

The right to primary education for refugee and asylum-seeking children in Cameroon: an appraisal of compliance with international law duties

Agbor DNO



orcid.org/0000-0001-8025-1165

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Supervisor: Prof ON Fuo

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Student number: 37020412

ABSTRACT

In international human rights law, the right to education is arguably one of the most important rights for at least two reasons. First, it cuts across as a social, economic and cultural right. Second, it has a direct bearing on the enjoyment of civil, political, social, economic and cultural rights. For vulnerable groups such as women, children and migrants, emphasis has always been made on the need to respect, protect, fulfil and promote the right to education, given the crucial value it plays in promoting peace, stability, and socio-economic and personal development. Two critical issues arise when looking at children of refugees and asylum-seekers. The first is their vulnerability as involuntary migrants who fled their home countries and settled in another country. The second is that as children, they are always vulnerable to different forms of exploitation.

Against this background, and in view of the huge number of refugees and asylum-seekers in Cameroon, this study investigates Cameroon's obligations to children who are refugees and asylum-seekers. It seeks to ascertain the measures put in place to mitigate their vulnerability and enable them to enjoy the right to primary education. To achieve this, the study assesses the international and African regional human rights framework which entrenches the right to primary education. It also identifies various obligations created by these instruments and which serve as benchmarks for evaluating whether a State Party like Cameroon fulfilled its international obligations in this regard. The study discusses various measures taken by Cameroon to enhance the respect, protection, fulfilment and promotion of the right to primary education in its territory. It also analyses the challenges that make this difficult and almost impossible. The study concludes with findings and recommendations for consideration by policymakers.

Keywords

Children; refugees and asylum-seekers; right to primary education; right to education; international law; African regional law; Cameroon.

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TABLE OF CONTENTS

ABSTRACT.....	ii
ACKNOWLEDGEMENTS.....	iv
LIST OF ABBREVIATIONS.....	viii
Chapter 1 Introduction.....	1
1.1 Background and motivation.....	1
1.2 The right to primary education in international law.....	1
1.3 The right to primary education for children of refugees and asylum-seekers in Cameroon.....	5
1.4 Research Question.....	7
1.5 Research aim and objectives.....	7
1.6 Research methodology	7
1.7 Outline of the study.....	8
Chapter 2 International and African Regional Law Duties on the Right to Primary Education for Refugees and Asylum-Seeking Children	9
2.1 Introduction.....	9
2.2 Right to primary education in international and African regional law	10
2.2.1 International law instruments	10
2.2.2 The right to primary education in African regional instruments	14
2.3 The nature of the obligations of States Parties on the right to education	15
2.3.1 Normative content and key elements of the right to primary education	15
2.3.1.1 Compulsory and free primary education	15

2.3.1.2	Detailed plan of action and developmental strategy for primary schools.....	16
2.3.1.3	The obligation to achieve progressive realisation of the right to primary education	17
2.3.1.4	The obligation to ensure the availability, accessibility, acceptability, and adaptability of primary education	17
2.3.1.5	Material conditions of teachers	18
2.3.1.6	Non-discrimination	18
2.3.2	General and specific legal obligations	19
2.3.2.1	Progressive realisation	19
2.3.2.2	Immediate obligations	19
2.3.2.3	The obligation to respect, protect, and fulfil.....	19
2.3.2.4	Curricula and minimum educational standards	20
2.3.2.5	Fellowship system	20
2.3.2.6	International cooperation and assistance.....	20
2.3.2.7	Minimum core obligations	21
2.3.2.8	Educational choices for learners	21
2.4	Obligations under African regional law	21
2.4.1	Nature of obligations	22
2.4.2	Obligations to respect, protect, promote and fulfil	23
2.4.3	Provision of resources and progressive realisation	24
2.4.4	Immediate obligations regarding the implementation of the right to primary education.....	24
2.4.5	The obligation to take steps	25
2.4.6	Specific obligations on the right to primary education	25
2.5	Chapter summary.....	25

Chapter 3	Realising the Right to Primary Education in Cameroon	28
3.1	Introduction	28
3.2	Reception of international law in Cameroon	28
3.3	Demographics on refugees and asylum-seekers in Cameroon	29
3.4	Measures implemented to meet international obligations	31
3.4.1	Legislative arrangements	31
3.4.1.1	The Cameroonian Constitution	32
3.4.1.2	Law No 98-4 of 14 April 1998 - relating guidelines for education in Cameroon	33
3.4.1.3	Finance Law No. 2000/08 of 30 June 2000	34
3.4.1.4	Law No. 2005/006 of 27 July 2005 - Relating to the Status of Refugees in Cameroon	35
3.4.2	Allocation and provision of resources	38
3.4.2.1	Budgetary allocation	39
3.4.2.2	Infrastructure	39
3.4.2.3	Recruitment of teachers and provision of pedagogic support	40
3.4.2.4	Drafting and implementation of new curricula	40
3.4.2.5	Special schools for refugees and asylum-seekers hotspots	41
3.4.2.6	Subsidising private primary schools	42
3.4.2.7	Incentive packages to public primary schools	43
3.4.2.8	International assistance and cooperation	43
3.5	Chapter summary	46
Chapter 4	Conclusion	48
4.1	Introduction	48
4.2	Objectives	48
4.3	Findings	49

4.4 Recommendations.....54

BIBLIOGRAPHY56

LIST OF ABBREVIATIONS

ACRWC	African Charter on the Rights and Welfare of the Child
AJEM	Australian Journal of Emergency Management
AJIL	American Journal of International Law
AJLS	African Journal of Legal Studies
AJRH	African Journal of Reproductive Health
AU	African Union
CAR	Central African Republic
CESCR	Committee on Economic, Social and Cultural Rights
CRC	Convention on the Rights of the Child
ECOSOC	Economic and Social Council
EJSS	European Journal of Social Sciences
EPW	Economic and Political Weekly
FCFA	Franc de la Communauté Financière Africaine
HRQ	Human Rights Quarterly
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
IDP	Internally Displaced Persons
IJELP	International Journal for Education Law and Policy
IJER	International Journal of Educational Reform

IJGLS	Indiana Journal of Global Legal Studies
ILSA J Int'l & Comp L	ILSA Journal of International & Comparative Law
Int J Child Rights	International Journal of Children's Rights
Int J Const Law	International Journal of Constitutional Law
J Conscious Stud	International Journal of Science and Consciousness
JERAP	Journal of Educational Research and Practice
JHR	Northwestern University Journal of International Human Rights
JL Pol'y & Globalization	Journal of Law, Policy and Globalization
JMF	Journal of Marriage and Family
JPAM	Journal of Policy Analysis and Management
MINJUST	Ministry of Justice
NQHR	Netherlands Quarterly of Human Rights
OAU	Organisation of African Unity
PASZEP	School-Building Support Project in Priority Education Areas
TILJ	Texas International Law Journal
U Chi L Rev	University of Chicago Law Review
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund

Wash U Global Stud L Rev Washington University Global Studies Law Review

West J Black Stud

Western Journal of Black Studies

Chapter 1 Introduction

1.1 Background and motivation

The importance of education to personal, societal and national development has been documented by many scholars across various disciplines.¹ In the context of international human rights, education plays a vital role in the realisation of many other civil, political, economic, social and cultural rights.² Despite the fact that education has been classified as a social right, it can be argued that it has a hybrid nature that qualifies it as an economic right because it plays an invaluable role in the realisation of economic rights.³ For children, the right to education is very important due to the fact that it plays a vital role towards intellectual, spiritual, moral and physical development.⁴ Furthermore, education empowers children with the skills needed for them to reach their full potential in life.

In view of the importance of education for the development of children, the right to primary education is guaranteed in numerous international and regional human rights instruments. The perpetration of any kind of discrimination or imposition of any measures that may hamper the realisation of the right to education for children will have enormous adverse consequences on the children in question. This is also true for children who find themselves in challenging circumstances like in situations of armed conflict, internal displacement due to political instability, and in foreign countries as asylum-seekers and refugees.

1.2 The right to primary education in international law

The adoption of the *Universal Declaration of Human Rights*⁵ by the UN General Assembly on 10 December 1948 infused human rights into international discourse, leading to enormous strides for their protection.⁶ Although the *UDHR* is soft law, it

¹ Wobbekind 2012 *Business Economics* 90-96; Bhardwaj 2016 *J Conscious Stud* 23-28; Conger, Conger and Martin 2010 *JMF* 685-704.

² Hodgson 1996 *Int J Child Rights* 237-262.

³ Kalantry, Getgen and Koh 2010 *HRQ* 260-265.

⁴ Maddock 2017 *AJEM* 17; Somani 2017 *JERAP* 125-139.

⁵ Universal Declaration of Human Rights (1948) (hereafter *UDHR*).

⁶ Özler 2018 *Ethics & International Affairs* 395-406; Baderin and Ssenyonjo "Development of International Human Rights Law before and after the UDHR" 1-30. See also Stamatopoulou 1998 *ILSA J Int'l & Comp L* 281.

sets standards by which governments should treat their people.⁷ It was the first international instrument to recognise a corpus of human rights, including civil, political, economic, social and cultural rights.⁸ The wording of the *UDHR* touches on issues of universal entitlement, i.e., the rights it enshrines are available to every human being without distinction.⁹ It also contains a non-discrimination clause which prohibits all forms of discrimination based on any of the listed grounds.¹⁰ Article 26 of the *UDHR* recognises the right to education, which it says should be available to everyone. Article 26(1) stipulates that education shall be free and compulsory at elementary and fundamental stages.

Subsequent to the *UDHR*, the international community adopted the *International Covenant on Economic, Social and Cultural Rights*.¹¹ One of the key features of the *ICESCR* is the imposition of obligations upon States Parties. Some of the obligations include respecting, protecting, fulfilling and promoting the rights it enshrines. It also requires states to undertake certain steps, within the bounds of available resources, to progressively realise economic, social and cultural rights.¹² It also obligates states to guarantee all the rights contained in the *ICESCR* without discrimination and to adopt different measures aimed at enhancing the realisation of these rights.¹³ Article 13 of the *ICESCR* imposes the obligation to "recognize the right of everyone to education."¹⁴ Article 13(2)(a) of the *ICESCR* provides that primary education "shall be compulsory and available free to all." In the context of the right to education, States Parties to the *ICESCR* must provide free and compulsory primary education to all children. This view is further corroborated by the wording of Article 2(2) of the *ICESCR*, which urges States Parties to undertake to guarantee enumerated rights without any kind of discrimination. This suggests that refugees and asylum-seeking children also qualify

⁷ See the Preamble to the *UDHR*. See Glendon 2004 *JHR* 4.

⁸ Articles 1 to 29 of the *UDHR* contain civil, political, economic, social and cultural rights.

⁹ See Articles 1-29 of the *UDHR*.

¹⁰ Article 2 of the *UDHR*. See, for example, the following works: Farrior 2015 *Wash U Global Stud L Rev* 751 and Vijapur 1993 *India Quarterly* 69.

¹¹ *International Covenant on Economic, Social and Cultural Rights* (1966) (hereafter *ICESCR*).

¹² Article 2(1) of the *ICESCR*.

¹³ Article 2(2) of the *ICESCR*.

¹⁴ See generally Beiter *The Protection of the Right to Education by International Law*.

as protected groups.¹⁵ Applying the non-discrimination clause means that they are entitled to the rights in the *ICESCR*.

In addition to the *ICESCR*, there is a specialised UN instrument dealing with children, which is the *Convention on the Rights of the Child*.¹⁶ This instrument equally imposes a series of obligations on States Parties and is geared towards the implementation of the rights in the *CRC*.¹⁷ One of the rights in the *CRC* is the right to education. This right is stipulated in Article 28. Article 28(1) of the *CRC* requires States Parties to make "primary education compulsory and available free to all."¹⁸ This provision, read with the non-discrimination clause in Article 2(1) of the *CRC*, guarantees every child, irrespective of his or her status, the right to free and compulsory primary education. This equally applies to refugees and asylum-seeking children due to the non-discrimination clause in the *CRC*.¹⁹

At the African regional level, there are two main instruments that recognise the right to education. The first is the *African Charter on Human and Peoples' Rights*.²⁰ Like the above instruments, the *Banjul Charter* imposes similar obligations upon Member States of the African Union (AU) that have ratified it to undertake measures to realise the rights that it enshrines, including the right to education. But unlike the *ICESCR* and the *CRC*, the *Banjul Charter* does not sub-categorise the right to education. It simply says that "every individual shall have the right to education."²¹ Article 2 of the *Banjul Charter* prohibits the perpetration of any kind of discrimination in the enjoyment of the rights that it enshrines. These two provisions suggest that the right to education is available to everyone, irrespective of age or status. In turn, this means that it includes children who are asylum-seekers or refugees.

¹⁵ This is discussed in detail in Chapter 2.

¹⁶ *Convention on the Rights of the Child* (1989) (hereafter *CRC*).

¹⁷ Article 4 of the *CRC*.

¹⁸ Ekundayo 2018 *JL Pol'y & Globalization* 105-116; Ekundayo 2018 *JL Pol'y & Globalization* 45-54; Lee 2013 *Democracy and Education* 1-9; Mondal 2017 *SAGE Open* 1-12; Nowak "Right to Education" 57-66; Singh, Taneja and Dubochet 2013 *Oxfam India Policy Brief* 1-4; Emmanuel B Waydon, Liu Ying and Ketter 2016 *Education Research International* 8-24.

¹⁹ Article 2(1) of the *CRC*.

²⁰ *African Charter on Human and Peoples' Rights* (1981) (hereafter *Banjul Charter*).

²¹ See Article 17(1) of the *Banjul Charter*.

Lastly, the *African Charter on the Rights and Welfare of the Child*,²² a specialised regional instrument, deals with the rights of children. Its obligations are similar to the ones contained in the *ICESCR*, the *CRC*, and the *Banjul Charter*. Like these instruments, it stipulates that every child has the right to an education²³ and that primary education shall be free and compulsory.²⁴

The above provisions of international and African regional human rights instruments show that there are differences in obligations imposed on States Parties.²⁵ The UN human rights instruments are applicable to everyone in general and children in particular and impose on States Parties the obligation to ensure that every child has a right to free and compulsory primary education, which is made available to all children.²⁶ At regional level, the *Banjul Charter* recognises that everyone has the right to education,²⁷ while the *ACRWC* does not only recognise the child's right to education in Article 11(1) but further mandates that basic education shall be free and compulsory.²⁸ This suggests that children with refugee and asylum-seeker statuses have the right to free and compulsory basic education. States Parties to these international and African regional human rights instruments should adopt measures to ensure that these children also enjoy the right to free and compulsory primary education.

The statuses of refugees and asylum-seekers are granted to individuals who flee their countries of origin for any of the reasons stipulated in the *UN Convention Relating to the Status of Refugees*,²⁹ as amended by the *UN Protocol Relating to the Status of Refugees*.³⁰ The Protocol extends protection to refugees at a global level because persons living in foreign countries face various forms of discrimination based on their nationalities. The *Refugee Convention* stipulates specific provisions that relate to rights

²² *African Charter on the Rights and Welfare of the Child* (1990) (hereafter *ACRWC*).

²³ Article 11 of the *ACRWC*.

²⁴ Article 11(3)(a) of the *ACRWC*.

