

Justiciability of the Right to Access to Water in Cameroon

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I. INTRODUCTION

Water is one of the most important substances on earth and is crucial for human life. Human beings must have water to survive and it plays a central and critical role in all aspects of human life. It is a key building block of life.¹ While vital to humanity, water has a strong social and economic content. Socially, water plays a vital role in human nourishment, health and sanitation.² Economically, it ensures that a balance is maintained between guaranteeing that water for basic human needs is available to everyone.³

The importance of water to human life led to the explicit recognition in 2010 by the United Nations General Assembly⁴ (UNGA) and Human Rights Council⁵ (HRC) Resolutions on the recognition of the human right to water as a distinct right.⁶ Individuals thus have the fundamental right to sufficient and safe drinking water which is a precondition for the realisation of other human rights.⁷ As such, the first priority of every country and the international community should be to provide access to safe water to those who are deprived of such access.

The right to access to water is grounded in Article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) of 1966 which sets out the right to an adequate standard of living and in Article 12, the right to health.⁸ The HRC affirms that the human right to safe

drinking water is derived from the right to an adequate standard of living and inextricably related to the right to the highest attainable standard of physical and mental health, as well as the right to life and human dignity.⁹ Access to water is thus a socio-economic right originating from the rights to adequate standard of living and health. Moreover, the right to access to water is recognised in Article 1 of the UNGA Resolution 64/292 which states that the General Assembly "recognises the right to safe and clean drinking water and sanitation as a human right that is essential for the full enjoyment of life and all human rights."

Recognising access to water as a human right means it is fundamental and guaranteed from every violation. It is indispensable for individual enjoyment of almost every other fundamental right. The negation of this right, will lead to the non-realisation of other fundamental rights¹⁰. This is due to the fact that the 1948 Universal Declaration of Human Rights (UDHR) states that all rights are interdependent and indivisible.

The content of the right to access to water is stated by the UNGA¹¹ in paragraph 2 of GC 15 as:

(Arts. 11 and 12 of the Covenant), adopted at the Twenty-ninth Session of the Committee on Economic, Social and Cultural Rights, Contained in Document E/C.12/2002/11, Official Records of the Economic and Social Council, (2003), Supplement No. 2 (E/2003/22), Annex IV, (2003), at 2, 10-12.

⁹ UNGA, *Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development*, Resolution 64/292, (A/RES/15/19), taken in the 15th session on (06 October 2010), article 3.

¹⁰ Article base, "Origin and Development of Fundamental Rights", available at <http://www.articlesbase.com/national-state-local-articles/origin-and-development-of-fundamental-rights-4843635.html>, (accessed on 30 September 2016).

¹¹ Michael H. P., "The Four Freedoms Turn 70", Washington, D.C., (2010), available at <http://www.humanrights.gov/2011/04/20/assistant-secretary-michael-h-posner-the-four-freedoms-turn-70>, (accessed on 13 September 2015).

¹ L. Selborne, *The Ethics of Freshwater Use: A Survey*, COMSET Sub-Commission on the Ethics of Fresh Water, (2000) at 5.

² Pope John Paul II, *Peace with God the Creator, Peace with all Creation*, Message for the Celebration of World Day of Peace, (1990), at section 7.

³ The Pontifical Council for Justice and Peace, "A Contribution of the Delegation of the Holy See on the Occasion of the Third World Water Forum", Kyoto, 2003, at p.4.

⁴ UNGA, *The Human Right to Water and Sanitation*, Resolution 64/292, (A/RES/64/292), taken on (July 28, 2010).

⁵ HRC, *Human rights and access to safe drinking water and sanitation*, Resolution 15/9 (A/HRC/15/9), taken on (September 24, 2010).

⁶ See Institute for Human Rights and Business, "More than a Resource: Water, Business and Human Rights," (2011), at 3.

⁷ *Ibid.*

⁸ See in particular Committee on Economic, Social and Cultural Rights, *General Comment No. 15: The Right to Water*

The human right to water entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses. An adequate amount of safe water is necessary to prevent death from dehydration, to reduce the risk of water-related disease and to provide for consumption, cooking, personal and domestic hygienic requirements.

According to the United Nations Office to support the International Decade for Action, having the right to access to safe water means everyone is entitled to water free from micro-organisms, chemical substances and radiological hazards that constitute a threat to health. In other words, everyone is entitled to clean, potable and sufficient water.¹²

In order to meet the context of the right to access to water, several countries including South Africa, Kenya, Indonesia, Costa Rica, India, and Belgium have explicitly recognised this right through constitutional amendments and national legislation. Other countries including Indonesia, India, and Costa Rica have implicitly recognised the right to water through interpretations of existing provisions,¹³ such as those related to the right to life, the right to a safe environment, and/or the right to health. Access to water has found a place in new constitutions and bills of rights of more than eighty countries and of supra-national entities.¹⁴ This could be seen with the case of the South African Constitution 1996¹⁵ whereby in its Section 27 entitled "*Right of access to health care, food, water and social security*", it is stated that everyone has the right to have access to enough food and water.

Generally, new legislation has focused on access to safe drinking water. Often, such legislation reflects trends in international water law¹⁶ or international human rights law, including the recognition of the human right to water and sanitation.¹⁷ While the United Nations Organisation (UN) first pillar of the Guiding Principles focuses on states' obligations to protect against human rights harms by business, States' duties under international law include their obligations to respect and to fulfil human rights.¹⁸ In Cameroon, the right to access to water is recognised both implicitly and explicitly.

¹²United Nations Office, '*Water for Life*', UN-Water Decade Programme on Advocacy and Communication (UNW-DPAC), (2005-2015), at.3.

¹³Mai-Lan, H. and Morrison, J., *The CEO Water mandate Bringing a Human Rights lens to corporate water stewardship, result of initial research*, Pacific Institute, California, (2012), at 8.

¹⁴Flanz, G.H., *Constitutions of the Countries of the World*, Oceana, USA, Dobbs Ferry, NY, (2000), at 239.

¹⁵ In its chapter 2 entitled Bill of Rights.

¹⁶See for example, the Berlin Rules, available at <http://www.internationalwaterlaw.org/documents/intldocs/pdf>, (accessed on 30 August 2015). See also Dellapenna, J., "*The Berlin Rules on Water Resources: The New Paradigm for International Water Law*", (2007), at 1-9.

¹⁷ Mai-Lan, H. and Morrison, J., op.cit. at 7.

