack of teaching materials, and lack of water and sanitation facilities at school. They provided recommendation

thereto which will bring substantial changes if the Cameroon government applies those recommendations.

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