²⁵ These obligations are discussed in detail in Chapter 2.

²⁶ See, for example, Article 13(1)(a) of the *ICESCR* and Article 28(1)(a) of the *CRC*.

²⁷ Article 17 of the *Banjul Charter*.

²⁸ Article 11(3)(b) of the *ACRWC*.

²⁹ *Convention Relating to the Status of Refugees* (1951) (hereafter *Refugee Convention*). The definition of who is a refugee is stipulated in this instrument.

³⁰ *Protocol Relating to the Status of Refugees* (1967) (hereafter *Protocol Relating to the Status of Refugees*).

and obligations, such as the right to public education.³¹ Although it falls short of making a direct obligation for the provision of free and compulsory elementary education, it requires States Parties to accord to refugees and asylum-seekers "the same treatment as is accorded to nationals with respect to elementary education."³²

Looking at the international legal arrangements on the right to education and bearing in mind the wording of Article 22(1) of the *Refugee Convention*, one can say that primary education for refugees and asylum-seekers should also be free and compulsory. Unfortunately, the *AU Convention Governing the Specific Aspects of Refugee Problems in Africa*,³³ a regional instrument, does not make any provision for the right to education.

1.3 The right to primary education for children of refugees and asylum-seekers in Cameroon

International law is law in Cameroon. Its reception in Cameroon is governed by the Cameroon Constitution.³⁴ Article 45 of the Cameroon Constitution states that "all duly ratified international agreements shall become law in Cameroon." In addition, all duly ratified international agreements enjoy a superior status over national law. Cameroon is a State Party to the foregoing instruments, as she acceded to the *ICESCR* on 27 June 1984, signed the *CRC* on 25 September 1990 and ratified it on 11 January 1993. Cameroon ratified the *Banjul Charter* on 18 September 1989, signed the *ACRWC* on 16 September 1992 and ratified it on 5 September 1997. Cameroon acceded to the *Refugee Convention* on 23 October 1961. Article 45 of the Cameroon Constitution makes the provisions of these instruments automatically applicable as law in Cameroon. Therefore, Cameroon has a duty to realise the right to primary education for children of refugees and asylum-seekers.

³¹ See Article 22 of the *Refugee Convention*. More specifically, Article 22(1) which states as follows: "The Contracting States shall accord to refugees the same treatment as is accorded to nationals with respect to elementary education."

³² See Article 22(1) of the *Refugee Convention*.

³³ *Convention Governing the Specific Aspects of Refugee Problems in Africa* (1969) (hereafter *OAU Refugee Convention*)

³⁴ Law No 96-06 of 18 January 1996 to Amend the Constitution of 2 June 1972.

The Preamble to the Cameroon Constitution stipulates that primary education for all children shall be free and compulsory. In addition, it aligns with the normative framework of the *UDHR* and the *Banjul Charter* in that it contains all the norms that include the prohibition of discrimination and guarantees equality for everyone. Article 9 of the Law Relating to the Status of Refugees in Cameroon stipulates that refugees in Cameroon have a right to education.³⁵ However, it does not expressly say whether primary education shall be free and compulsory for children of refugees and asylum-seekers.

Data from credible international bodies indicates that in 2020 there were about 436 406 refugees and asylum-seekers in Cameroon.³⁶ In 2022, the UNHCR revealed that the number of refugees only in Cameroon reached 508 000.³⁷ The state from which the highest number of refugees came (approximately 351 904) is the Central African Republic (CAR). About 136,036 came from Nigeria. Other nationalities made up the remaining figure. About 59 000 are aged between 0 and 4 years, while 114 000 are between 5 and 11 years.³⁸ Estimates suggest that about 70 000 are aged between 12 and 17. In 2022, there were 8 865 asylum-seekers in Cameroon.³⁹ They originate principally from Nigeria and CAR. Most asylum-seekers are located in the Adamawa, Centre, East, Far North and Littoral Regions.

In the context of the high numbers of refugees and in light of Cameroon's international and African regional human rights duties, this study seeks to explore and analyse the measures put in place by the government of Cameroon to realise the right to primary education for refugee and asylum-seeking children.

1.4 Research question

What measures have been taken by Cameroon to realise refugees and asylum-seekers' children's right to primary education in Cameroon?

³⁵ Law No 2005/006 of 27 July 2005 Relating to the Status of Refugees in Cameroon.

³⁶ Macrotrends 2022 <https://www.macrotrends.net/countries/CMR/cameroon/refugee-statistics>

³⁷ UNHCR 2022 <https://reporting.unhcr.org/document/3333>

³⁸ UNHRC "Cameroon - Statistics - April 2021"

³⁹ UNHCR 2022 <https://reporting.unhcr.org/document/3333>

1.5 Research aim and objectives

The aim of this study is to evaluate how the government of Cameroon complies with its international and African regional human rights duties to realise the right to primary education for refugee and asylum-seeking children. The objectives of the study are:

- (i) To examine the nature of the obligations imposed on Cameroon by relevant international and African regional human rights instruments to realise the right to primary education for children of refugees and asylum-seekers;
- (ii) To analyse legal and policy measures taken by the government of Cameroon to realise the right to primary education for children of refugees and asylum-seekers;
- (iii) To identify and discuss factors that may impede the efforts of Cameroon to realise the right to primary education for children of refugees and asylum-seekers; and
- (iv) To draw conclusions and make recommendations that can improve the compliance of Cameroon with its international and African regional human rights duties.

1.6 Research methodology

The topic of this study and its aim and objectives require a qualitative legal research method, which involves the collection, classification, and analysis of primary and secondary sources of law.⁴⁰ Primary sources of law that are used in the study include international legal instruments, the Cameroon Constitution, legislation and case law. Secondary sources of law include publications by scholars, expert reports and policies.⁴¹ The aim of analysing primary and secondary sources of law is to demonstrate how Cameroon complies with its obligations under relevant international

⁴⁰ See generally Dobinson and Johns "Qualitative Legal Research"; Epstein and King 2002 *U Chi L Rev*; and Watkins and Burton (eds) *Research Methods in Law*.

⁴¹ See generally Dobinson and Johns "Qualitative Legal Research"; Epstein and King 2002 *U Chi L Rev*; and Watkins and Burton (eds) *Research Methods in Law*.

and African regional instruments on the right to basic education for children of asylum-seekers and refugees. It should be noted that the research suffered from severe limitations such as the availability of recent reports, restrictions on accessing governmental documents especially those related to policies. That made it a challenge to discuss different aspects of the right to primary education.

1.7 Outline of the study

This dissertation is made up of four chapters. The first chapter is the present one, which introduces the study. It contains the background to the problem, the aims and objectives, the research question, the research methodology, and the structure of the dissertation. The second chapter examines international and African regional human rights law on the right to primary education and the legal framework that underpins the right to primary education in these instruments. Chapter 2 further discusses the normative and substantive obligations imposed by these instruments on States Parties with regard to realising the right to primary education for children of refugees and asylum-seekers. Chapter 3 analyses measures taken by Cameroon to comply with its international and African regional duties to give effect to the right to primary education for children of refugees and asylum-seekers. Chapter 4 concludes the study and proffers recommendations.

Chapter 2 International and African Regional Law Duties on the Right to Primary Education for Refugees and Asylum-Seeking Children

2.1 Introduction

Refugees are a very vulnerable group in any country where they find themselves. The UN adopted the *Refugee Convention* to address their plight at the global level. Regionally, Africa adopted the *OAU 1969 Refugee Convention*. The right to education is one of the most important rights for refugees. This study analyses the extent to which the government of Cameroon guarantees the right to primary education for children of refugees and asylum-seekers. As seen in section 1.3, Cameroon is a State Party to international and African regional human rights instruments which guarantee the right to primary education.

Education is one of the numerous social and economic rights recognised in international and African regional human rights law.¹ Some of these instruments categorise the right to education into primary, secondary, and tertiary education.² The Committee on Economic, Social and Cultural Rights (hereafter the CESCR)³ interprets the relevant provisions of the right to education and details their normative and substantive content.⁴ It is important to note that to enhance compliance with the duties emanating from the right to education, the CESCR adopted General Comment

¹ See Coomans 2004 *Persona & Derecho* 61-100; 1.2 above. See also Beiter *The Protection of the Right to Education by International Law*.

² See, for example, Article 13(2)(a)-(d) of the *ICESCR* and Article 28(1)(a)-(d) of the *CRC*.

³ The Committee on Economic, Social and Cultural Rights is a UN 18-member Committee, elected by the Economic and Social Council (ECOSOC) and mandated to oversee the implementation of the provisions of the *ICESCR*. The members are elected to a four-year term in accordance with ECOSOC Resolution 1985/17 of 28 May 1985. In 2008, the mandate of the Committee on Economic, Social and Cultural Rights was extended to the receipt and treatment of communications following the adoption of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (2008), adopted by the UN General Assembly Resolution Number A/RES/63/117 of 10 December 2008. See generally Veriava and Paterson "The Right to Education" 113-136; Sital, Getgen and Koh "Enhancing Enforcement of Economic, Social, and Cultural Rights Using Indicators: A Focus on the Right to Education in the *ICESCR*" 211-268; Du Plessis, Conley and Loock 2007 *Educational Research and Reviews* 198-208; and Perera 2021 *NQHR* 268-290.

⁴ See CESCR "General Comment No. 13" adopted by the CESCR at the 21st Session, E/C.12/1999/10, 8 December 1999.

13, which details the content of the right to education, the obligations of States Parties to the *ICESCR*,⁵ and the steps to be taken to realise the right.⁶

The purpose of this chapter is to analyse the nature of the obligations imposed by international and African regional human rights instruments on States Parties to realise the right to primary education for refugees and asylum-seeking children. To achieve this objective, this chapter is divided into four parts. The first part discusses guarantees of the right to primary education in international human rights instruments. The second part analyses the African regional human rights system and examines how it recognises the right to primary education. The third part discusses the nature of the obligations imposed by the international human rights regime on States Parties to realise the right to primary education for children of refugees and asylum-seekers.⁷ The fourth part explores the nature of the obligations imposed by African regional human rights instruments. The last part concludes the chapter.

2.2 Right to primary education in international and African regional law

The following discussion shows that the right to primary education is provided in binding and non-binding international and African regional instruments.

2.2.1 International human rights instruments

There are three binding international human rights instruments that guarantee the right to primary education. These are the *ICESCR*, the *Refugee Convention*, and the *CRC*. The *ICESCR* was developed from the *UDHR* and is the first binding and most important UN instrument on social, economic and cultural rights. By August 2022, it had over 170 ratifications and 70 signatories.⁸ The *ICESCR* represents the biggest stride ever made by the global community to package a set of social, economic and cultural rights. One of the rights it guarantees is the right to education, which is presented in three dimensions.⁹ Article 13(1) of the *ICESCR* unequivocally guarantees

⁵ The different obligations curled from the CESCR's General Comment 13 CESCR "General Comment No. 13" are discussed in section 2.3 below.

⁶ See CESCR "General Comment No. 13" paras 1-46.

⁷ See Singh 2005 *IJELP* 103-118.

⁸ United Nations "Declarations and Reservations"

⁹ See Article 13 of the *ICESCR*.

everyone the right to education. It further elaborates on the goals of education. To achieve the content, aims and aspirations of Article 13(1) of the *ICESCR*, Article 13(2) outlines a series of measures, one of which is making primary education compulsory and free to everyone.¹⁰ Article 13(2)(b) and (c) of the *ICESCR* deal with secondary and higher education, respectively. Interestingly, and unlike the *UDHR*, Article 13(2)(d) of the *ICESCR* deals with "fundamental education" geared towards "persons who have not received or completed the whole period of their primary education."¹¹ While the *ICESCR* enshrines primary education, it also provides fundamental education as a remedial measure for individuals who did not receive or complete primary education. This means a learner who was not able to acquire or complete primary education will be eligible for fundamental education to remedy that gap in their life. Article 14 of the *ICESCR* adds to primary education by obligating States Parties:

To work out and adopt a detailed plan of action for the progressive implementation, within a reasonable number of years, to be fixed in the plan, of the principle of compulsory education free of charge for all.

The *Refugee Convention*, as amended by the *Protocol Relating to the Status of Refugees*, governs the protection and entitlements of refugees and asylum-seekers in Article 22(1), which stipulates that refugees shall be granted the same treatment as nationals with respect to elementary education. This means that they shall obtain free and compulsory primary or elementary education that is given to children of their host countries. The *Protocol Relating to the Status of Refugees* extends the guarantees on the right to elementary education in the *Refugee Convention* across the globe without any geographical and time-limits to those with refugee status.

The *CRC* specifically addresses the rights of children to education in Article 28 as follows:

1. States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular: (a) Make primary education compulsory and available free to all... (e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.

¹⁰ See Article 13(2)(a) of the *ICESCR*.

¹¹ See Article 13(2)(d) of the *ICESCR*.

Article 28(1) of the *CRC*, like the *ICESCR*, makes education a right for every child. Article 28(1) states that "States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall", amongst other things, make "primary education compulsory and available free to all".¹² This provision removes the justification that it is difficult or impossible to provide free and compulsory primary education to every child because of insufficient economic resources. Hence, this provision is similar to Article 2(2) of the *ICESCR*.¹³ Article 28(1)(e) is relevant to the right to education because it encourages States Parties to the Convention to take measures that they deem necessary "to encourage regular attendance at schools and the reduction of drop-out rates." Arguably, this clause means that a state's responsibility is not limited to providing free and compulsory education to all children but extends to ensuring that all children benefit from mandatory and free primary education and regularly attend school.

In addition to the binding international legal instruments on the right to education at the international level, there is a strong international soft law architecture that informs both the importance and direction of the right to education. Some of the important instruments are the *UDHR* and the *1990 World Declaration on Education for All*,¹⁴ which was adopted in March 1990 at the World Conference for All held in Jomtien, Thailand.

Article 26 of the *UDHR* guarantees everyone the right to education in a comprehensive manner. Article 26(1) stipulates that elementary education shall be compulsory. Several observations can be made from Article 26 of the *UDHR*. The first is that in comparison with other international instruments, it is generic in content and lacks specifics. This is because it declares that everyone has the right to education but does not provide any details on the kind of education, the individual's ability to receive education, and at what level. The second is that Article 26(1) of the *UDHR* asserts that education at the "elementary and fundamental stages shall be free" but does not

¹² Article 28(1)(a) of the *CRC*.

¹³ The phrase "with a view to achieving this right progressively" is discussed below in section 2.3.

¹⁴ World Declaration on Education for All and Framework for Action to Meet Basic Learning Needs (1990) (hereafter *World Declaration on Education*).

define what is meant by elementary and fundamental stages. It proceeds to stipulate that elementary education shall be compulsory.