¹⁸ WASH United, Freshwater Action Network, and Waterlex, *The Human Right to Safe Drinking Water and Sanitation in Law and Policy: A Sourcebook* (2012).

II. RECOGNITION OF THE RIGHT TO ACCESS TO WATER IN CAMEROON

Cameroon recognises the right to access to water both implicitly and explicitly.

A. The implicit recognition

The implicit recognition is derived from the principle of interrelation of all human rights and could be seen through global, regional and national instruments.

As far as some global instruments are concerned, we have the 1948 Universal Declaration of Human Rights in its articles 3 and 25(1) which protect the right of everyone to life and the right to adequate standard of living for the health and well-being of himself and of his family, including food, clothing, housing, in article 11 the International Covenant on Economic, Social and Cultural Rights (ICESCR) 1966 and the International Covenant on Civil and Political Rights (ICCPR) 1966 which recognises the right of everyone to an adequate standard of living. Also the implicit recognition of the right to access to water is done in articles 2 and 6 of the International Covenant on Civil and Political Rights (ICCPR) 1966 which recognise the right to non-discrimination and the right to life.

Concerning regional instruments, one of them is the African Charter on Human and Peoples' Rights 1986 Ratified by Cameroon ratified on September 18, 1989. Article 16 of this charter states that every individual shall have the right to enjoy the best attainable state of physical and mental health and States parties to the present Charter shall take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick. It has been mentioned above that the right to water is a prerequisite for the enjoyment of other rights. As such, in order to enjoy the right to health, citizens must have access to water.

At the national level, Law N° 2008/001 of 14 April 2008 to amend and supplement some provisions of law N° 96/6 of 18 January 1996 to amend the Constitution of 2 June 1972 guarantees the protection of human rights since it enshrines the basic principles which underlie the Universal Declaration of Human Rights. Human rights protection is expressly stated in the Preamble of the Constitution in that, "*The State shall guarantee all citizens of either sex the rights and freedoms set forth in the preamble of the Constitution*". Moreover, it is explicitly stated in the Preamble to the Constitution that everyone has the right to life. Article 45 goes further to state that duly ratified Treaties, Conventions and International agreements override the laws of Cameroon. As such, Even though the Constitution does not explicitly recognise the right to access to water, the Constitution expressly recognises all instruments that will be signed and ratified at the international level by the Cameroon government including agreements referring to the right to access to water.

B. Explicit recognition

The explicit recognition of the right to access to water in Cameroon can be seen through international human rights instruments, international humanitarian instruments, regional instruments and national instruments. International human rights instruments are the Convention on the Elimination of All Forms of Discrimination against Women

(CEDAW) 1979¹⁹ in its Article 14(2)(h) which sets out an agenda to end discrimination against women, and explicitly provides that:

States parties shall take all appropriate measures to ... ensure to such women the right: ... To enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.

The Convention on the Rights of a Child 1989²⁰ explicitly mentions water²¹ as article 24(2)(c) states as that '*States Parties ... shall take appropriate measures: ... to combat disease and malnutrition... through the provision of ...clean drinking water, taking into consideration the dangers and risks of environmental pollution*'.

Added to these Conventions are Declarations. One of these Declarations is the Mar De Plata Declaration and Agenda 21 Programme of Action for Rio Declaration which deals with the right to access to water. Cameroon participated in the June 1992 United Nations Conference on Environment and Development equally called the Rio Summit where a declaration called the Rio Declaration was signed.²² Chapter 18 of Agenda 21 of this Declaration endorsed the Resolution of the 1977 Mar del Plata Water Conference that '*all peoples, whatever their stage of development and social and economic conditions, have the right to have access to drinking water in quantities and of a quality equal to their basic needs*'.

There is the 2002 Johannesburg Declaration and Plan of Action. Cameroon attended the World Summit on Sustainable Development was held in Johannesburg, South Africa, from 26 August to 4 September 2002, in conformity with General Assembly resolutions 55/199 and 56/226.²³ The Declaration of the Summit states:

We welcome the Johannesburg Summit focus on the indivisibility of human dignity and are resolved through decisions on targets, timetables and partnerships to speedily increase access to basic requirements such as clean water, sanitation, energy, health care, food security and the protection of biodiversity.

There is equally the Declaration of the Fifth World Water Forum was held in Istanbul 2009 whereby 25 countries, including Cameroon adopted a separate declaration on the right to water and sanitation, stating that '*... We recognise that access to water and sanitation is a human right and we*

are committed to all necessary actions for the progressive implementation of this right'.

The Ministerial Declaration of the Sixth World Water Forum held in Marseille in March 2012 referred to the recognition of these rights by the UN General Assembly and Human Rights Council and in relation to the recognition of the human right to safe and clean drinking water and sanitation, they committed to accelerate the full implementation of the human rights obligations relating to access to safe and clean drinking water and sanitation by all appropriate means as a part of our efforts to overcome the water crisis at all levels.

There are equally Resolutions that recognise the right to access to water in Cameroon. An example is the December 1999 UN General Assembly Resolution A/Res/54/175 "The Right to Development." Cameroon being a member of the United Nations Organisation, Article 12 of the Resolution applicable in Cameroon affirms that:

In the full realization of the right to development, inter alia: (a) The rights to food and clean water are fundamental human rights and their promotion constitutes a moral imperative both for national Governments and for the international community.

One of the international humanitarian laws which explicitly recognise the right to access to water is the Geneva Convention of 1949 for the amelioration of the condition of the wounded and sick in armed forces in the field of 12 August 1949 and its Additional Protocols of 1977. Cameroon ratified the Geneva Convention on 16 September 1963 and its additional protocols I and II on 16 March 1984.²⁴ The Geneva conventions and their additional protocols explicitly recognise the right to access to water²⁵ Articles 20, 26, 29 and 46 of Convention III are to the effect that the detaining power shall supply prisoners of war who are being evacuated with sufficient food and potable water, and with the necessary clothing and medical attention. Sufficient drinking water shall be supplied to prisoners of war.

Apart from the baths and showers with which the camps shall be furnished, prisoners of war shall be provided with sufficient water and soap for their personal toilet and for washing their personal laundry; the necessary installations, facilities and time shall be granted them for that purpose. The Detaining Power shall supply prisoners of war during transfer with sufficient food and drinking water to keep them in good health, likewise with the necessary clothing, shelter and medical attention.