Article 26(2) of the *UDHR* stipulates the aims of education, while Article 26(3) addresses the issue of parental approval on the kind of education appropriate for their children. Setting aside the foregoing shortcomings, it is important to mention that the *UDHR* was key in laying the foundation of international human rights in general and the right to education in particular. The *UDHR* is soft law, meaning that its provisions are not legally binding. Notwithstanding, most international law instruments draw their inspiration from the *UDHR*, which is the bedrock of the International Bill of Rights in that it sets the context for the other two instruments, i.e., the *ICCPR* and *ICESCR*.¹⁵ In addition, the *UDHR* is a persuasive authority and parts of it constitute customary international law.¹⁶ Therefore, the right to education does not only feature in the *ICESCR* as a social right but is further elaborated with more specific details than in the *UDHR*.¹⁷

In addition to the *UDHR*, it is worth exploring some key aspects of the *1990 World Declaration*. First, the Preamble to the Declaration re-emphasises the importance of education. Article III of this Declaration addresses the issue of achieving universal access and promoting equity in education. Article V of the same deals with broadening the means and scope of basic education.

In April 2000, the World Education Forum adopted the *Dakar Framework for Action, Education for All: Meeting our Collective Commitments* in Senegal.¹⁸ Among the numerous strategies for realising education for all without distinction, the *Dakar*

¹⁵ See Francioni 1997 *TILJ* 471; Simmons 2009 *IJGLS* and Arat 2006 *HRQ* 416.

¹⁶ The practice of free and compulsory primary education and ensuring non-discrimination in accessing free and compulsory primary education, have attained almost universal recognition by states to the point that it now resides as customary international law. Per Article 38(b) of the Statute of the International Court of Justice, customary international law is a binding source of international law. This means that such a practice that has attained the status of customary international law is binding on Cameroon.

¹⁷ Sital, Getgen and Koh "Enhancing Enforcement of Economic, Social, and Cultural Rights Using Indicators: A Focus on the Right to Education in the *ICESCR*" 211.

¹⁸ *Dakar Framework for Action, Education for all: Meeting our Collective Commitments* (2000) (hereafter *Dakar Framework*).

Framework outlines the need to adopt a policy that provides for free and compulsory primary education for all persons without distinction.¹⁹

The normative framework is informed by those non-binding international instruments which complement and guide the interpretation, understanding and implementation of the legal instruments relating to the right to primary education. The right to free and compulsory primary education, which must be available to all persons without discrimination, is entrenched in international law. As such, States Parties to the different instruments discussed above must develop policies and provide resources aimed at the realisation of this right.

2.2.2 The right to primary education in African regional instruments

The *Banjul Charter* is the main regional instrument that entrenches the human rights of all Africans without distinction as to age, race, religion, gender, or any other social status.²⁰ Article 17 of the *Banjul Charter* states that "every individual shall have the right to education." Unlike other international instruments, the *Banjul Charter* does not classify the right to education into categories.²¹ Consequently, it does not prescribe making education free and compulsory.

Article 11(1) of the *ACRWC* stipulates that every child "shall have the right to an education." Article 11(2)(a)-(h) outlines the goals of education, while Article 11(3) outlines a series of measures prescribed for the purpose of achieving the full realisation of the right to education. Among those measures is the provision of free and compulsory basic education to all children,²² encouraging attendance at schools, and the reduction of drop-out rates.²³ Article 5 of the *OAU Refugee Convention*

¹⁹ Paragraph 9 of the *Dakar Framework*.

²⁰ Article 2 of the *Banjul Charter*.

²¹ See Article 17(1) of the *Banjul Charter*. The African Commission on Human and Peoples' Rights, *Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights* (2010) (hereafter *African Commission Principles and Guidelines*) sub-categorises the right to education into six, one of which is the right to primary education - see para 70 of the *African Commission Principles and Guidelines*. This document requires primary education to be compulsory and free to all.

²² Article 11(3)(a) of the *ACRWC*.

²³ Article 11(3)(d) of the *ACRWC*.

enshrines the principle of non-discrimination, which is important in the context of the right to primary education.

2.3 Nature of the obligations of States Parties on the right to education

The discussion in section 2.3 shows that the right to education is a well-established right in international and African regional human rights law. It is sub-categorised into primary, fundamental, secondary, and tertiary education. The *ICESCR* makes primary education free and compulsory, as discussed above.²⁴ Fundamental education is aimed at remedying gaps in primary education for persons who are unable to pursue or complete primary education.²⁵ Specific international and regional instruments dealing with children as a vulnerable group also recognise the right to education.²⁶ Other instruments take similar approaches that urge States Parties to take measures to ensure that primary education is free and compulsory. They also require States Parties to encourage the participation of learners in attending school and reduce the drop-out rates.²⁷ The discussion below focuses on key elements of the right to primary education, its normative content, and the general and specific legal duties imposed on States Parties to realise this right under international law.

2.3.1 Normative contents and key elements of the right to primary education

International instruments which recognise the right to education²⁸ and the CESCR's General Comment 13 on the right to education in general, and the right to primary education in particular, show that States Parties bear some normative obligations from these instruments.²⁹ These are discussed below.

2.3.1.1 Compulsory³⁰ and free primary education

States Parties to both the *ICESCR* and the *CRC* must provide compulsory and free primary education for all children within their territories.³¹ The requirement for

²⁴ Article 13(2)(a) of the *ICESCR*.

²⁵ Article 13(2)(d) of the *ICESCR*.

²⁶ See, for example, Article 28 of the *CRC* and Article 11 of the *ACRWC*.

²⁷ Article 28(1)(e) of the *CRC* and Article 11(3)(d) of the *ACRWC*.

²⁸ Article 13 of the *ICESCR*.

²⁹ These are discussed in section 2.3.1.1 to 2.3.2.6 below.

³⁰ CESCR "General Comment 11" para 6.

³¹ Article 13(2)(a) of the *ICESCR* and Article 28(1)(a) of the *CRC*.

compulsory primary education underscores the fact that parents, guardians, learners, and the state cannot choose whether children should have access to primary education.³² Making primary education compulsory for all children reinforces the prohibition of gender discrimination, as required by Articles 2 and 3 of the *ICESCR*. Also, the education offered to children must be adequate, relevant and promote the realisation of other rights to which they are entitled.³³

The requirement for making primary education free is unequivocal and intended to ensure that primary education is available without any charges to children and their parents or guardians.³⁴ As such, fees or levies imposed by schools, local authorities, or the government would constitute disincentives to the enjoyment of the right to primary education and may also compromise its realisation. Such policies or acts contravene the right to primary education. The levying of all direct and indirect fees is prohibited because such fees may have an adverse effect on the realisation of the right to primary education.³⁵ Hence, States Parties must develop plans of action that detail how they will make primary education free for everyone in their territories.³⁶

2.3.1.2 Detailed plan of action and developmental strategy for primary schools

Within two years of ratifying the *ICESCR*, States Parties must adopt plans of action on which they intend to make primary education compulsory and free. Such plans of action must cover all aspects of the right to primary education and be sufficiently detailed to ensure the comprehensive realisation of the right.³⁷ States Parties may not invoke the absence and inadequacy of resources as a ground for the non-fulfilment of their obligation to make primary education free and compulsory.³⁸ The plan of action of a State Party that lacks the resources to realise the right to free and compulsory primary education must indicate it intends to procure international assistance and

³² CESCR "General Comment 11" para 6.

³³ CESCR "General Comment 13" para 6.

³⁴ CESCR "General Comment 13" para 7.

³⁵ CESCR "General Comment 13" para 7.

³⁶ CESCR "General Comment 13" para 7.

³⁷ CESCR "General Comment 11" para 8.

³⁸ CESCR "General Comment 11" para 8.

cooperation to obtain the resources needed to make primary education free and compulsory.³⁹

2.3.1.3 The obligation to achieve progressive realisation of the right to primary education

The obligation to achieve progressive realisation of the right to primary education means that the plan of action adopted by each State Party must be aimed at securing the progressive implementation of the right to compulsory and free primary education.⁴⁰ Article 14 of the *ICESCR* stipulates that the target date for such must be "within a reasonable number of years" and that the time frame must be "fixed in the plan."⁴¹ This means that the plan must specifically outline a series of targeted implementation dates for each stage of the progressive implementation of the plan.⁴² While the plan details the progressive implementation of substantive obligations, normative obligations, such as the prohibition of any kind of discrimination, must be implemented fully and immediately.⁴³

2.3.1.4 The obligation to ensure the availability, accessibility, acceptability, and adaptability of primary education

States Parties to the *ICESCR* must ensure that the right to primary education meets four essential aspects, namely, availability, accessibility, acceptability and adaptability. Availability means that the number of primary schools in each state should be sufficient in quantity.⁴⁴ This requires States Parties to establish primary schools, provide the necessary infrastructure for them to be functional, and allocate human resources such as trained teachers. These entail the construction of new primary schools and the rehabilitation of old ones. Such infrastructure should possess specific minimal sanitary facilities such as toilets, water, and electricity. The schools must possess learning

³⁹ CESCR "General Comment 11" para 8.

⁴⁰ CESCR "General Comment 11" para 10.

⁴¹ CESCR "General Comment 11" para 10.

⁴² CESCR "General Comment 11" para 10.

⁴³ CESCR "General Comment 11" para 10. The notion of "progressiveness" as used in Article 11 is different from the one contemplated in Article 2(1) or insofar as other aspects of the Article are concerned. It is a very limited progressiveness, seeing that Article 13(2)(a) states that primary education "shall be" compulsory and available free to all.

⁴⁴ CESCR "General Comment 13" para 6(a). See also Veriava and Paterson "The Right to Education" 113.

facilities such as libraries and computers and other information technology facilities. Making education available also requires States Parties to recruit and remunerate competent teachers to provide instruction to children.⁴⁵

Accessibility touches on three different but overlapping dimensions, which are non-discrimination, physical accessibility, and economic accessibility. This means that States Parties must ensure that primary education is accessible to everyone without discrimination. Also, primary education should be physically accessible, meaning that schools must be within safe physical reach. Thirdly, primary education must be economically accessible, which means that it must be affordable.⁴⁶ This obliges States Parties to determine the appropriate content, curricula and pedagogy for their primary schools.⁴⁷ States Parties must ensure that the contents of the curricula in primary schools are flexible and reflect the various demographics. The curricula must be modified from time to time to align with changes in society.⁴⁸

2.3.1.5 Material conditions of teachers

States Parties to the *ICESCR* must take steps to improve the material conditions of teachers in primary schools. Material conditions include locally competitive remuneration, the provision of didactic materials, safe working conditions, and protection of the right of teachers to organise and bargain collectively.⁴⁹

2.3.1.6 Non-discrimination

The instruments discussed in 2.2 and 2.3 above require States Parties to realise primary education without discrimination. The non-discrimination clause is stipulated in Article 2(2) of the *ICESCR*, which requires States Parties to "undertake to guarantee that the rights enunciated" in the *ICESCR* will be available to everyone without any discrimination on any of the listed grounds. Article 2(2) of the *ICESCR* prohibits any

⁴⁵ See CESCR "General Comment No. 13" para 6(a) where the Committee describes the notion of "availability." See also Veriava and Paterson "The Right to Education" 113.

⁴⁶ See CESCR "General Comment No. 13" para 6(b) where the Committee describes the notion of "accessibility." See also Veriava and Paterson "The Right to Education" 113.

⁴⁷ See CESCR "General Comment No. 13" para 6(c) where the Committee describes the notion of "acceptability." See also Veriava and Paterson "The Right to Education" 113.

⁴⁸ See CESCR "General Comment No. 13" para 6(d) where the Committee considers the concept of "adaptability." See also Veriava and Paterson "The Right to Education" 113.

⁴⁹ CESCR "General Comment No. 13" para 27.

discrimination against anyone, including children, based on their nationality. The non-discriminatory clause means that refugee and asylum-seeking children, irrespective of their nationality or social status, qualify to enjoy all the rights to primary education stipulated in the *ICESCR*.⁵⁰

2.3.2 General and specific legal obligations

2.3.2.1 Progressive realisation

Progressive realisation of the right to primary education means that States Parties shall continually move expeditiously and effectively as possible towards the complete realisation of the right to primary education.⁵¹ It also means that they must take measurable steps within specific timeframes towards the realisation of the right to primary education.

2.3.2.2 Immediate obligations

The *ICESCR* mentions the "progressive realisation" of rights that it enshrines. This includes the right to primary education. Despite constraints, some States Parties experience problems due to limited resources. The *ICESCR* imposes some obligations which are immediately realisable. For example, it requires States Parties to guarantee the right to primary education without any kind of discrimination.⁵² States Parties are also obliged "to take steps" towards the full realisation of the right to primary education. The steps taken shall be "deliberate, concrete and targeted" towards the realisation of the right to primary education.⁵³

2.3.2.3 The obligation to respect, protect, and fulfil

The obligation to respect means that States Parties must avoid any measure that hinders or prevents the complete enjoyment of the right to primary education. The obligation to protect means that States Parties are required to take measures aimed at preventing private actors from interfering with the enjoyment of the right to primary education. The obligation to fulfil entails that States Parties must take positive

⁵⁰ Article 13(2) of the *ICESCR*. para 10.

⁵¹ CESCR "General Comment No. 13" para 44.

⁵² Article 2(2) of the *ICESCR*.

⁵³ CESCR "General Comment No. 13" para 43.

measures to enable and assist both individuals and communities in enjoying the right to primary education.⁵⁴

2.3.2.4 Curricula and minimum educational standards

States Parties are also obliged to ensure that curricula for primary schools are directed to the objectives mentioned in Article 13(1) of the *ICESCR*.⁵⁵ States Parties are further required to establish and maintain effective and transparent systems in monitoring the direction of primary education towards the objectives stated in Article 13(1) of the *ICESCR*.⁵⁶

2.3.2.5 Fellowship system

States Parties to the *ICESCR* must establish educational fellowship systems to assist disadvantaged and vulnerable groups of learners. This requires States Parties to develop and run educational systems that reinforce the principal responsibility of providing primary education directly to children in all circumstances.⁵⁷ It also includes the provision of support to learners who come from disadvantaged groups in order to abate the drop-out rates.

2.3.2.6 International cooperation and assistance

Article 2(1) of the *ICESCR* obliges States Parties to take steps on their own and in partnership with international assistance and cooperation mechanisms to achieve the progressive realisation of all socio-economic and cultural rights.⁵⁸ This means that international assistance and cooperation should be sought with the goal of achieving a realisation of the right to primary education. Within states, local actors within civil society should assist States Parties in offering education to learners. The States Parties must approach international (non)governmental organisations for assistance towards enhancing the realisation of the right to primary education.

⁵⁴ CESCR "General Comment No. 13" paras 46-47.

⁵⁵ CESCR "General Comment No. 13" para 49.

⁵⁶ CESCR "General Comment No. 13" para 49.

⁵⁷ CESCR "General Comment No. 13" para 53.

⁵⁸ CESCR "General Comment No. 13" para 56.