Articles 85, 89 and 127 of Convention IV state respectively as follows:

... Internees shall ... be provided with sufficient water and soap for their daily personal toilet and for washing their personal laundry;

²⁴International Committee of the Red Cross, "Treaties, State Parties and Commentaries", (2003), available at https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/vwTreatiesByCountryS_elected.xsp?xp_countrySelected=CM, (accessed on 29 March 2017).

²⁵ In the 1949 Convention III it is recognised in articles 20, 26, 29, 46 and in the 1949 Convention IV in its articles 85, 89, 127. In Protocol I in its article 54 and in Protocol II in its articles 5 and 14.

¹⁹Ratified by Cameroon pursuant to the Law of 15 July 1988.

²⁰Cameroon signed this convention on 25 September 1990 and ratified it on 11 January 1993.

²¹United Nations Treaty Collections, "Convention on the Rights of the Child", (2017), available at https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-11&chapter=4&clang=en, (accesses on 29 March 2017).

²²Ministère de L'environnement et de la protection de la Nature, et du développement durable, (2017), «*Historique du MINEP*», http://www.minep.gov.cm/index.php?option=com_content&view=article&id=36&Itemid=18&lang=en, (accessed on March 11, 2017).

²³ United Nations, Report of the World Summit on Sustainable Development, (2002), at 79.

...Sufficient drinking water shall be supplied to internees....

...The Detaining Power shall supply internees during transfer with drinking water and food sufficient in quantity, quality and variety to maintain them in good health, and also with the necessary clothing, adequate shelter and the necessary medical attention.....

Article 54 of Protocol I states that it is prohibited to attack, destroy, remove or render useless objects indispensable to the survival of the civilian population, such 'as foodstuffs, ... drinking water installations and supplies and irrigation works, for the specific purpose of denying them for their sustenance value to the civilian population or to the adverse party, whatever the motive, whether in order to starve out civilians, to cause them to move away, or for any other motive'. Articles 5 (b) and 14 of Protocol II state that interned or detained shall, to the same extent as the local civilian population, be provided with food and drinking water. It is therefore prohibited to attack, destroy, remove or render useless, for that purpose, objects indispensable to the survival of the civilian population, such as foodstuffs, agricultural areas for the production of foodstuffs, crops, livestock, drinking water installations and supplies and irrigation works.

As far as the regional instruments are concerned, the right to access to water is recognised in the 1990 African charter on the rights and welfare of the child²⁶ and the 2003 African Convention on the Conservation of Nature and Natural Resources²⁷ and Abuja Declaration of the first Africa-South America Summit of November 2006.

As far as the African Charter on the Rights and Welfare of a Child is concerned, it was signed by Cameroon on 16 September, 1992, ratified on 05 September 1997 and deposited on 23 June 1999.²⁸ Its article 14 (2) states that:

2. States Parties to the present Charter shall undertake to pursue the full implementation of this right and in particular shall take measures...(c) to ensure the provision of adequate nutrition and safe drinking water;

As for the African Convention on the Conservation of Nature and Natural Resources of 11 July 2003 is the revision of the 1968 Algiers convention which Cameroon ratified on September 29, 1978. The Governments of Algeria, Burkina Faso, Cameroon and Nigeria took the initiative to bring about the revision of the said Convention. This revision was done in Maputo on 11 July 2003 with the signing of the 2003 Maputo Convention.

Article V of this convention entitled "WATER" states that:

The Contracting States shall establish policies for conservation, utilisation and development of underground and surface water, and shall endeavour to guarantee for

²⁶ African charter on the rights and welfare of the Child, signed in 1990 by the Organisation of African Union.

²⁷ African Convention on the Conservation of Nature and Natural Resources, Signed in 2003

²⁸OAU, African Charter on the Rights and Welfare of the Child, "Ratification information Doc. CAB/LEG/24.9/49" entered into force (29 November 1999), available at <http://hrlibrary.umn.edu/instreet/afchildratifications.html>, (accesses on 16 February 2017).

their populations a sufficient and continuous supply of suitable water,...

As such, Cameroon accepts to guarantee sufficient and continuous supply of water to its population and it committed itself to 'promote the right of our citizens to have access to clean and safe water and sanitation within our respective jurisdictions'²⁹in the Abuja Declaration of the first Africa-South America Summit of 30 November 2006 which she signed. Potable water must be available and accessible for everyone in the household or its immediate vicinity, in sufficient quantity and on a continuous basis, both for personal and domestic use. Water may be used for drinking, personal sanitation, washing of clothes, food preparation and personal and household hygiene. As such, there must be a sufficient number of water outlets to ensure that citizens' water needs are met. Equally, where water is collected elsewhere, collection and waiting times should not unreasonably be long. Water should equally be of good quality since it is a fundamental human need and contaminated water jeopardises both the physical and social health of all people. It is an affront to human dignity.³⁰

It is important to note that despite the ratification and enactment for several instruments guaranteeing and protecting the right to access to water in Cameroon, there are several shortcomings to the respect, protection and fulfilment if this right in Cameroon. Cameroon's major challenges for water access to water include:

- data challenges (gathering and updating quality and quantity information for water),³¹
- institutional capacity (political will, capacity building, and mechanisms for monitoring and enforcement),^{32,33}and
- local capacity (education for disaster risk management, care and monitoring of water resources at the community level).³⁴

²⁹ WASH United, "Recognition of the human rights to water and sanitation by UN Member States at the international level- An overview of resolutions and declarations that recognise the human rights to water and sanitation", (2015), at 27.

³⁰Koffi Annan (2001), *op.cit*.

³¹World Water Assessment Programme, (2009), 'The United Nations World Water Development Report 3: Water in a Changing World', pp. 2-5.

³² The National Coordination of the ANCR-NCSA process, (2007) National Coordination of the National Capacity Self Assessment Project in Global Environment Management ANCR-NCSA Process. Online: <https://www.thegef.org/gef/sites/thegef.org/files/documents/document/ncsa-cameroon-fr-ap.pdf>.

³³ African Development Bank, (2009), 'Country Strategy Paper 2010-2014 Cameroon'. Accessed online September 09 2013:

http://www.afdb.org/fileadmin/uploads/afdb/Documents/Project-and-Operations/CAMEROON_2010-2014%20COUNTRY%20STRATEGY%20PAPER.pdf and Central Intelligence Agency (2013), "The World Factbook 2013-14. Washington", available online at <https://www.cia.gov/library/publications/the-world-factbook/index.html>, (retrieved on March 11, 2007).