2.3.2.7 Minimum core obligations

States Parties to the *ICESCR* must perform minimum core obligations.⁵⁹ With regards to the right to primary education, these include the obligation to ensure the right of access to public educational institutions and programmes on a non-discriminatory basis; the obligation to ensure that primary education conforms to the objectives stated in Article 13(1) of the *ICESCR*; the obligation to provide primary education for everyone in accordance with Article 13(2) of the *ICESCR*; the obligation to adopt and implement national educational strategies which include provision for other levels of education; and the obligation to ensure a free choice of education without interference from state and non-state actors.⁶⁰

2.3.2.8 Educational choices for learners

Article 13(3) of the *ICESCR* obliges States Parties thereto to refrain from interfering with the liberty of parents and guardians to choose schools that are different from the ones they offer, provided such educational institutions meet prescribed minimum standards. The purpose of this is to ensure that children receive religious and moral education that conforms to the convictions of their parents or legal guardians.⁶¹

This obligation is further reinforced by Article 13(4) of the *ICESCR*, which requires States Parties to grant individuals and bodies the freedom to "establish and direct educational institutions," provided such institutions adhere to the principles stipulated in Article 13(1) of the *ICESCR* and meet the prescribed minimum standards regarding educational institutions.⁶²

2.4 Obligations under African regional law

The *Banjul Charter* recognises numerous economic, social and cultural rights, including the right to education. In 2010, the African Commission adopted the *Principles and guidelines on the implementation of Economic, Social and Cultural Rights in the African*

⁵⁹ See also the CESCR "General Comment No. 3" where the CESCR confirmed that States Parties to have some minimum core obligation to ensure the satisfaction of, at least, minimum essential levels of all rights in the *ICESCR*.

⁶⁰ CESCR "General Comment No. 13" para 57.

⁶¹ CESCR "General Comment No. 13" para 28.

⁶² CESCR "General Comment No. 13" paras 29-30.

Charter on Human and Peoples' Rights (African Commission Principles and Guidelines) in which it details out the obligations of States Parties with regard to social, economic and cultural rights. Since the right to education is one of the socio-economic rights in the *Banjul Charter*, the *African Commission Principles and Guidelines* broadly apply to it. In addition, the *Banjul Charter* and *African Commission Principles and Guidelines* impose specific legal obligations with regard to the right to primary education. The substance of these obligations resembles the *ICESCR*, making it unnecessary to repeat the explanations of some of the obligations. However, there are a few obligations in the *African Commission Principles and Guidelines* which do not feature in the *ICESCR* and are slightly different.

2.4.1 Nature of obligations

Article 1 of the *Banjul Charter* obligates States Parties to "recognise" the rights, duties and freedoms in the Charter and to "adopt legislative or other measures to give effect to them." Examples of these measures include, providing for the protection and realisation of economic, social and cultural rights through constitutional rights and institutions, legislation, policy and budgetary measures, educational and public awareness measures, and administrative action.⁶³ States Parties must guarantee availability, adequacy, affordability, and acceptability with respect to economic, social and cultural rights.

Guaranteeing availability means that States Parties should ensure that the necessary goods and services needed to enjoy the right to free and compulsory primary education are practically available to individuals who need them to be able to enjoy the right. They must establish and equip schools, recruit and train teachers, and provide teaching materials, among others.⁶⁴ Adequacy means that goods and services must be sufficient to meet all the requirements of the right to primary education. In the context of the right to primary education, schools must be in sufficient numbers

⁶³ *African Commission Principles and Guidelines* para 2.

⁶⁴ *African Commission Principles and Guidelines* para 3(a).

for learners to enrol and should not be understaffed or under-resourced, as this would make it difficult for learners to obtain quality education in conducive environments.⁶⁵

Accessibility refers to physical and economic affordability, which entails that goods and services required for the enjoyment of the rights should be made available to everyone, including members of vulnerable and disadvantaged groups such as children of refugees and asylum-seekers. Physical accessibility to primary school means that the schools must be within reachable physical distance and not too far from where the learners reside. Economic accessibility means that learners should be able to afford the direct and indirect costs of attending primary school.⁶⁶ Acceptability means that the provision of primary education should be made in a way that respects societal and cultural norms.⁶⁷

2.4.2 Obligations to respect, protect, promote and fulfil

Economic, social and cultural rights, such as the right to free and compulsory primary education in the *Banjul Charter*, impose negative and positive obligations on States Parties, which include the duty to respect, protect, promote and fulfil those rights. The obligation to respect entails that States Parties shall refrain from directly and indirectly interfering with the enjoyment of the right to primary education. It also means that individuals shall have the freedom to use all resources at their disposal to meet their needs. It also means that all organs of state shall not engage in any conduct that violates the right to primary education.⁶⁸

The obligation to protect requires states to take positive measures aimed at ensuring that no person or group, or juristic person engages in any conduct that violates the right to primary education. It also envisages the implementation of relevant national legislation and programmes aimed at providing remedies for such violations.⁶⁹

The obligation to promote means that States Parties must take measures to enhance people's awareness of the right to education and provide accessible information

⁶⁵ *African Commission Principles and Guidelines* para 3(b).

⁶⁶ *African Commission Principles and Guidelines* para 3(c).

⁶⁷ *African Commission Principles and Guidelines* para 3(d).

⁶⁸ *African Commission Principles and Guidelines* para 6.

⁶⁹ *African Commission Principles and Guidelines* para 7.

relating to the programmes and institutions that have been developed and established to realise the right to education.⁷⁰

With regards to the right to primary education, the obligation to fulfil requires States Parties to take positive steps to advance the realisation of the right to primary education. This positive obligation requires each State Party to make necessary internal arrangements towards the actual realisation of the right to primary education. It also includes the adoption of different measures by each State Party to enable and assist both individuals and communities in gaining access to the right to education on their own. It also means that vulnerable and marginalised groups such as children of refugees and asylum-seekers should be prioritised in all programmes relating to primary education.⁷¹

2.4.3 Provision of resources and progressive realisation

The *Banjul Charter* does not expressly mention the “progressive realisation” of the right to primary education or any other right. However, it imposes an obligation on States Parties to progressively and constantly move towards the full realisation of the right to primary education. This should be done within the limits of available resources. Progressive implementation of the right to primary education means that States Parties must develop reasonable and measurable plans of action, including achievable benchmarks and timeframes, for the enjoyment of the right to primary education.⁷²

2.4.4 Immediate obligations regarding the implementation of the right to primary education

Some obligations take immediate effect upon ratification of the *Banjul Charter*. These include the prohibition of retrogressive steps and the prevention of any discrimination in the enjoyment of the right to primary education.⁷³

⁷⁰ *African Commission Principles and Guidelines* para 8.

⁷¹ *African Commission Principles and Guidelines* paras 10-12.

⁷² *African Commission Principles and Guidelines* paras 13-14.

⁷³ *African Commission Principles and Guidelines* para 16.

2.4.5 *The obligation to take steps*

States Parties have an immediate obligation to take steps towards the realisation of the right to primary education in accordance with reasonable and measurable plans of action. The various measures adopted by States Parties should be deliberate, concrete and targeted towards the realisation of the right to primary education.⁷⁴

2.4.6 *Specific obligations on the right to primary education*

The *Principles and Guidelines* provide a wide range of core obligations relating to the right to education generally and the right to primary education specifically. These are ensuring that children enjoy the right to free and compulsory primary education;⁷⁵ implementing policies aimed at eliminating or reducing the costs of attending primary school;⁷⁶ developing systems that make primary education physically and economically accessible for all children;⁷⁷ and ensuring that educational programmes are of high quality and are appropriate to the needs of society. With regards to vulnerable groups, additional obligations include ensuring that all children enjoy equal access to and progress in the educational system, addressing the socio-economic and cultural barriers that may impede girl children from enjoying the right to primary education;⁷⁸ and ensuring the safety of school children by taking appropriate measures to protect them.⁷⁹

2.5 Chapter summary

This chapter examines the international legal and normative framework relating to the right to free and compulsory primary education for refugees and asylum-seeking children in line with the objectives of the study to identify and discuss various

⁷⁴ *African Commission Principles and Guidelines* para 18.

⁷⁵ This means that no child should be denied the right to free and compulsory primary education because of school fees or related costs of education. To achieve this, states are required to "progressively increase the amount of national resources allocated to education": *African Commission Principles and Guidelines* para 71(a).

⁷⁶ This includes the provision of stipends, free or subsidised uniforms, free textbooks, free or subsidised transportation, and free school meals: *African Commission Principles and Guidelines* para 71(b).

⁷⁷ This involves the building of schools and the provision of education materials, the ensuring continued education for teachers and instructors: *African Commission Principles and Guidelines* para 71(c).

⁷⁸ *African Commission Principles and Guidelines* para 71(p).

⁷⁹ *African Commission Principles and Guidelines* para 71(q).

obligations imposed on States Parties by different international and African regional human rights instruments. To achieve this objective, it is important to discuss the international and African regional legal framework on the right to primary education, as done in this chapter.⁸⁰ The obligations imposed by international and African regional law are explored and analysed in this chapter.⁸¹ International obligations emanating from both the *ICESCR* and the *CRC* and General Comments 11 and 13 (dealing specifically but broadly with the right to education within the *ICESCR*) are numerous.

These obligations include the normative content and key elements of the right to primary education,⁸² which encompass the obligation to provide compulsory and free primary education;⁸³ adoption of detailed plans of action and developmental strategies for primary schools;⁸⁴ achieving progressive realisation of the right to primary education;⁸⁵ ensuring availability, accessibility, acceptability and adaptability in fulfilling the right to primary education;⁸⁶ creating material conditions for teachers in primary schools;⁸⁷ and prohibiting all kinds of discrimination in the enjoyment of the right to primary education.⁸⁸

In addition, there are general and specific legal obligations on States Parties in the *ICESCR*.⁸⁹ These include, the obligation to progressively realise and implement the right to primary education;⁹⁰ fulfilling immediate obligations contained in the *ICESCR*;⁹¹ respecting, protecting and fulfilling the right to primary education;⁹² developing and implementing primary school curricula that meet minimal educational

⁸⁰ See section 2.2.1 on the right to primary education in international law and section 2.2.2 on the African regional human rights law on the right to primary education.

⁸¹ See section 2.3 on the nature of the States Parties' obligations in international law and section 2.4 on the obligations on States Parties to the *Banjul Charter*.

⁸² Section 2.3.1. See also the CESCR "General Comment No. 11" and CESCR "General Comment No. 13."

⁸³ Section 2.3.1.1. See CESCR "General Comment No. 13" para 6.

⁸⁴ Section 2.3.1.2. See also the CESCR "General Comment No. 13" para 8.

⁸⁵ Section 2.3.1.3. See also the CESCR "General Comment No. 13" para 10.

⁸⁶ Section 2.3.1.4. See also the CESCR "General Comment No. 13" para 6(a)-(d).

⁸⁷ Section 2.3.1.5. See also the CESCR "General Comment No. 13" para 27.

⁸⁸ Section 2.3.1.6. See also the CESCR "General Comment No. 13" paras 31-37.

⁸⁹ Section 2.3.2. See also the CESCR "General Comment No. 13" paras 43-57.

⁹⁰ Section 2.3.2.1. See also the CESCR "General Comment No. 13" para 44.

⁹¹ Section 2.3.2.2. See also the CESCR "General Comment No. 13" para 43.

⁹² Section 2.3.2.3. See also the CESCR "General Comment No. 13" paras 46-47.

standards;⁹³ developing primary school fellowship systems;⁹⁴ seeking international cooperation and assistance towards progressively realising the right to primary education;⁹⁵ and performing minimum core obligations.⁹⁶

In addition to international law, the *Banjul Charter* imposes obligations on the right to primary education. These obligations are further entrenched in the African Commission's *Principles and Guidelines*. Since most obligations in the African regional human rights system are similar to those in international law, it is not necessary to repeat them. States Parties must respect, protect, promote and fulfil the right to primary education;⁹⁷ provide resources and progressively realise the right to primary education;⁹⁸ fulfil immediate obligations regarding the implementation of the right to primary education;⁹⁹ take steps towards realising the right to primary education;¹⁰⁰ and fulfil specific obligations on the right to primary education.¹⁰¹

In the light of substantive and normative provisions and the obligations of States Parties, one can assess the degree to which Cameroon fulfils its international obligations regarding the right to primary education. The next chapter explores different national legal instruments put in place to ensure that Cameroon fulfils its international obligations in providing free and compulsory primary education to children of refugees and asylum-seekers within its territory. The chapter interrogates the policies adopted towards that end and identifies some challenges in that regard.

⁹³ Section 2.3.2.4. See also the CESCR "General Comment No. 13" para 49.

⁹⁴ Section 2.3.2.5. See also the CESCR "General Comment No. 13" para 53.

⁹⁵ Section 2.3.2.6. See also the CESCR "General Comment No. 13" para 56.

⁹⁶ Section 2.3.2.7. See also the CESCR "General Comment No. 13" para 57.

⁹⁷ Section 2.4.2. See the *African Commission Principles and Guidelines* para 6.

⁹⁸ Section 2.4.3. See the *African Commission Principles and Guidelines* paras 13-14.

⁹⁹ Section 2.4.4. See the *African Commission Principles and Guidelines* para 16.

¹⁰⁰ Section 2.4.5. See the *African Commission Principles and Guidelines* para 71(a)-(c).

¹⁰¹ Section 2.4.6. See the *African Commission Principles and Guidelines* paras 71(a)-(c) and (p)-(q).

Chapter 3 Realising the Right to Primary Education in Cameroon

3.1 Introduction

The previous chapter examined the right to primary education within the context of the international and African regional human rights framework. It discussed the scope of the right to primary education generally and for children of refugees and asylum-seekers specifically. The analysis showed that international and regional human rights instruments create specific obligations for States Parties. This chapter looks at the measures taken by Cameroon to realise the right to primary education for children of refugees and asylum-seekers in its territory. It starts with a discussion on the reception of international and regional law in Cameroon, followed by a synoptic analysis of the data on refugees and asylum-seekers in Cameroon. The last part discusses the measures that have been taken by Cameroon with regard to realising the right to primary education for children of refugees and asylum-seekers. The chapter ends with a summary of key findings.

3.2 Reception of international law in Cameroon

Cameroon is a member of the UN and the AU. International instruments adopted by these two intergovernmental organisations relating to international human rights are part of Cameroonian laws. The reception of international law in Cameroon is governed by the Cameroon Constitution, which provides that:

Duly approved or ratified treaties and international agreements shall, following their publication, override national laws, provided the other party implements the said treaty or agreement.¹

This provision means that international law, in the form of ratified treaties and international agreements, constitutes law in Cameroon.² Ratified treaties are self-executing because there is no need for a further domestic process for legislative implementation of such ratified treaties and international agreements.³ They

¹ Article 45 of the Law No 96-06 of 18 January 1996 to Amend the Constitution of 2 June 1972.

² Agbor 2015 *AJLS* 162.

³ Vazquez 1995 *AJIL* 695.

constitute law and are enforceable when ratified. In addition, international treaties and agreements have a superior status over domestic laws in Cameroon.⁴

Against the above backdrop, it is important to recall that Cameroon acceded to the *ICESCR* on 27 June 1984. On 25 September 1990, she signed the *CRC* and ratified it on 11 January 1993. Cameroon acceded to the *Refugee Convention* on 23 October 1961. On 23 July 1987, Cameroon signed the *Banjul Charter* and ratified it on 20 June 1989. She signed the *ACRWC* on 16 September 1992 and ratified it on 5 September 1997. Article 45 of the Cameroon Constitution gives these instruments the status of law because they directly impose binding obligations on the country.

As indicated in Chapter 2, international and African regional human rights instruments impose binding obligations on countries that have signed and ratified them. In the context of Article 45 of the Cameroon Constitution, it is argued that the obligations discussed in Chapter 2 of this study are binding on the country. The following subsection analyses how Cameroon attempts to comply with its international and African regional human rights duties to provide basic education to children of refugees and asylum-seekers.