³⁴Tchouaffe, T., Norbert, F. & Tchamba, M., N., (2008), "Water Governance in the River Nyong Basin, Cameroon" Water issues/challenges and Climate Change Adaptation in Africa,

Cameroon's government, educational institutions and communities seek to address these challenges, often with assistance from outside organisations, particularly in building institutional capacity for addressing these challenges at different levels. Some specific capacity building challenges include providing education and facilitating empowerment at the local level for flood/drought preparedness while developing the human resources to enable capacity building within the country. Additionally, Cameroon is working to address building capacity to address water related risks through trans-boundary initiatives.³⁵

However, though access to clean and adequate water has been recognised in Cameroon, questions such as 'can access to water be considered as a fundamental right in Cameroon?', 'is its violation punishable and remedied under Cameroonian law?' Some answers to these questions shall be provided in the following paragraphs.

III. JUSTIFICATION OF THE RIGHT TO ACCESS TO WATER IN CAMEROON

Water is the essence of life. Lack of access to safe water has a major effect on people's health. This is the reason why Kofi Annan said '*Access to safe water is a fundamental human need and, therefore, a basic human right. Contaminated water jeopardises both the physical and social health of all people. It is an affront to human dignity.*'³⁶ It is important to note that defining water as a human right makes a difference in that ensuring that access to sufficient safe water is a human right constitutes an important step towards making it a reality for everyone.³⁷

The right to access to water is a right inherent to all human beings, whatever his/her nationality, place of residence, sex, national or ethnic origin, colour, religion, language, or any other status. Everyone is entitled to this right without discrimination. Access to water and other human rights are all interrelated, interdependent and indivisible. Since Universal human rights are often expressed and guaranteed by law, in the forms of treaties, customary international law, general principles and other sources of international law, access to water has been recognised implicitly and explicitly, both in national and international laws. Moreover, International human rights law lays down obligations of Governments to act in certain ways or to refrain from certain acts, in order to promote and protect human rights and fundamental freedoms of individuals or groups. States are bound to respect these obligations as far as the right to access to water is concerned.

A. International human rights law principles relating to the right to water

Human rights principles that justify the right to access to water are the principles of universality and inalienability,

p. 24, and Tadjoung, P. *Importance, menaces et perspectives pour la conservation de la faune mammalienne et ichtyologique du bassin versant supérieure de la vallée du fleuve Nyong*. Mémoire de DESS en Sciences Forestières, Université de Yaoundé I. p.66.

³⁵Ngalmé, E. N., (2013), "*Cameroon, Nigeria Cooperate on Flood Prevention*", Thompson Reuters Foundation, available at <http://www.trust.org/item/20130819082113-2z9lo>, (retrieved on September 05, 2016).

³⁶ Kofi Annan, United Nations Secretary-General.

³⁷ WHO, "*The Right To Water*", (2003), at 29-32.

interdependency and indivisibility, equality and non-discrimination.

1. Universality and inalienability of the right to access to water

The principle of universality of human rights holds that human rights apply to everyone simply by virtue of their being human. This principle, as first emphasised in the Universal Declaration on Human Rights in 1948, has been reiterated in numerous international human rights conventions, declarations, and resolutions. The 1993 Vienna World Conference on Human Rights, for example, noted that it is the duty of States to promote and protect all human rights and fundamental freedoms, regardless of their political, economic and cultural systems. All States have ratified at least one of the core human rights treaties,³⁸ reflecting consent of States which creates legal obligations for them and giving concrete expression to universality.

As far as the right to access to water is concerned, the fact that Cameroon took part in the discussions during which access to water was recognised as a human right marks the country's consent and by consenting, it is subjected to the obligation to respect, protect and fulfil this universal right. As such, human rights must be universal in order to remain coherent.³⁹

By definition, inalienability involves the inability of something to be taken from or given away by the possessor.⁴⁰ The principle of inalienability is laid down in severable human rights instruments. The 1776⁴¹ US Declaration of independence stated in its preamble that that all men are created equal, that they are endowed by their Creator with certain unalienable Rights. Among these are life, liberty and the pursuit of happiness. The 1789 Declaration of the Rights of Man⁴² describes fundamental rights in its preamble as natural, unalienable and sacred rights. The 1948 Universal Declaration of Human Rights states that the recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.

That which is inalienable cannot be bought, sold, or transferred from one individual to another. As such, the right

³⁸ United Nations Human Rights Office of the High Commissioner, (2017), "*Human Rights Bodies*", available at <http://www.ohchr.org/EN/HRBodies/Pages/HumanRightsBodies.aspx>, (accessed on 18 March 2017).

³⁹ Leila N., (2016), "*Are Human Rights Really 'Universal, Inalienable, and Indivisible'?*" <http://blogs.lse.ac.uk/humanrights/2016/09/14/are-human-rights-really-universal-inalienable-and-indivisible/>, (retrieved on 11 February 2017).

⁴⁰ Nasr L., (2016), "*Are Human Rights Really 'Universal, Inalienable, and Indivisible'?*", available at <http://blogs.lse.ac.uk/humanrights/2016/09/14/are-human-rights-really-universal-inalienable-and-indivisible/>, (accessed on 11 December 2016).

⁴¹ The United States Declaration of Independence was ratified on July 4, 1776.

⁴² The Declaration of the Rights of Man and of the Citizen was passed by France's National Constituent Assembly in August 1789.

to access to water cannot be bought, sold or transferred from one individual to another. Consequently, access to water being a fundamental right cannot be alienated.

2. Interdependency and indivisibility of the right to access to water and other human rights

The indivisibility principle maintains that the implementation of all rights simultaneously is necessary for the full functioning of the human rights system.⁴³ Indivisibility also means that no human right can be fully implemented without the full realisation of all other rights. This means protecting the civil and political rights while neglecting the socio-economic and cultural rights will make all rights values suffer. All human rights are indivisible and the improvement of one right facilitates advancement of the others. Likewise, the deprivation of one right adversely affects the others.

Nickel⁴⁴ makes a number of strong arguments against indivisibility by distinguishing the concept from interdependence. For example, an arm and leg are not mutually indispensable (indivisible) because one can function without the other. While they may be interdependent to some extent, they are not indivisible. Conversely, a heart and brain cannot function irrespective of each other, thus making them indivisible by definition. Such is the distinction we must make with human rights, too.⁴⁵ Consequently, the protection of the right to water is an essential prerequisite to the fulfilment of many other human rights. Failure to directly recognise the right to water may weaken the enforcement capability and authority of existing provisions as they relate to water.