3.3 Demographics on refugees and asylum-seekers in Cameroon

It is important to investigate the population of refugees and asylum-seekers in Cameroon to determine how many children of refugees and asylum-seekers qualify for free and compulsory primary education. Even though the government distinguishes between nationals and foreigners, it is important to fragment the data for specific reasons. The first reason is that as a host country, the government should know how many refugees and asylum-seekers are hosted in the country; the number of children; their ages and gender; and who qualifies for free and compulsory primary education. Second, and based on the first reason, it helps the government in establishing trends in access to primary education, identifying if there are any gaps or challenges, and design interventions aimed at surmounting them. Third, it helps in assessing the extent to which Cameroon fulfils her international obligations owed to these classes

⁴ Agbor 2015 *AJLS* 162.

of persons, arising from the ratified international instruments that deal with them.⁵ Fourth, the allocation of adequate resources and infrastructural development in the areas that host refugees and asylum-seekers can only be done if such details are considered. Therefore, it is imperative to look at the demographics relating to refugees and asylum-seekers in Cameroon and the specific details relating to children and their access to free and compulsory primary education.

The September 2022 bulletin published by the UNHCR discloses that there are 508 000 refugees in Cameroon,⁶ 351 904 of whom come from CAR and 136,036 from Nigeria. Other nationalities make up the remaining figure. There are 8 865 asylum-seekers.⁷

Refugees and asylum-seekers reside across the national territory with the exception of three regions that have no record of any refugee or asylum-seeker, namely, the North-West, South and West Regions.⁸ The East Region has the highest incidence of refugees.⁹ There are 209 000 documented refugees in that Region, which is followed by the Far North Region, which has 130 900 refugees. The Adamawa Region hosts 90 800 refugees, while the North Region has 47 000 refugees. The Centre Region has 17 100 refugees, while 12 200 refugees are in the Littoral Region. About 618 refugees are in the South-West Region.¹⁰

It is also important to look at the age and gender composition of refugees because they affect the right to primary education. About 16% of child refugees are children aged between 0 and 4 years, equally divided between females and males. Children between 5 and 11 years constitute 29%, of which 14% are females, and 15% are males. Children between 12 and 17 years make up 18% of child refugees and are evenly divided between females and males.¹¹ With respect to primary education, the

⁵ These instruments include the *ICESCR*, *Banjul Charter*, *CRC* and the *ACRWC*.

⁶ UNHCR 2022 <https://reporting.unhcr.org/document/3333>.

⁷ UNHCR 2022 <https://reporting.unhcr.org/document/3333>.

⁸ UNHCR 2022 <https://reporting.unhcr.org/document/3321>.

⁹ UNHCR 2022 <https://reporting.unhcr.org/document/3321>.

¹⁰ UNHCR 2022 <https://reporting.unhcr.org/document/3321>.

¹¹ UNHCR 2022 <https://data.unhcr.org/en/documents/details/95959>.

applicable age group is 5 and 11 years. This brings the total number to about 147 000 children who are supposed to have free and compulsory primary education.¹²

Unfortunately, the September 2022 bulletin reports that about 72% of refugee children are "out of school." In this context, "school" is broadly used to encompass all levels of schooling from pre-primary, primary and secondary schooling.¹³ Other than seeing it from a holistic perspective, it is important to exercise caution in splitting the data to get an exact figure of the number of primary school children who have access to free and compulsory primary education and those that do not. The Bulletin provides additional data that sub-categorises the enrolment into different school stages (primary, secondary and tertiary).¹⁴ Looking at this data presented in comparison with Cameroonian nationals, only 47% of refugees enrol in primary schools.¹⁵ Hence, out of the estimated 147 000 children who qualify for free and compulsory primary education, only 47% enrol, bringing their number to 70 000 child refugees who make use of free and compulsory primary education in Cameroon. About 80 000 children do not enrol for free and compulsory primary education.¹⁶ In comparison with Cameroonian nationals, an enrolment rate of 106% is recorded: meaning that there is a far-exceeding expectation when it comes to Cameroonian nationals.¹⁷

3.4 Measures implemented to meet international obligations

Cameroon has adopted many measures to respect, promote, protect and fulfil the right to primary education. Those measures are discussed below.

3.4.1 Legislative arrangements

The discussion in 2.3 and 2.4 shows that all countries that signed and ratified the *ICESCR*, the *Refugee Convention*, the *Protocol to the Refugee Convention*, the *CRC*, the *Banjul Charter* and the *ACRWC* must undertake measures, including legislative measures, to give effect to the rights across their national territories. The same applies

¹² UNHCR 2022 <https://data.unhcr.org/en/documents/details/95959>.

¹³ UNHCR 2022 <https://data.unhcr.org/en/documents/details/95959>.

¹⁴ UNHCR 2022 <https://data.unhcr.org/en/documents/details/95959>.

¹⁵ UNHCR 2022 <https://data.unhcr.org/en/documents/details/95959>.

¹⁶ UNHCR 2022 <https://data.unhcr.org/en/documents/details/95959>.

¹⁷ UNHCR 2022 <https://data.unhcr.org/en/documents/details/95959>.

to the right to primary education. This is a core obligation which ensures that the right is entrenched in the national legislative framework for domestic application and that, where necessary, adjudication mechanisms are provided. As discussed below, in Cameroon, there are laws and policies that have been adopted by the government to concretise the right to primary education for all. The paragraphs that follow discuss these instruments, showing the extent to which they cater for children of refugees and asylum-seekers.

3.4.1.1 The Cameroon Constitution

With regard to the normative and core obligations,¹⁸ the Preamble to the Cameroon Constitution affirms the principle of non-discrimination. The right to compulsory primary education and the obligation of the state to "guarantee the child's right to education" is stipulated in the Cameroon Constitution in the following words:

Primary education shall be compulsory. The organization and supervision of education at all levels shall be the bounded duty of the State.¹⁹

Hence, the Cameroon Constitution aligns itself with international and African regional human rights instruments that recognise the right of the child to primary education and the duty to make primary education compulsory for every child.²⁰ The Cameroon Constitution makes it mandatory for every child in Cameroon to have primary education. This constitutional provision does not subject the realisation of the right to education to any factor, such as available resources or limit its enjoyment to only Cameroonian nationals. From a constitutional point of view, all children of refugees and asylum-seekers in Cameroon are entitled by law to have primary education. This is in line with the principle of non-discrimination in the realisation of the right to basic education that is guaranteed in international and African regional human rights law.²¹ In addition, the Cameroonian state positions itself as the guarantor of the right to primary education, as shown in the Preamble to the Cameroon Constitution. This means that it is the duty of Cameroon to ensure that the right of every child to primary

¹⁸ See the discussion above in section 2.3.1.

¹⁹ Preamble to the Cameroon Constitution.

²⁰ See Chapter 2, section 2.5.2.1.

²¹ See Chapter 2, section 2.5.2.1.

education is respected, promoted, protected and fulfilled. This obligation must be fulfilled against international and regional benchmarks.²²

Despite the above positive duties, the Cameroon Constitution is reticent on whether compulsory primary education must be freely available. The conspicuous failure to deal with the aspect of whether compulsory primary education shall be free poses a problem on whether this constitutional mandate considers socio-economic realities that may inhibit the realisation of the right, such as poverty.²³ If the state does not provide primary education for free, persons living in poverty may not be able to ensure that their children enjoy this right. Therefore, it appears that the constitutional position adopted by Cameroon on the right to primary education is not aligned with the norms and contents of international and African regional human rights law relating to the child's right to free and compulsory primary education.²⁴

3.4.1.2 Law No 98-4 of 14 April 1998 - Relating to Guidelines for Education in Cameroon

The constitutional right to primary education is further given effect in Law No 98-4 of 14 April 1998, which provides the general legal framework for education in Cameroon.²⁵ This law makes it clear that education shall be a top priority for the nation²⁶ and shall be provided by the state.²⁷ In addition to the state, private sector partners shall assist in providing education.²⁸ The general purpose of education at all levels and the intended objectives of education are outlined in this law.²⁹

Section 6 of Law No 98-4 of 14 April 1998 guarantees every child's right to education, while section 9 makes primary education compulsory. The non-discriminatory clause in the application of the law generally, and to refugees and asylum-seekers specifically, is crucial and is contained in section 7, which guarantees equal opportunities for

²² See section 2.3 and 2.4 respectively.

²³ Bilchitz 2014 *Int J Const Law* 710-713.

²⁴ See, for example, the following provisions: Article 13(2)(a) of the *ICESCR*; Article 28(1)(a) of the *CRC*; and Article 11(3)(a) of the *ACRWC*.

²⁵ Section 1(1) of Law No 98-4 of 14 April 1998.

²⁶ Section 2(1) of Law No 98-4 of 14 April 1998.

²⁷ Section 2(2) of Law No 98-4 of 14 April 1998.

²⁸ Section 2(3) of Law No 98-4 of 14 April 1998.

²⁹ Sections 4 and 5(1)-(9) respectively of Law No 98-4 of 14 April 1998.

education to all without discrimination on the bases of gender, philosophical, political or religious opinion, as well as socio-cultural, linguistic or geographical origin. This further confirms that in line with the Cameroon Constitution, children of refugees and asylum-seekers are entitled to compulsory primary education in Cameroon without any distinction against them based on their status or geographical origin. Despite this legislative commitment, it should be reiterated that the clear failure to indicate whether compulsory primary education shall be free remains a key challenge. There is a need to amend Law No 98-4 of 14 April 1998 to expressly ensure that primary education is free in line with obligations imposed by the *ICESCR*, the *CRC*, the *Banjul Charter* and the *ACRWC*, as discussed in Chapter 2.

3.4.1.3 Finance Law No 2000/08 of 30 June 2000

The Cameroon Constitution and Law No 98-4 of 14 April 1998 are valuable in not only recognising the child's right to education but also making primary education compulsory. Unfortunately, these two national instruments do not address the issue of whether such primary education should be free, meaning that no costs such as fees or levies should be prescribed by public primary schools. In effect, it would also mean that socio-economic challenges such as poverty could be a great inhibitor to the realisation of compulsory primary education. This uncertainty was fixed in Finance Law No 2000/08 of 2000, which made primary education in public primary schools free. Therefore, the legislative framework recognises the child's right to compulsory primary education without distinction of any kind. Finance Law No 2000/08 of 2000 rectified the conspicuous omission on whether such compulsory primary education shall be free. The enactment of the Finance Law in 2000 effectively abolished the payment of school fees in public primary schools. This means that the children of refugees and asylum-seekers have the same right to free primary education as their Cameroonian counterparts.

Section 2.3.1.1 of this thesis discussed the concept of compulsory and free primary education. The abolition of school fees for primary schools is intended, among other things, to increase economic accessibility so that learners can enrol in primary schools. However, some levies are imposed in various schools, depending on their needs. One of the levies is the Parent-Teacher Association levy. This levy is compulsory for every

learner and is intended to cater for specific challenges, such as inadequate infrastructure and an insufficient number of teachers, among others. Failure to pay such mandatory levies attracts consequences such as non-admission into classes, non-participation in extra-curricular activities, and exclusion from examinations. The imposition of levies is a cost to primary education. It is also a disincentive to children and their parents and guardians. Therefore, the state must work on eliminating all indirect costs, such as mandatory levies, because it has an adverse effect on the realisation of the right to primary education. The state can do this by allocating sufficient budgetary resources over time to cater for the concerns of schools that charge levies. The enactment of Finance Law No 2000/8 in 2000 abolished school fees for primary schools, but it is a partial solution to making primary education free in Cameroon. The state's failure to take positive and progressive steps towards the complete eradication of all indirect fees and levies imposed by some primary schools has a counterproductive effect because learners are ultimately unable to attend classes, participate in learning activities, and are excluded from examinations. The direct adverse effects of this include an increase in drop-out rates and the non-enrolment of children in primary schools.

3.4.1.4 Law No 2005/006 of 27 July 2005 - Relating to the Status of Refugees in Cameroon

The only national legislation that addresses the status and rights of refugees was enacted on 27 July 2005, in the form of Law No 2005/006 Relating to the Status of Refugees in Cameroon. Among other things, it spells out the rights of refugees and asylum-seekers, including their children. It lists numerous civil, political, economic, social and cultural rights. Article 9 accords "to all refugees regularly installed in Cameroon and within the limits of the rights granted to nationals."³⁰ The right to education is included. With reference to "rights granted to nationals", this means that compulsory and free primary education available to Cameroonian nationals is also available to refugees and asylum seekers. Secondly, refugees and asylum-seekers are

³⁰ The phrase "regularly installed" in the context of the applicability of this Law means that such a person would have presented his or herself for registration by the competent local authorities, and his or her records captured by the local authorities.

entitled to non-discrimination. This aligns the law with the non-discrimination provisions contained in the *ICESCR*, the *Banjul Charter*, the *CRC*, and the *ACRWC*. Lastly, the law grants refugees and asylum-seekers the right to education but does not stipulate the level at which they shall receive it.³¹ In view of the fact that different laws make public primary education free and compulsory, children of refugees and asylum-seekers enjoy free and compulsory primary education in public primary schools in Cameroon.

In spite of the strong legislative framework on free and compulsory primary education, including for children of refugees and asylum-seekers, it is a challenge to get all children of primary school age go to primary schools in Cameroon. The UNHCR September 2022 bulletin shows that over 50% of children of refugees and asylum-seekers do not enrol in primary school. The question is, why is this the case? Making education free means that no fees are prescribed for enrolment into school. Poor enrolment in public primary schools which offer free primary education means that there are other factors hindering access to education. As in many other countries, socio-economic and cultural factors play a crucial role in the realisation of human rights in general and the right to free and compulsory primary education in particular.³² The situation is not different with the children of refugees and asylum-seekers in Cameroon. Even though national legislation makes primary education free and compulsory,³³ there is a complex interplay of social, economic and cultural factors which inhibit the realisation of this right.³⁴

One of the crucial factors that make it difficult to realise the right to free and compulsory primary education is poverty.³⁵ Like other learners, children of refugees

³¹ Article 9 of Law No. 2005/006 of 27 July 2005 relating to the status of refugees in Cameroon.

³² Mubangizi and Mubangizi 2005 *Development Southern Africa* 277-278. See also Anastasia and Teklemariam 2011 *West J Black Stud* 268; and Sajjad *et al* 2012 *EJSS* 395-396.

³³ See for example the Preamble to the Cameroonian Constitution, section 9 of Law No 98-4 of 14 April 1998 and the Finance Law of 2000.

³⁴ For a discussion of the different factors, see the following: Mubangizi and Mubangizi 2005 *Development Southern Africa* 277-278; Anastasia and Teklemariam 2011 *West J Black Stud* 268; Sajjad *et al* 2012 *EJSS* 395-396; and Chandrasekhar and Mukhopadhyay 2006 *Economic and Political Weekly* 3797.

³⁵ Capra 2009 *Thought & Action* 74-80 and Tilak 2002 *Journal of Human Development* 191-201. See also Ladd 2012 *JPAM* 203-227.

and asylum-seekers are expected to incur some incidental costs.³⁶ The absence of a price tag for learners does not mean that no cost is involved in going to school. Parents still have to purchase school uniforms for their children. They need schoolbooks and other stationery. They need to be fed during school time. Learners also need money to take part in extra-murals.³⁷ Some have to pay for transport to school. Most parents do not have the financial means to sustain these expenses. It then becomes difficult for them to provide the necessary finances for their children to grab the opportunity to attend free public primary schools.