3. Rights and obligations engendered by the right to access to water

Human rights entail both rights and obligations. The right to access to water gives duty bearers obligations they are supposed to fulfil vis-à-vis right holders. The obligations and rights that result from the right to access to water are as follows.

A. Obligations resulting from the right to access to water

Realising the human rights to water for all on a non-discriminatory and equal basis includes specific obligations and responsibilities for all actors involved. States, as duty-bearers, assume obligations and duties under international law to respect, to protect and to fulfil human rights and must guarantee access to water to all on an equal and non-discriminatory basis.⁴⁶ At the individual level, while we, as rights-holders are entitled our human rights, we should also respect the human rights of others.⁴⁷

The obligation to respect means that States must refrain from interfering with or curtailing the enjoyment of human rights. States are required to refrain from action that will

⁴³*Ibid.*

⁴⁴ Nickel, J.W., "Rethinking Indivisibility: Towards A Theory of Supporting Relations between Human Rights", (2008), at 1-18.

⁴⁵*Ibid.*

⁴⁶Committee on Economic, Social and Cultural Rights, General Comment No. 15, para. 21.

⁴⁷ WASH United, "Recognition of human Rights to Water and Sanitation" (2015), at 7.

unjustifiably interfere with the rights to water and sanitation and principles of non-discrimination and equality. The obligation to respect also implies that the State may not endorse, perpetuate and reinforce discriminatory and stigmatising practices. Examples include the criminalisation of the homeless in accessing public facilities for water and sanitation or continuation of the outlawed practice of manual scavenging.⁴⁸

The obligation to protect requires States to protect individuals and groups against human rights abuses. The obligation to protect requires State action to prevent and remedy infringements to the rights to water and sanitation by third parties. Private actors may affect those rights in different ways, including in their role as service providers whereby they are required to provide services in a non-discriminatory and equal manner. This applies to corporations, but also to other non-State actors, such as NGOs or international agencies that are involved in service provision.⁴⁹

The obligation to fulfil means that States must take positive action to facilitate the enjoyment of basic human rights. States are responsible for ensuring that conditions are in place for the enjoyment of the human rights to water and sanitation on an equal basis. States must progressively realise the human rights to water and sanitation, which means that they must take deliberate, concrete and targeted steps, individually and through international assistance and cooperation towards fully realising the rights guaranteed under the ICESCR. States must do so as expeditiously and effectively as possible and using the maximum of their available resources.⁵⁰

B. Rights resulting from the right to access to water

The right to water contains both freedom and entitlements. The freedoms include the right to maintain access to existing water supplies necessary for the right to water, and the right to be free from interference, such as the right to be free from arbitrary disconnections or contamination of water supplies.⁵¹ By contrast, the entitlements include the right to a system of water supply and management that provides equality of opportunity for people to enjoy the right to adequate water.⁵² GC15 acknowledges that while the adequacy of water may vary according to different

⁴⁸ UN Special Rapporteur on the human right to safe drinking water and sanitation, Common violations of the human rights to water and sanitation, A/HRC/27/55, (2014), at 60.
⁴⁹*Ibid.*

⁵⁰ Australian Human Rights Commission, (2015), "Nature of obligations regarding economic, social and cultural rights", Available at, <https://www.humanrights.gov.au/nature-obligations-regarding-economic-social-and-cultural-rights>, (accesses on 02 April 2017).

⁵¹ University of Minnesota Human Rights Library, "Committee on Economic, Social and Cultural Rights, General Comment 15, The right to water" (Twenty-ninth session, 2003), U.N. Doc. E/C.12/2002/11 (2002), reprinted in Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.6 (2003), at 105, available at <http://hrlibrary.umn.edu/gencomm/escgencom15.htm>, (accessed on March 06, 2015).

⁵²*Ibid.*

conditions, availability, quality and accessibility are factors that apply in all circumstances.

As far as availability is concerned, each person has the right to a water supply that is sufficient and continuous for personal and domestic uses, such as drinking, personal sanitation, washing of clothes, food preparation, personal and household hygiene. As for quality, the right to water means that not only are people entitled to a sufficient and continuous supply of water, but they are also entitled to water of adequate quality. Water for personal or domestic use must be safe and free from microorganisms, chemical substances and radiological hazards that constitute a threat to a person's health. Furthermore, water should be of an acceptable colour, odour and taste for personal or domestic use. Concerning accessibility, the Comment provides that water and water facilities and services must be accessible to everyone, without discrimination, within the jurisdiction of the state party. It identifies four overlapping dimensions of accessibility, physical, economic and information accessibilities, as well as equal access irrespective of status.

Concerning physical accessibility, water and adequate water facilities and services must be within safe physical reach of all sectors of the population, which is defined as 'within the immediate vicinity, of each household, educational institution and workplace'. Water should be of sufficient quality, culturally appropriate and sensitive to gender, life-cycle and privacy requirements. As for economic accessibility, water, water facilities and services and the direct and indirect costs and charges associated with securing water, must be affordable for every citizen. The direct and indirect cost and charges associated with securing water must be affordable and must not compromise or threaten the realisation of other fundamental rights.⁵³

Information accessibility includes the right to seek, receive and impart information concerning water issues. This means citizens should be able to look for information, to have, or collect, or obtain information and to divulge and/or give information. Concerning equal access irrespective of status, access to water and water facilities and services should be realised, in law and in fact, without discrimination on any of the prohibited grounds. As such there must be no discrimination as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.⁵⁴

IV. REMEDIES FOR THE VIOLATION OF THE RIGHT TO ACCESS TO WATER IN CAMEROON

The key to government enforcement of the right to access to water is the justiciability of this right, the ability of the courts, once the right is recognised, to enforce and adjudicate it.⁵⁵ Thus, justiciability enables individuals to seek remedies and hold their governments accountable if the right is violated.⁵⁶ Proponents also argue that justiciability is

⁵³ See generally GC 15.

⁵⁴ *Ibid.*

⁵⁵ See Cook, J. R., *Advancing Safe Motherhood Through Human Rights, In Giving Meaning To Economic, Social And Cultural Rights*, (2001), at 114.

⁵⁶ Asian Legal Res. Ctr., Reports of the Special Rapporteur on the Right to Food, Article 2 ICC PR, Apr. 2003 16, 22, available at <http://www.article2.org/pdf/v02n02.pdf> (arguing that accountability requires justiciability).

key in holding governments accountable for not meeting their obligations under international law, which increasingly recognises access to water as a fundamental human right.⁵⁷

The incorporation in domestic laws of international instruments recognising the right to water significantly broadens and improves remedial measures and the justiciability of the right to access to water. It enables courts to adjudicate violations by direct reference to the International Covenant on Economic, Social and Cultural Rights, the constitution or specific laws recognising or incorporating elements of the right to water.

In Cameroon, several laws give the opportunity to individuals to seek remedies for the violation of their right to access to water.

Firstly, Law No 2016/007 of 12 July 2016 on the Penal Code in its article 148 gives the possibility for individuals to file complaints against any civil servant who has the duty to render services but abstains from doing same. As such, any government officer who has the right to provide access to water but fails to do so can be brought before the judicial institutions for refusal of service. This article states that:

Any public servant, notary public, public auctioneer, bailiff or process server who, having been lawfully required, refrains from performance of any duty of his office, shall be punished with imprisonment for from 3 (three) months to 2 (two) years.

Equally, the Cameroon Water Code expressly gives room for punishment for the violation of the right to access to potable water. In its articles 15, it states that:

(1) A person shall be punished with imprisonment of from two to five years and a fine of from 5,000,000 to 10,000,000 CFA francs or one of these two penalties only, any person who:

- ...
- *supplies drinking water to the public without complying with the quality standards in force;*
- *violates a perimeter of protection around the points of collection, treatment and storage of water.*

(2) In case of recommission of the offense, the offender shall be punished with double the maximum penalty provided for in the preceding paragraph.

Article 16 goes further to state that :

(1) Every person who pollutes and alternates water quality shall be punished with imprisonment of 5 to 15 years and with a fine of from 10 to 20 million FCFA.

(2) In the case of recommission, the offender shall pay double the maximum penalty provided for in the preceding paragraph.

Article 17 and 18 go further to state that the penalties provided for in this Law are supplemented by the penalties contained in the Criminal Code as well as in the legislation on

⁵⁷ Anil Naidoo & Adam Davidson-Harden, 'Water as a Strategic International Resource' (2006), at 1-2 (unpublished manuscript), available at http://www.cancun2003.org/download_en/Naidoo_DavidsonHarden_conflict_water_version_final_ingles.doc, (accessed on 13 August 2017).

environmental protection. And that the provisions of articles 54 and 90 of the Criminal Code relating to suspension and mitigating circumstances are not applicable to the penalties provided for in this law. This means, any person found guilty of these offenses shall not benefit from mitigating circumstances and attenuation of sentences provided for by the Cameroon Penal Code.

A question may occur as to where those whose rights have been violated might seek for reparation. To ensure justiciability, states must guarantee access to subsequent binding remedial judicial mechanisms at the administrative and regulatory levels, and ultimately at the level of Courts. Citizens must have resort to courts and quasi-judicial mechanisms, as well as international quasi-judicial bodies.

A. Judicial Redress

1. National Institutions

As far as judicial institutions are concerned, in Cameroon, the 2006 Law⁵⁸ on Judicial Organisation sets up several institutions. Article 3 of this law states that the judicial organisation in Cameroon comprises of the Supreme Court, the Courts of Appeal, the Special Criminal Court, lower courts in matters concerning administrative litigations, Lower Audit Courts, Military Courts, the High Courts, the Courts of First Instance and Customary Courts.⁵⁹ Judicial institutions deal with judicial accountability mechanisms, and they ensure that the violation of a right is punished according to the rules laid down by law.

As far as the right to access to water is concerned, the competent courts can be the Court of First Instance, the High Court, the Administrative Court, the Audit Court, the Special Criminal Court, the Court of Appeal and the Supreme Court.

If an individual deems his right to access to water has been violated by another individual or a non-state institution, it can bring the action to the Court of First instance if the amount of damages claimed does not exceed 10 million XAF. If an individual wants to claim damages above 10 million FCFA for the violation of his right to access to water by another individual or a non-state institution, or force a duty bearer to respect protect and fulfill his right to access to water, or forbid an individual or non-state institution from violating his right to access to water, he can seize the High Court for such actions.

Administrative Courts are competent to hear administrative matters at first instance. In case of violation of and individuals right to access to water by an administrative official or a state institution, the citizen can seize the Administrative Court for reparation. Regional Audit Courts are competent to control public accounts. As such all sums disbursed for the provision of water in Cameroon can be controlled at the Regional Audit Courts. The Special Criminal Court is competent to hear matters of misappropriation of

⁵⁸ Law No 2006/15 of December 29, 2006 on judicial organisation, amended by law No 2011/027 of 14 December 2011.

⁵⁹ For the composition and functioning of these courts, see articles 13 to 31 of the 2006 law on judicial organisation, amended by the 2011 law, as well as Law No 2006/016 of 29 December 2006 on the organisation and functioning of the Supreme Court.

public funds above XAF 50 million. So if an administrative official is accused of misappropriating funds meant for the provision and distribution of water in Cameroon, the case will be brought before the Special Criminal Court for hearing.

The Courts of Appeal hear appeals against judgments and decisions of customary law courts, the courts of First Instance, the High Courts and the Military Courts. The function of the Supreme Court is to ensure that judgments of lower courts are in consonance with the law. It receives appeals from the various Courts of Appeal, the Administrative Court, The Regional Audit Courts and the Special Criminal Court. The Supreme Court is made up of the Judicial Bench, the Administrative Bench and the Audit Bench.

A number of courts have adjudicated cases related to the promotion and protection of the right to access to water in various countries, notably in relation to the pollution of water resources and disconnections from water services. Domestic courts have also increasingly heard cases relating to access to safe drinking water and sanitation under the protection of the rights to life, health and adequate housing or the right to a healthy environment. For instance, in the case of *Residents of Bon Vista Mansions v. Southern Metropolitan Local Council*, the South African High Court found that disconnecting a water supply represented a prima facie breach of the State's constitutional duty to respect the right to water. In *Subhash Kumar v. State of Bihar*, the Supreme Court of India held that the right to life was a fundamental right under article 21 of the Constitution, and it included the right to enjoy pollution-free water for the full enjoyment of life.

In Cameroon, an example of a case filed in court for violation of the right to access to water could be seen in *Mbwoge Daniel Mbong V. The National Water Corporation (SNEC)*. In this case, the plaintiff sued defendants for negligence, breach of contract and unjust enrichment. The Plaintiff contended amongst other claims that the defendant has been billing him arbitrarily, and arbitrarily disconnecting his tap. The judge in this case however declared himself to be incompetent when the plaintiff pleaded that the case be transferred to the High Court as a matter of procedure. This case and many others go a long way to show that the right to access to water is justiciable in Cameroon and individuals can seek reparation for the violation of their right before the judicial institutions.