Refugees and asylum-seekers fled from their countries unprepared and without any finances. They are bound to start new lives in their host countries, which do not offer any lucrative economic activities, meaning they struggle to live. They also do not get any financial assistance from the host nations and are left on their own to struggle to provide for themselves. Confronted with limited choices, most refugee and asylum-seeker parents take the hard route, which entails sacrificing the education of their kids for menial jobs such as making petty trades, commerce in the markets, providing cheap labour in the farms, and allowing their daughters to marry at tender ages.³⁸

The data discussed earlier in this chapter shows that most refugees come from neighbouring countries like Nigeria and CAR. These refugees and asylum-seekers grew up in communities where harmful social and cultural practices take place. Moving to Cameroon does not mean that such harmful practices will end. In fact, they continue to practice them while in Cameroon. Some of those harmful practices adversely affect their children's right to primary education and include child marriages and child labour.³⁹ Most of the refugees and asylum-seekers grew up with the incorrect understanding that female children do not require any form of formal education and that opportunities for female children to get free and compulsory primary education

³⁶ See for example the Preamble to the Cameroonian Constitution; Section 9 of Law No 98-4 of 14 April 1998 and the Finance Law of 2000 Finance Law No. 2000/08 of 30 June 2000.

³⁷ Chandrasekhar and Mukhopadhyay 2006 *Economic and Political Weekly* 3797.

³⁸ Walker 2012 *AJRH* 231-235; Wadesango, Rembe and Chabaya 2011 *The Anthropologist* 123-125; Delprato, Akyeampong and Dunne 2017 *World Development* 173-176; and Cosmas and Marwa 2022 *IJER* 2-6.

³⁹ Walker 2012 *AJRH* 231-235; Wadesango, Rembe and Chabaya 2011 *The Anthropologist* 123-125; Delprato, Akyeampong and Dunne 2017 *World Development* 173-176; and Cosmas and Marwa 2022 *IJER* 2-6.

are meaningless. Hence, female children are groomed for marriage, farm work and small-size commerce in their communities.⁴⁰ Instead of going to school, such children would engage in menial jobs and are recruited and paid clandestinely. These practices are already imbued in them. Fleeing their countries to Cameroon does not mean they abandon such practices. Rather, those cultural values and practices are reinforced in their new settlement and demarcate themselves from nationals who have different sets of beliefs. The female children of refugees and asylum-seekers add to the data on early child marriages in Cameroon. Lastly, primary education in Cameroon is offered in only the two official languages (English and French). Probably, the challenge in offering primary education to refugees and asylum-seekers may affect their access to education, even though such an issue has so far not been reported.

3.4.2 Allocation and provision of resources

As seen in section 2.3.2.3 (international law) and 2.4.3 (African regional law), another core obligation borne by States Parties to international and regional instruments dealing with the right to primary education is the provision of resources for the realisation of that right. Article 2(1) of the *ICESCR* requires States Parties to "take steps...to the maximum of its available resources, with a view to achieving progressively the full realisation of the rights" in the *ICESCR*. The following subsections look into the resources allocated to primary education in order to further the realisation of the right to primary education in Cameroon. The discussion touches on budgetary allocation to the Ministry of Basic Education; the creation of new schools in different communities to deal with physical accessibility; the provision of infrastructure such as buildings, classrooms, sanitary facilities, electrification and libraries; the recruitment and training of competent teachers to teach; international cooperation and assistance; provision of support to learners; and revision of school curricula to reflect learners' diversity and changes in society.

⁴⁰ Walker 2012 *AJRH* 231-235; Wadesango, Rembe and Chabaya 2011 *The Anthropologist* 123-125; Delprato, Akyeampong and Dunne 2017 *World Development* 173-176; and Cosmas and Marwa 2022 *IJER* 2-6.

3.4.2.1 Budgetary allocation

Financial resources are continually placed at the disposal of the Ministry of Basic Education to assist it with the requisite operations to fulfil the realisation of the right to primary education for everyone. The budgetary allocation for the Ministry of Basic Education rose from 22,331,065,000 FCFA in 2019 to 235,315,000,000 FCFA in 2020.⁴¹ Evidence from the Ministry of Justice reveals that there is a steady increase in the budgetary allocation for the Ministry of Basic Education to ensure that it is equipped with the financial resources to make education accessible to everyone, including children of refugees and asylum-seekers.

The question arises whether the allocated budget is sufficient for the Ministry to cater for both nursery and primary education in Cameroon. In the context of compulsory and free primary education that meets international benchmarks, one would question a few things regarding Cameroon. The first is the level of physical accessibility in terms of the proximity of primary schools to learners, the adequacy of infrastructural support provided by the state, the staffing of those primary schools, and the competitive nature of the remuneration packages offered to teachers in primary schools. All these inter-relate with the right to primary education as well as the quality of education offered to learners in primary schools. The mere fact that specific schools impose levies to deal with some challenges means that the support from the state is inadequate. From the perspective of progressive realisation, the state should reconsider budgetary allocations to the Ministry of Basic Education so that within specific time frames in the short and long terms, all those important aspects are resolved.

3.4.2.2 Infrastructure

In line with her international obligations, Cameroon is making infrastructure for primary education available. The state bears the primary responsibility of establishing and constructing public schools in Cameroon,⁴² including primary schools. Every year,

⁴¹ Report of the Ministry of Justice on Human Rights in Cameroon in 2020 (2022) 105 para 313.

⁴² See Section 12 of Law No 98-4 of 14 April 1998 which states as follows:
Education shall be financed by: budgetary allocations from the State; contributions from education partners; budgetary appropriations from regional and local authorities; donations and legacies; and all other contributions provided for by law.

it builds new schools and provides the necessary infrastructure for operationalising such schools. In 2020, over 920 new classrooms, 32 latrines and eight fences were constructed. Also, 21 public primary schools were rehabilitated. In 2020, over 6,500 desks were added to the existing number of desks for learners, while 80 desktop computers were acquired for headteachers. In 2019, 1 703 classrooms were built using at least 50% of the funds from the state. In 2019, 24 fences and 80 latrines were built by the state. In 2019, 88 schools were established. In addition, 21 834 benches were purchased for use by learners. As seen in section 2.3.2.6 above, the efforts of the government to provide infrastructure are complemented by foreign partners.

3.4.2.3 Recruitment of teachers and provision of pedagogic support

The recruitment of teachers to meet the increasing demand for primary education is a priority for the government, which sets target numbers every year. Building on the progress made in previous years, the government launched the first operation to recruit 12 000 teachers over a period of four years with an annual target of 3 000.⁴³ In 2019, over 4 300 teachers were trained in the use of new curricula.⁴⁴ The government also implemented the writing system and pedagogy of national languages, creating a multilingual environment in public primary schools.⁴⁵

Pedagogic support is provided regularly to teachers in the form of textbooks and other teaching aids. Revised curricula are made available to learners in either of the two official languages. Teachers are trained on the revised curriculum and the importance of adapting their contents to accommodate learners from diverse backgrounds such as Muslims, Christians and non-nationals, including children of refugees and asylum-seekers.

3.4.2.4 Drafting and implementation of new curricula

Through the support of the School-Building Support Project in Priority Education Areas (PASZEP), 138 406 copies of the new curricula (contents of school programme) were

⁴³ Report of the Ministry of Justice on Human Rights in Cameroon in 2019 (2021) 91 para 235.

⁴⁴ Report of the Ministry of Justice on Human Rights in Cameroon in 2019 (2021) 92 para 262.

⁴⁵ Report of the Ministry of Justice on Human Rights in Cameroon in 2019 (2021) 92 para 263.

produced and distributed freely across Cameroon to public and private primary schools.⁴⁶ Unfortunately, no details are provided regarding the curricula and aspects such as the contents of the curricula; the frequency of revision and distribution of the curricula; and whether every learner and parent is provided with a copy.

3.4.2.5 Special schools for refugees and asylum-seekers hotspots

The government has taken a few steps to ease access to education for refugee children in Cameroon. In the application of the relevant laws, free education is offered to children of refugees and asylum-seekers. Teaching and learning materials are distributed to schools and learners. There is awareness-raising and mobilisation of the parents for them to appreciate the importance of education. Training of teachers is also conducted.⁴⁷ The supply of teaching staff and equipped educational facilities have been ongoing.

In 2019, Cameroon identified areas that host the highest number of refugees and asylum-seekers, such as the Far North, East and Adamawa Regions. In the East and Adamawa Regions, 22 new schools were built exclusively for refugees. New curricula were produced and distributed freely to schools attended by refugees in both the French and English languages in those Regions (4 100 for primary schools in Adamawa; 11 300 for primary schools in the Far North Region; and 4 500 for primary schools in the East Region).⁴⁸ In addition to infrastructure, schools were built in and out of the refugee camps or in temporary learning and child protection spaces. This was done because these structures received a large number of children.⁴⁹ For example, in the 2019/2020 school year, the following data were recorded: in the Adamawa Region, 3 116 refugee pupils were hosted in six schools which were allocated 53 teachers. For the East Region, 8 255 refugee pupils in 16 schools had 57 teachers. The Far North Region documented 16 144 refugee pupils in six schools with an allocation of 138 teachers.⁵⁰

⁴⁶ Report of the Ministry of Justice on Human Rights in Cameroon in 2019 (2021) 92 para 261.

⁴⁷ Report of the Ministry of Justice on Human Rights in Cameroon in 2019 (2021) 299 para 1037.

⁴⁸ Report of the Ministry of Justice on Human Rights in Cameroon in 2019 (2021) 299 para 1037.

⁴⁹ Report of the Ministry of Justice on Human Rights in Cameroon in 2019 (2021) 300 para 1039.

⁵⁰ Report of the Ministry of Justice on Human Rights in Cameroon in 2019 (2021) 300 para 1037.

3.4.2.6 Subsidising private primary schools

As discussed in section 2.3.2.8, Article 13(3) of the *ICESCR* grants parents the liberty to choose the appropriate schools for their children.⁵¹ Furthermore, the *ICESCR* requires States Parties to grant individuals and bodies the right to establish and direct educational institutions, provided they adhere to the principles stipulated in Article 13(1) of the *ICESCR* and meet the minimum standards.⁵² Section 2(3) of *Law No 98-4* of 14 April 1998 states that private sector partners shall assist in providing education. Even though free primary education is limited to public primary schools, the government recognises the support provided by private bodies in educating children.⁵³ Such private institutions shoulder the costs of establishing their infrastructure, recruiting teachers, and determining what kind of assistance to provide to their learners.

Private schools that offer primary education usually charge fees. Some parents prefer them for different reasons. Most private primary schools serve a religious character and are structured as Roman Catholic, Presbyterian, Baptist, Islamic, and Protestant.⁵⁴ In support of their activities, the government provides some financial assistance to subsidise their operating costs to lower the fees they charge. This also helps in improving economic and physical accessibility. The design of the curricula in these secular schools reflects religious and cultural contexts and communities, making the education acceptable and adaptable. In 2019, the sum of 4 454 170 000 FCFA was given as subsidies to secular primary schools in Cameroon.⁵⁵ The goal of this was to enable them to offer quality education to their learners through the recruitment of competent and qualified teachers and the provision of infrastructure such as classrooms, libraries and computer laboratories.⁵⁶ In 2020, the amount of subsidy

⁵¹ CESCR "General Comment No. 13" para 28.

⁵² Article 13(4) of the *ICESCR*. See also CESCR "General Comment No. 13" paras 29-30.

⁵³ See Section 2(3) of Law No 98-4 of 14 April 1998 on private sector partners assisting in the provision of education.

⁵⁴ See the discussion above in section 2.3.2.8 and the CESCR "General Comment No. 13" para 28.

⁵⁵ Report of the Ministry of Justice on Human Rights in Cameroon in 2019 (2021) 91 para 252.

⁵⁶ Report of the Ministry of Justice on Human Rights in Cameroon in 2019 (2021) 91 para 252.

given to private primary school was 3 099 995 000 FCFA, a slight decrease from the previous year (2019).⁵⁷

3.4.2.7 Incentive packages to public primary schools

In addition to funding public primary schools, the government granted them incentive packages. In 2019, incentive packages amounted to 5 087 077 000 FCFA. In 2020, the incentives given to public primary schools totalled 9 300 447 000 FCFA as operating funds. For primary schools in border areas, allowances were granted to teachers.⁵⁸

3.4.2.8 International assistance and cooperation

As seen in section 2.5.2.4, the *ICESCR* makes it clear that States Parties shall seek international cooperation and assistance with a view to realising the listed rights in the *ICESCR*.⁵⁹ International assistance and cooperation have been concluded by Cameroon and other states in order to contribute towards realising the right to primary education. A few examples are worth mentioning. A partnership of Cameroon, Japan, and the Islamic Development Bank built and rehabilitated eight schools.⁶⁰ In 2020, six schools were constructed following the Cameroon-Japan cooperation.⁶¹ Prior to 2019, significant support had been provided to Cameroon by different states and intergovernmental organisations, which assisted in the construction and rehabilitation of hundreds of classrooms and fences, courtyards, computer laboratories, the purchase of desks, and the provision of didactic computers. The French Government equipped over 20 schools with solar panels.

In previous years, intergovernmental financial institutions like the Islamic Development Bank considerably assisted Cameroon with much-needed infrastructure for primary education in the form of classroom rehabilitation; electrification of school buildings; provision of borehole water and sanitary facilities; construction of libraries and computer labs; and the provision of school kits to learners. The UNHCR has been pivotal in the provision of various forms of assistance to learners and their

⁵⁷ Report of the Ministry of Justice on Human Rights in Cameroon in 2020 (2022) 106 para 322.

⁵⁸ Report of the Ministry of Justice on Human Rights in Cameroon in 2020 (2022) 106, para 322.

⁵⁹ See Article 2(1) of the *ICESCR*.

⁶⁰ Report of the Ministry of Justice on Human Rights in Cameroon in 2019 (2021) 91 para 251.

⁶¹ Report of the Ministry of Justice on Human Rights in Cameroon in 2020 (2022) 105 para 318.

communities. For example, in 2020, schools in which children of refugees and asylum-seekers were admitted received infrastructural assistance such as the construction and rehabilitation of classrooms, the provision of school supplies to learners, didactic materials, and financial support to teachers.⁶² In Yaoundé, 21 refugee children with disabilities and 10 in Douala received financial assistance from the UNHCR to cater for their special education needs.⁶³

The United Nations Children's Fund (UNICEF) has also been instrumental in providing some infrastructure to improve access to primary education in Cameroon. In the North and Far North Regions, UNICEF constructed 30 blocks of two classrooms; 30 latrine blocks; 60 boreholes, 200 libraries in 200 public primary schools and distributed didactic materials, including educational, recreational and hygiene kits.⁶⁴

All these actions taken by development partners are valuable in assisting the Cameroon government in fulfilling its objective of promoting access to education broadly and primary education specifically. Also important is the fact that in partnering with national and international actors for assistance to realise the right to primary education in Cameroon, a critical obligation enshrined in international and regional human rights instruments has been fulfilled.