2. The African Court on Human and Peoples Rights

The African Court on Human and Peoples' Rights is the regional judicial body in charge of hearing matters dealing with human rights violations in Africa. In order to complement and reinforce the functions of the, the African Commission on Human and Peoples Rights, this Court was established in 2004. It is a judicial body that delivers binding judgments on compliance with the African Charter. Applications may be made by the African Commission when it receives complaints from individuals or NGO's with observer status. Applications can directly be made to the Court by African intergovernmental organisations and States. If it finds that the right of the applicant has been violated, it can order remedial measures such as compensation or reparations. It can also order provisional measures subject to article 27 of the protocol establishing the Court. This measure can be ordered if the case is of

extreme gravity and urgent as well as when necessary to avoid irreparable harm.

3. The effectiveness of judicial remedies

To ensure that judicial remedies are effective, an independent and functioning judiciary is vital. Members of the judiciary must be competent to perform their role and accountable for their performance. The African Commission laid down what is meant by the right to an impartial hearing in *Law Office of Ghazi Suleiman v Sudan*.⁶⁰ It cited its Resolution on the Right to a Fair Trial and Legal Aid in Africa during the adoption of the Dakar Declaration and Recommendations and found a violation of the African Charter's article 7(1)(d) in this case.⁶¹ An examination of the African Commission's decisions reveals that pursuant to the said article, impartiality in courts requires bona fide judicial process. Courts must be independent of the political branches of government.⁶²

In order to ensure that violation of the right to access to water does not go unpunished, states should practice judicial assistance. Legal aid is provided in Cameroon by the 2009 law organising Judicial Assistance.⁶³ This law enables those who benefit from judicial assistance or legal aid to obtain either a court decision or its execution free of charge or with the reduction of all the costs he/she was expected to pay. It can either be total or partial. It is total when the decision granting the aid does not limit either the acts or the phases of the procedure, while it is partial if the decision who grants judicial assistance states that the said assistance is with regard to only certain acts or phases of the procedure.

By virtue of section 5 of this law, legal assistance can be granted to those who have insufficient means to access justice or execute a judgment rendered earlier. It equally

⁶⁰Communications 222/98 & 229/99, Law Office of Ghazi Suleiman v Sudan Sixteenth Annual Activity Report, 39 (2003) (accessed 31 May 2004).

⁶¹ Communications 222/98 & 229/99, Law Office of Ghazi Suleiman v Sudan Sixteenth Annual Activity Report, 39 (2003) (accessed 31 May 2004), at 67.

⁶² See also, *Constitutional Rights Project (in respect of Akamu & Others) v Nigeria*, (2000) AHRLR 180 (ACHPR 1995), *Constitutional Rights Project v Nigeria (II)* (2000) AHRLR 248 (ACHPR 1999) at 19 & 20, *Constitutional Rights Project (in respect of Lekwot & Others) v Nigeria* (2000) AHRLR 183 (ACHPR 1995), *Law Office of Ghazi Suleiman v Sudan* Communications 222/98 & 229/99, Law Office of Ghazi Suleiman v Sudan, Sixteenth Annual Activity Report, 39 (2003) (accessed 31 May 2004), *Mouvement Burkinabé des Droits de l'Homme et des Peuples v Burkina Faso*, Communication 204/97, *Mouvement Burkinabé des Droits de l'Homme et des Peuples v Burkina Faso*, Fourteenth Annual Activity Report (2002) 9 IHRR 250, *Milton García Fajardo & Others v Nicaragua*, Inter-American Commission, Case 11.381, rep n 100/01 (2003) 10 IHRR 531, *Waldemar Gerónimo Pinheiro and José Víctor Dos Santos v Paraguay*, Inter-American Commission, Case 11.506, rep n 77/02 (2002) (accessed 31 May 2004), *Media Rights Agenda v Nigeria* (2000) AHRLR 262 (ACHPR 2000) paras 47-48, *Giménez v Argentina*, Inter-American Commission, Case 11.245 (1996).

⁶³Law No 2009/004 of 14 April 2009 organising Judicial Assistance.

states that legal aid is granted upon application and only if without such aid, the applicant cannot access justice or execute a judgment. Access to justice, however, also requires creating awareness of laws and rights and having the ability to claim them. This is why in Cameroon, as far as creating awareness is concerned, once a law is promulgated, it is always published in the official gazette in French and in English. This is done with the aim of enabling everyone to be aware of such law in the language most suitable and convenient for him.

Also, States must also ensure *de facto* access to justice which is the fact of ensuring that beside the legal framework and regulations to seek redress, positive measures should be identified to eliminate discrimination in access to justice.⁶⁴ Those who face these obstacles in accessing justice are often the poorest, most vulnerable and marginalised in society.⁶⁵ This fact may lead to little or virtually no court cases. Some other common barriers to justice include lack of awareness, accessibility constraints, financial barriers, socio-cultural, inconsistencies, complacency, repugnancy rules and other challenges.⁶⁶ People must be informed about the enforceability of the right to water, remedial mechanisms as well as the barriers encountered.⁶⁷

Moreover, distance is a significant barrier to access to justice. The fact that it is the state who has the obligation to provide water to citizens and is accountable if she fails to do so, in case a citizen has the will to engage the responsibility of the state in Cameroon, he can only go to an Administrative Court located at the regional level. As such, justice mechanisms in this domain are centralised in urban centres, travel is often involved, which implies costs and time away from work, family and other activities. This poses a serious obstacle for the poor and marginalised living in remote areas to access justice.⁶⁸ As such, there may be need for the establishment of decentralised institutions, regulations that could financially support travel, or the appointment of intermediaries who can represent claimants at various stages of the proceedings.

Equally, remedies for the violation of the right to access to water must be financially accessible to everyone.⁶⁹ Fees are often encountered at every stage of the legal proceedings, and the loss of income while away from employment may constitute an insurmountable burden.⁷⁰ Additionally, illegal fees, or bribes, are often used in order to access administrative officials, procedures and courts. In this light, there is need for immediate and sustainable measures to be taken to prevent and curb corruption. Furthermore, support

⁶⁴A/67/278, paragraph 11.

⁶⁵Albuquerque C., *Realising the human rights to water and sanitation: A Handbook, 'Justice'*, (2014), at 41.

⁶⁶Special Rapporteur on extreme poverty and human rights, UN Doc.A/67/278, 25.