A major constraint to the infrastructure provided to communities is insecurity and instability in some regions. In the past five years, Cameroon has been entangled in three complex crises. First, in the Far North Region, intermittent terrorist attacks by Boko Haram, a cross-border terrorist network with a base largely in Nigeria, have devastated numerous communities, shattered health and educational facilities, and forced the displacement of many people.⁶⁵ Secondly, in the East Region, the recurrent political crises in neighbouring CAR have resulted in over 300 000 refugees and thousands of asylum-seekers in Cameroon.⁶⁶ Thirdly, armed factions (government and secessionists) in the North-West and South-West Regions of Cameroon have also targeted civilian structures such as hospitals, schools, and homes, triggering a state

⁶² Report of the Ministry of Justice on Human Rights in Cameroon in 2020 (2022) 293 para 1014.

⁶³ Report of the Ministry of Justice on Human Rights in Cameroon in 2020 (2022) 293 para 1014.

⁶⁴ Report by the Ministry of Justice on Human Rights in Cameroon in 2013 (2014) 117 para 243.

⁶⁵ Nkwi 2013 *Conflict Studies Quarterly* 67-87.

⁶⁶ UNHCR 2022 <https://reporting.unhcr.org/document/3321>.

of insecurity in those areas through sporadic violence. This has had a huge impact on human settlement. Cameroon records at least 1 million IDPs which, as discussed below, has its own effect on the available infrastructure and resources dedicated to primary education.⁶⁷

Cameroon is home to over 400 000 refugees and asylum-seekers as a result of the violence and political developments that occur outside her national borders.⁶⁸ Among that number are children who are of primary school age, who are required to have free and compulsory primary education in their host country. This number ultimately influences the resources allocated to primary education institutions as far as the number of desks, teachers, and the distribution of study materials is concerned. For some refugees and asylum-seekers who live in distant communities, the challenge includes ensuring that there is physical access to those primary schools. It means that more schools have to be constructed and old ones rehabilitated to ensure that children receive education in dignified conditions.

The prevalent insecurity triggered by Boko Haram severely affects the realisation of the right to free and compulsory primary education. Learners in that Region are unable to access schools because they have been vandalised by sporadic acts of violence and terrorism perpetrated by Boko Haram. Such infrastructural damage compromises physical accessibility, which is a fundamental pillar with regard to the right to (primary) education. The insecure environment makes learners and teachers unwilling to jeopardise their lives by going to school to learn and teach, respectively. This becomes a serious challenge because of the grave danger involved and the severe ramifications it has on children's right to free and compulsory primary education.

The insecurity is not limited to the Far North Region. The Anglophone Cameroon crisis, which started in late 2016, has also created an unsafe and insecure environment for everyone. Images and soundbites of schools destroyed, learners subjected to inhumane treatment by secessionist and law enforcement personnel, teachers captured, and school administration officials abducted for ransom and, in some cases,

⁶⁷ UNHCR 2022 <https://reporting.unhcr.org/document/3321>.

⁶⁸ UNHCR 2022 <https://reporting.unhcr.org/document/3321>.

subjected to brutal execution with live recordings, have militated against parents sending their children to school and teachers making themselves available to teach. Numerous schools have been closed indefinitely. In some cases, the infrastructures were set ablaze. The results of these atrocities include reduced facilities for learning, meaning that even if the crisis were to end today, the number of learners would exceed the available infrastructure to accommodate them for learning. Most teachers have abandoned their posts and sought more lucrative jobs in other sectors which do not require them to be physically present at sites of work.

Even though the data indicates that there are no refugees and asylum-seekers in the North-West and South-West Regions, the insecurity there has resulted in the displacement of thousands of people who have moved to different locations in the country. The insecurity and instability in those Regions, marked by the destruction of infrastructure and an inconducive environment for learning, have resulted in too much pressure on the other regions as affected people are forced to move there for livelihood. The IDPs in the Northern and Eastern Regions of Cameroon mean that school infrastructure is overburdened, teachers overworked, and classes overfilled. With no special primary schools for children of refugees and asylum-seekers, the overcrowding in those schools means discomfort and insecurity in the learning environment, and ultimately, the performance of the learners in those schools is affected.

3.5 Chapter summary

This chapter looks at the measures taken by Cameroon to fulfil her international obligations of respecting, promoting, protecting and fulfilling the right to compulsory and free primary education and how that extends to children of refugees and asylum-seekers in Cameroon. The following key findings come to light. First, international and African regional human rights laws have the force of law in Cameroon. Specific provisions of the Cameroon Constitution make such instruments self-executing and grants them a superior status over national laws. Therefore, all international and African regional human rights instruments in which the right to primary education is stipulated and which have been ratified constitute an integral part of Cameroon law. Secondly, the available data reveals that there is a significant number of refugees and

asylum-seekers in Cameroon. Specific regions such as Adamawa, East and Far North record some of the highest incidences. These refugees and asylum-seekers have children who are of primary school age, meaning they are entitled to compulsory and free primary education in Cameroon. The measures taken by Cameroon in fulfilment of her international and African regional obligations are numerous and include the adoption and enforcement of specific pieces of legislation across the country; the allocation of resources such as budgets, infrastructure, recruitment of teachers; adoption and revision of curricula; establishing special schools for children of refugees and asylum-seekers; providing subsidies to private primary schools; and national and international assistance aimed towards the provision of primary education.

The chapter also finds that the realisation of the right to compulsory and free primary education is severely hampered by some complex factors, such as the instability and insecurity looming in the North and Far North Regions fuelled by Boko Haram; socio-economic and cultural factors such as poverty; harmful cultural practices; and the Anglophone Cameroon crisis that has triggered a mass displacement of people from their communities. These issues put pressure on resources in public primary schools in other parts of the country.

Chapter 4 Conclusion

4.1 Introduction

Education is fundamental to the development of children, including refugees and asylum-seeking children whose vulnerability is amplified. International and African regional instruments guarantee free and compulsory primary education for children. These instruments collectively impose a myriad of duties on States Parties to ensure that the right to free and compulsory primary education is realised for refugee and asylum-seeking children. Cameroon is a State Party to all the relevant international and African regional human rights instruments and is obliged to comply with the duties imposed by those instruments. This is very important given the number of refugees in Cameroon.

Cameroon is bordered by the CAR and Nigeria, both of which have security challenges and insurgency, making the country a destination for hundreds of thousands of refugees fleeing their home countries in search of safe havens. The data published in September 2022 by the UNHCR reveals that there were over 508 000 refugees in Cameroon, ¹351 904 of whom came from CAR and 136 036 from Nigeria. There were 8 865 asylum-seekers in Cameroon.² They were and are distributed across the country, although the highest concentrations were and are in the regions closest to CAR and Nigeria.

4.2 Objectives

In view of the above background, the main objective of this study was to evaluate how the government of Cameroon complies with its international and African regional human rights duties to realise the right to primary education for refugee and asylum-seeking children. To achieve this objective, chapter 2 of the study discussed the nature of the obligations imposed on Cameroon by the relevant international and African regional human rights instruments to realise the right to primary education for children of refugees and asylum-seekers. Chapter 3 examined the legal and policy measures

¹UNHCR 2022 <https://reporting.unhcr.org/document/3333>.

²UNHCR 2022 <https://reporting.unhcr.org/document/3333>.

taken by Cameroon to realise the right to primary education for the children of refugees and asylum-seekers. The discussion equally identified challenges that impede the efforts of the government of Cameroon in realising the right to primary education for children of refugees and asylum-seekers. The research is based on an integrated analysis of binding and non-binding international and African regional instruments, the Constitution of Cameroon, relevant national legislation and policies, scholarly publications on the subject, as well as general and specialised reports.

4.3 Findings

Chapters 2 and 3 of this study make critical findings. Chapter 2 notes that first, there is a broad array of international obligations arising from international and regional human rights instruments that Cameroon has ratified. Those obligations are outlined and briefly explained in Chapter 2. Under international law, the following constitute the normative content and key elements of the right to primary education:

- compulsory and free primary education;³
- the adoption of a detailed plan of action and developmental strategy for primary schools;⁴
- the obligation to achieve progressive realisation of the right to primary education;⁵
- the obligation to ensure availability, accessibility, acceptability, and adaptability in fulfilling the right to primary education;⁶
- material conditions of teachers;⁷ and
- non-discrimination.⁸

In addition, there are some general and specific legal obligations,⁹ which include:

³ Section 2.3.1.1.
⁴ Section 2.3.1.2.
⁵ Section 2.3.1.3.
⁶ Section 2.3.1.4.
⁷ Section 2.3.1.5.
⁸ Section 2.3.1.6.
⁹ Section 2.3.2

- progressive realisation;¹⁰
- immediate obligations;¹¹
- the obligation to respect, protect, and fulfil;¹²
- curricula and minimum educational standards;¹³
- fellowship system;¹⁴
- international cooperation and assistance;¹⁵
- minimum core obligations;¹⁶and
- educational choices for learners.¹⁷

Under African regional law, the following are some of the obligations borne by States Parties to the regional human rights instruments pertaining to the right to free and compulsory primary education for children:¹⁸

- the obligations to respect, protect, promote and fulfil;¹⁹
- the provision of resources and progressive realisation;²⁰
- immediate obligations regarding the implementation of the right to primary education;²¹
- the obligation to take steps;²²and
- specific obligations on the right to primary education.²³

¹⁰ Section 2.3.2.1.

¹¹ Section 2.3.2.2.

¹² Section 2.3.2.3.

¹³ Section 2.3.2.4.

¹⁴ Section 2.3.2.5.

¹⁵ Section 2.3.2.6.

¹⁶ Section 2.3.2.7.

¹⁷ Section 2.3.2.8.

¹⁸ Section 2.4.

¹⁹ Section 2.4.2.

²⁰ Section 2.4.3.

²¹ Section 2.4.4.

²² Section 2.4.5.

²³ Section 2.4.6.

Chapter 3 established the following with regard to the binding nature of international and regional instruments on Cameroon:

First, the international and regional instruments which Cameroon ratified are self-executing, meaning that no further domestic legal processes are required for them to apply and have the force of law in the Cameroonian domestic legal system. Second, the provisions of treaties have a superior status over domestic laws in Cameroon. With regard to the right to primary education in Cameroon, international law and African regional human rights law are applicable and with a superior status. This means that every child in Cameroon is entitled to free and compulsory primary education. Third, the state has taken various measures to comply with its international and African regional human rights obligations to provide free and compulsory primary education in Cameroon.

With regards to the obligation to provide compulsory and free primary education, chapter 3 established that statutorily, Cameroon enabled four national laws to ensure that primary education is compulsory, free and provided without any discrimination based on any factor such as nationality. The Cameroonian Constitution and *Law No 98-4 of 14 April 1998* lay down guidelines for education in Cameroon and made primary education compulsory for every child. The *Finance Law* of 2000 abolished school fees in public primary schools, thereby making them free. Law No 2005/006 Of 27 July 2005 Relating to the Status of Refugees in Cameroon grants all refugees the right to education in the broader context of rights enjoyed by Cameroonian nationals to be available to refugees as well. This means that if children in Cameroon are entitled to free and compulsory primary education in public schools, then children of refugees and asylum-seekers are also entitled to free and compulsory primary education in public schools.

However, this study finds that the abolition of school fees in public primary schools does not prevent individual schools from imposing some levies. Some schools charge levies such as the Parent-Teachers Association, which is mandatory for every pupil. Failure to pay this and other mandatory levies leads to the exclusion of children from classes, extra-curricular activities and examinations. It also affects economic

accessibility for parents whose economic conditions make it a challenge for them to send their children to public primary schools. Such actions constitute non-compliance with international law.

In addition, the foregoing national laws address the issue of non-discrimination with regard to the right to primary education. The Cameroon Constitution makes that right available to "every child", meaning that irrespective of any distinguishing factor, every child in Cameroon is entitled to compulsory primary education. The same approach is taken by Law No 98-4 of 14 April 1998, which Lays Down Guidelines for Education in Cameroon. The legislation provides that primary education shall be compulsory. This means that it is mandatory for every child to have primary education, leaving no exemption for learners or parents to decide. This obliges refugee and asylum-seeking parents to ensure that their children get primary education. The Finance Law of 2000 eliminates school fees in public primary schools for all children. Lastly, Law No 2005/006 of 27 July 2005 Relating to the Status of Refugees in Cameroon is constructed on the premise of non-discrimination in that all rights enjoyed by Cameroonians are also available to refugees and asylum-seekers, including the right to education, which is guaranteed to be enjoyed without distinction as to age, gender or national origin.

Lastly, a key dimension of Law No 98-4 of 14 April 1998, which Lays Down Guidelines for Education in Cameroon is the recognition that private sector partners shall assist in the provision of education. It was found that this is an important component in two ways. First, private sector partners establish and manage primary schools, thereby increasing the number of available primary schools. Second, they offer different choices to parents who are entitled to determine education that is suitable for their children in view of their moral, religious and philosophical convictions. These private schools charge fees, and they may under international law do so. However, the government provides subsidies to them so that they can keep their fees at affordable rates.

In conclusion, it can be argued that even though Cameroon has put in place a strong legislative framework towards fulfilling the specific obligations in international and

African regional law regarding the right to free and compulsory primary education, the imposition of mandatory indirect fees by primary schools and its adverse effect on accessing those primary schools need urgent attention and can be addressed by significantly increasing the budget to cater for the specific needs of such schools.

The obligation to achieve progressive realisation of the right to primary education is fulfilled in several ways in Cameroon, including by building new public primary schools every year; rehabilitating old public primary schools; providing infrastructural support such as the construction of latrines; provision of water and other sanitary facilities; and availing libraries, desks and tables for both children and teachers. It was also found that the annual budget allocated to the Ministry of Basic Education has been increasing over the years. However, no information is available on the size of classes, learner-teacher ratio, and the proximity of those public schools to learners.

The obligation to ensure availability, accessibility, acceptability, and adaptability in fulfilling the right to primary education arises from norms that constitute some of the foundational pillars in realising the right to free and compulsory primary education. Parents are at liberty to choose the kind of education that is appropriate for their children. In addition, Cameroon increases the number of schools annually. The recruitment of competent teachers has also been done annually.

The obligation to improve the material conditions of teachers entails the distribution of didactic materials to teachers and further training organised by the Ministry of Basic Education to cater for the special needs of refugees and asylum-seekers. The obligation to ensure non-discrimination in enjoying the right to compulsory and free primary education denotes the provision of primary education with no distinction between children for whatever reason. All children are entitled to compulsory and free primary education in public schools in Cameroon.

Regarding the immediate obligations, the study finds that through the enactment of legislation, the government took steps towards fulfilling its immediate obligations with regard to the right to compulsory and free primary education and to make it available to everyone without discrimination.

The obligation to respect, protect, and fulfil is met through numerous measures taken by Cameroon to respect, protect and fulfil the right to compulsory and free primary education. These measures include, the enactment of national legislation and the provision of resources to support budgets, infrastructures, and learners through fellowship programmes to help the poor. The obligation to provide curricula and minimum educational standards is met by the enactment of national legislation that deals with minimum educational standards. There are policies that require the development and revision of curricula even though no further details are provided.

The obligation to seek and secure international cooperation and assistance has been met by Cameroon through partnering with both national and international actors in obtaining vital resources directed towards primary education. This is vital in supporting infrastructural development.

The obligation to provide educational choices for learners is met through national laws that permit private sector partners to assist in the provision of education in Cameroon. In addition to public primary schools, there are numerous private primary schools, some of which have religious affiliations. Allowing private sector partners to establish and govern educational institutions gives parents choices over what primary school system is most suitable for their children.

In spite of these measures, some developments within the country make it a huge challenge to exercise the right to primary education. For example, the insecurity in the English-speaking Regions of Cameroon has triggered an unprecedented number of IDPs who, for obvious reasons, would relocate to other regions and add to the pressure on the already inadequate resources. In the North Region, the terrorist activities of the Nigerian-based terrorist group, Boko Haram, have taken a huge toll on infrastructure and insecurity due to damage to primary schools and the flight of teachers.

4.4 Recommendations

The hurdles discussed in chapter 3 are profound and severe. They are rooted in both politics and socio-economic realities. As such, there is no quick fix or short-term

resolution to them. They require deep and broad interventions that touch on politics, ideology, and economics. With regard to the low enrolment rates, there is a need for more intensive awareness campaigns conducted by both the government and civil society actors, targeting and engaging parents and traditional leaders in rural communities. Doing this will have a long-term impact on people and make them appreciate the importance of formal education, especially for the female child.

Special additional resources are required for child refugees and asylum-seekers. Having fled their countries of origin, their sources of livelihood have been shattered, making it difficult for them to meet their basic needs. The hidden expenses involved in educating children often become a huge challenge. Even though education in public primary schools is free, children need school uniforms, books, food, and shoes, among other things. Understanding the economic plight of the children of refugees and asylum-seekers will enable Cameroon to appreciate the need to not only acknowledge their social and economic situations but to allocate special resources to cater for them. More educational resources will encourage enrolment and school attendance by all children.

The insecurity challenge requires a long-term solution. Finding a solution to both the Anglophone Cameroon crisis and the insecurity caused by Boko Haram in the northern parts of Cameroon will both play significant and critical roles in stabilising the affected areas and offer learners a conducive environment for them to go to school without any fear.

BIBLIOGRAPHY

Literature

Agbor 2015 *AJLS*

Agbor A "The Role of the Judiciary in the Promotion of Democracy and Human Rights in Cameroon" 2015 *AJLS* 145-173

Anastasia and Teklemariam 2011 *West J Black Stud*

Anastasia N and Teklemariam AA "Socio-Cultural and Economic Factors Affecting Primary Education of Maasai Girls in Loitokitok District, Kenya" 2011 *West J Black Stud* 268-280

Arat 2006 *HRQ*

Arat ZFK "Forging a Global Culture of Human Rights: Origins and Prospects of the International Bill of Rights" 2006 *HRQ* 416-437

Baderin and Ssenyonjo "Development of International Human Rights Law before and after the UDHR"

Baderin MA and Ssenyonjo M "Development of International Human Rights Law before and after the UDHR" in Ssenyonjo MABaM (ed) *International Human Rights Law: Six Decades after the UDHR and Beyond* (Ashgate Farnham 2010) 3-27

Beiter *The Protection of the Right to Education by International Law*

Beiter KD *The Protection of the Right to Education by International Law: Including a Systematic Analysis of Article 13 of the International Covenant on Economic, Social and Cultural Rights* (Brill Leiden 2005)

Bhardwaj 2016 *J Conscious Stud*

Bhardwaj A "Importance of Education in Human Life: A Holistic Approach" 2016 *J Conscious Stud* 23-28

Bilchitz 2014 *Int J Const Law*

Bilchitz D "Socio-Economic Rights, Economic Crisis, and Legal Doctrine" 2014 *Int J Const Law* 710-739

Capra 2009 *Thought & Action*

Capra T "Poverty and its Impact on Education: Today and Tomorrow" 2009 *Thought & Action* 75-81

CESCR "General Comment No. 3"

CESCR "General Comment No. 3: The Nature of States Parties' Obligations"<https://www.refworld.org/pdfid/4538838e10.pdf> accessed 2 March 2020

CESCR "General Comment No. 11"

CESCR "General Comment No. 11: Plans of Action for Primary Education"<https://www.refworld.org/pdfid/4538838c0.pdf> accessed 12 April 2019

CESCR "General Comment No. 13"

CESCR "General Comment No. 13: The Right to Education"<https://www.refworld.org/pdfid/4538838c22.pdf> accessed 12 April 2019

Chandrasekhar and Mukhopadhyay 2006 *Economic and Political Weekly*

Chandrasekhar S and Mukhopadhyay A "Primary Education as a Fundamental Right: Cost Implications" 2006 *Economic and Political Weekly* 3797-3804

Conger, Conger and Martin 2010 *JMF*

Conger RD, Conger KJ and Martin MJ "Socioeconomic Status, Family Processes, and Individual Development" 2010 *JMF* 685-704

Coomans 2004 *Persona & Derecho*

Coomans F "Exploring the Normative Content of the Right to Education as a Human Right: Recent Approaches" 2004 *Persona & Derecho* 61-100

Cosmas and Marwa 2022 *IJER*

Cosmas L and Marwa DJ "The Impacts of Cultural Practices on Children's Access to Formal Education in Tanzania: A Case of Sukuma Community in Meatu District, Tanzania" 2022 *IJER* 1-12

Delprato, Akyeampong and Dunne 2017 *World Development*

Delprato M, Akyeampong K and Dunne M "Intergenerational Education Effects of Early Marriage in Sub-Saharan Africa" 2017 *World Development* 173-192

Dobinson and Johns "Qualitative Legal Research"

Dobinson I and Johns F "Qualitative Legal Research" in McConville M and Chui WH (eds) *Research Methods for Law* (Edinburgh University Press Edinburgh 2007) 16-45

Du Plessis, Conley and Loock 2007 *Educational Research and Reviews*

Du Plessis P, Conley L and Loock C "The Right to Education: Are We Facing the Challenges?" 2007 *Educational Research and Reviews* 198-208

Ekundayo 2018 *JL Pol'y & Globalization*

Ekundayo OS "Legal and Policy Considerations in the Realisation of Right to Free and Compulsory Primary Education in Kenya" 2018 *JL Pol'y & Globalization* 45-54

Ekundayo 2018 *JL Pol'y & Globalization*

Ekundayo OS "The Right to Free and Compulsory Primary Education in Ghana: Lessons for Other African Countries" 2018 *JL Pol'y & Globalization* 105-116

Emmanuel B Waydon, Liu Ying and Ketter 2016 *Education Research International*

Emmanuel B Waydon, Liu Ying and Ketter BL "Free and Compulsory Primary Education Policy in Liberia: Gap Between Promise and Actual Performance" 2016 *Education Research International* 8-24

Epstein and King 2002 *U Chi L Rev*

Epstein L and King G "Exchange: Empirical Research and the Goals of Legal Scholarship" 2002 *U Chi L Rev* 191-209

Farrior 2015 *Wash U Global Stud L Rev*

Farrior S "Color in the Non-Discrimination Provisions of the Universal Declaration of Human Rights and the Two Covenants" 2015 *Wash U Global Stud L Rev* 751-778

Francioni 1997 *TILJ*

Francioni F "An International Bill of Rights: Why It Matters, How Can It be Used" 1997 *TILJ* 471-482

Glendon 2004 *JHR*

Glendon MA "The Rule of Law in the Universal Declaration of Human Rights" 2004 *JHR* 1-19

Hodgson 1996 *Int J Child Rights*

Hodgson D "The International Human Right to Education and Education Concerning Human Rights" 1996 *Int J Child Rights* 237-262

Kalantry, Getgen and Koh 2010 *HRQ*

Kalantry S, Getgen JE and Koh SA "Enhancing Enforcement of Economic, Social, and Cultural Rights Using Indicators: A Focus on the Right to Education in the ICESCR" 2010 *HRQ* 253-310

Ladd 2012 *JPAM*

Ladd HF "Education and Poverty: Confronting the Evidence" 2012 *JPAM* 203-227

Lee 2013 *Democracy and Education*

Lee SE "Education as a Human Right in the 21st Century" 2013 *Democracy and Education* 1-9

Maddock 2017 *AJEM*

Maddock N "Educate the Child, Educate the Community" 2017 *AJEM* 125-139

Mondal 2017 *SAGE Open*

Mondal A "Free and Compulsory Primary Education in India Under the British Raj: A Tale of an Unfulfilled Dream" 2017 *SAGE Open* 1-12

Mubangizi and Mubangizi 2005 *Development Southern Africa*

Mubangizi JC and Mubangizi BC "Poverty, Human Rights Law and Socio-Economic Realities in South Africa" 2005 *Development Southern Africa* 277-290

Nkwi 2013 *Conflict Studies Quarterly*

Nkwi WG "Cameroon, too Much to Carry: the Perception and Ramifications of Boko Haram's Activities on Cameroon" 2013 *Conflict Studies Quarterly* 67-87

Nowak "Right to Education"

Nowak M "Right to Education" in Nowak M (ed) *Human Rights or Global Capitalism: The Limits of Privatization* (University of Pennsylvania Press Philadelphia 2016) 57-66

Özler 2018 *Ethics & International Affairs*

Özler Şİ "The Universal Declaration of Human Rights at Seventy: Progress and Challenges" 2018 *Ethics & International Affairs* 395-406

Perera 2021 *NQHR*

Perera R "Beyond the Minimalist Critique: An Assessment of the Right to Education in International Human Rights Law" 2021 *NQHR* 268-290

Sajjad *et al* 2012 *EJSS*

Sajjad H *et al* "Socio-Economic Determinants of Primary School Dropout: Evidence from South East Delhi, India" 2012 *EJSS* 391-399

Simmons 2009 *IJGLS*

Simmons B "Civil Rights in International Law: Compliance with Aspects of the 'International Bill of Rights'" 2009 *IJGLS* 437-481

Singh 2005 *IJELP*

Singh K "The Right to Education: International Legal Obligations" 2005 *IJELP* 103-118

Singh, Taneja and Dubochet 2013 *Oxfam India Policy Brief*

Singh S, Taneja A and Dubochet L "The Right to Free and Compulsory Education: Delivering the Promise of the Law" 2013 *Oxfam India Policy Brief* 1-4

Sital, Getgen and Koh "Enhancing Enforcement of Economic, Social, and Cultural Rights Using Indicators: A Focus on the Right to Education in the ICESCR"

Sital K, Getgen JE and Koh SA "Enhancing Enforcement of Economic, Social, and Cultural Rights Using Indicators: A Focus on the Right to Education in the ICESCR" in Ssenyonjo M (ed) *Economic, Social and Cultural Rights* (Routledge London 2017) 211-268

Somani 2017 *JERAP*

Somani T "Importance of Educating Girls for the Overall Development of Society: a Global Perspective" 2017 *JERAP* 125-139

Stamatopoulou 1998 *ILSA J Int'l & Comp L*

Stamatopoulou E "The Importance of the Universal Declaration of Human Rights in the Past and Future of the United Nation's Human Rights, Efforts" 1998 *ILSA J Int'l & Comp L* 281-290

Tilak 2002 *Journal of Human Development*

Tilak JB "Education and Poverty" 2002 *Journal of Human Development* 191-207

UNHRC "Cameroon - Statistics - April 2021"

UNHRC "Cameroon - Statistics - April 2021"<https://data.unhcr.org/en/documents/details/86553> accessed 20 July 2022

United Nations "Declarations and Reservations"

United Nations "Declarations and Reservations"<https://treaties.un.org/doc/Publication/MTDSG/Volume%20I/Chapter%20IV/IV-3.en.pdf> accessed 15 November 2022

Vazquez 1995 *AJIL*

Vazquez CM "The Four Doctrines of Self-Executing Treaties" 1995 *AJIL* 695-723

Veriava and Paterson "The Right to Education"

Veriava F and Paterson K "The Right to Education" in Dugard J *et al* (eds) *Research Handbook on Economic, Social and Cultural Rights as Human Rights* (Edward Elgar Cheltenham 2020)

Vijapur 1993 *India Quarterly*

Vijapur AP "The Principle of Non-Discrimination in International Human Rights Law: The Meaning and Scope of the Concept" 1993 *India Quarterly* 69-84

Wadesango, Rembe and Chabaya 2011 *The Anthropologist*

Wadesango N, Rembe S and Chabaya O "Violation of Women's Rights by Harmful Traditional Practices" 2011 *The Anthropologist* 121-129

Walker 2012 *AJRH*

Walker J-A "Early Marriage in Africa -Trends, Harmful Effects and Interventions" 2012 *AJRH* 231-240

Watkins and Burton (eds) *Research Methods in Law* 2nd ed (Routledge London 2017)

Watkins D and Burton M (eds) *Research Methods in Law* 2nd ed (Routledge London 2017)

Wobbekind 2012 *Business Economics*

Wobbekind RL "On the Importance of Education" 2012 *Business Economics* 90-96

Legislation

Law No 96-06 of 18 January 1996 to Amend the Constitution of 2 June 1972

Law No 98-4 of 14 April 1998 Relating Guidelines for Education in Cameroon

Finance Law No. 2000/08 of 30 June 2000

Law No 2005/006 of 27 July 2005 Relating to the Status of Refugees in Cameroon

International instruments

African Charter on Human and Peoples Rights (1981)

African Charter on the Rights and Welfare of the Child (1990)

African Commission Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights (2010)

Convention Governing the Specific Aspects of Refugee Problems in Africa (1969)

Convention on the Rights of the Child (1989)

Convention Relating to the Status of Refugees (1951)

Dakar Framework for Action, Education for all: Meeting our Collective Commitments (2000)

International Covenant on Economic, Social and Cultural Rights (1966)

Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (2008)

Protocol Relating to the Status of Refugees (1967)

Resolution 1985/17 (1985)

Universal Declaration of Human Rights (1948)

World Declaration on Education for All and Framework for Action to Meet Basic Learning Needs (1990)

Government publications

Report by the Ministry of Justice on Human Rights in Cameroon in 2013 (2014)

Report of the Ministry of Justice on Human Rights in Cameroon in 2020 (2022)

Report of the Ministry of Justice on Human Rights in Cameroon in 2019 (2021)

Internet sources

Macrotrends 2022 *Cameroon* - 2022
<https://www.macrotrends.net/countries/CMR/cameroon/refugee-statistics> accessed 1 October 2022

Macrotrends 2022
<https://www.macrotrends.net/countries/CMR/cameroon/refugee-statistics>

UNHCR 2022 <https://data.unhcr.org/en/documents/details/95959>

UNHCR 2022 *Cameroon - Education Dashboard: 2021-2022 School Year*
<https://data.unhcr.org/en/documents/details/95959> accessed 1 October 2022

UNHCR 2022 <https://reporting.unhcr.org/document/3333>

UNHCR 2022 *Cameroon: location of UNHCR persons of concern*
<https://reporting.unhcr.org/document/3333> accessed 1 October 2022

UNHCR 2022 <https://reporting.unhcr.org/document/3321>

UNHCR 2022 *Cameroon: main persons of concern*
<https://reporting.unhcr.org/document/3321> accessed 1 October 2022