⁶⁷*Ibid.*

⁶⁸Special Rapporteur on extreme poverty and human rights, UN Doc.A/67/278, 36-40.

⁶⁹UN Resolution No.A/HRC/15/31/Add.1, para. 54.

⁷⁰As identified by the Special Rapporteur on extreme poverty and human rights, UN Doc.A/67/278, paras. 51 - 56, and UN Special Rapporteur on the human right to safe drinking water and sanitation, C. de Albuquerque, *Realising the human rights to water and sanitation: A Handbook, 'Justice'*, (2014), at 42.

programs, including lawyers' assistance, are a way to ensure that seeking remedies is affordable to all.⁷¹ In Cameroon bribery and corruption are all punishable under section 134 and 134-1 and 142 of the Cameroon Penal Code under the titles of undue advantage and undue demand.

At times, turning to the judiciary to seek redress for something as vital as water in human life involves great inconveniences, hardships and immense financial sacrifices in Cameroon. These scare many from seeking justice when they have legitimate complaints, giving the violator a kind of immunity from prosecution. This may be a reason why the man body in charge of water distribution in Cameroon (CAMWATER) is in no hurry to respond adequately to citizens demands. At times, the difficulties include complexity of laws, restrictive time limits, procedural rules, fear of reprisals, discrimination or stigmatisation,⁷² harassments and paying of unjustified consumption bills, denial of pipe borne water supply services, meeting mounting court costs (filing fees, deposits, Bailiff service of writs and locus visits, transport costs for to and fro movements, etc), suffered delays and repeated adjournments, Defendants refusing to come to court and no decisions taken against them, magistrate's apparent insensitivity towards Plaintiff's plight and eventual dismissal of the case in defiance of the law. These injustices are justified by Section 8 of Law No. 2006/015 of 29 December 2006 on Judicial Organisation in Cameroon, which states that:

Justice shall be administered free of charge subject only to the fiscal provisions concerning stamp duty and registration and those concerning the reproduction of the records of proceedings for appeals. Statutory fees and expenses of counsel and other auxiliaries' of justice, the cost of prosecution and the execution of court decisions shall be advanced by the party for whose benefit they are incurred. They shall be borne finally by the party who loses the action, except where there is a contrary reasoned decision of the court.⁷³

There are several rules applicable (tax codes, registry and court regulations, etc) that come from this provision of the law are resulting very high costs, for individuals with legitimate complaints. They are required to advance or deposit as much as five per cent (5%) of their claims in some Court Registries, pay locus visits for Bailiffs and Courts, pay Bailiff service fee, pay filing fees, etc. The expectation being that Plaintiff's expenses will be reimbursed if he is successful in his action. But where Plaintiff's matter is thrown out of court or the Defendants are impecunious, insolvent or cannot be found, Plaintiff will be required to bear the full cost, except where there is a contrary reasoned decision of the court. Section 8 of Law No.2006/15 of 29 December 2006 on Judicial organisation in Cameroon appears to encourage people to seek redress through the judiciary but the same law and its various rules of application make it difficult, if not impossible, for people to have access to the judiciary.

⁷¹*Ibid.*

⁷² As set out by the Special Rapporteur on extreme poverty and human rights, in: A/67/278, 2012, para.71.

⁷³ See section 8 of the 2006 law on judicial organisation in Cameroon.

Generally, the justice system is a strong mechanism of accountability. A strong, independent and well-respected judiciary can provide a check on the arbitrary exercise of state power and individuals can use the justice system to formally claim their rights and seek redress. Though, poor people face significant barriers in accessing justice legal empowerment strategies can improve the accessibility of justice systems and help them demand accountability from officials. These involve increasing awareness among citizens about their right to access to water as well as giving them the skills and opportunities needed to access institutions and services. However, state institutions and leaders may attempt to undermine this accountability channel if it threatens their interests, for example by removing judges. That notwithstanding, the right to access to water is justiciable in Cameroon as stated in GC 15,⁷⁴ before any action that interferes with an individual's right to water is carried out any party, the relevant authorities must ensure, where such action is based on a person's failure to pay for water their capacity to pay must be taken into account because under no circumstances shall an individual be deprived of the minimum essential level of water.

B. Quasi-judicial Mechanisms

The quasi judicial Mechanism used to seek the redress for the violation of the right to access to water in Cameroon is the African Commission on Human and Peoples' Rights (ACHPR) is a quasi-judicial body tasked with promoting and protecting individual and collective rights throughout the African continent as well as interpreting the African Charter on Human and Peoples' Rights. It considers complaints of violations of the Charter. One of the main functions of the Commission is to attend to communications submitted by individuals, NGOs and States Parties to the African Charter, alleging violations of human rights by these states.⁷⁵

Any person, group of persons of State party alleging a violation, should first of all ascertain whether the State committing the violating has ratified the Charter, and in the case of a State, it must have ratified the Charter before submitting a complaint against another State party to the Charter. Cameroon ratified the Charter on July 23, 1987 and as such, a citizen, and Organisation of the state of Cameroon can submit a Communication at the African Commission on Human and Peoples' Rights.⁷⁶

By submitting a communication to the African commission on human and Peoples Rights, victims of the violation of the right to access to water who for one reason or another could not obtain justice in their countries after exhausting all the available legal remedies, may obtain help.⁷⁷ Under article 46 of the Charter, the Commission has the power to use any appropriate method of investigation into allegations of human rights abuses.

Where the Commission finds that violations have occurred, it makes recommendations to the State(s) concerned to ensure that the occurrences are investigated, that the victim(s) is

⁷⁴ GC 15, paragraph 56.

⁷⁵ African Commission on Human and Peoples' Rights, available at <http://www.achpr.org/fr/>, (accessed on 11 May 2017).

⁷⁶*Ibid.*

⁷⁷*Ibid.*

compensated (if necessary) and that measures are taken to prevent the recurrence of the violations. The Commission's recommendations are submitted to the Assembly of Heads of State and Government of the OAU for adoption and the decision of the Assembly is final.⁷⁸

C. Non judicial remedies

It is important to note that judicial remedies are not required in every case, nor is it always the most adequate approach for claimants. Therefore, non-judicial dispute resolution and complaint mechanisms must be available for timely and effective resolution. This is made available in the 2006 law⁷⁹ regulating the organisation and functioning of the Administrative Courts. Article 17 of this law states that case is only admissible after the rejection of the pre trial complaint known in French as '*recours gracieux préalable*' addressed to the authority who wronged the citizen, or the authority that had the legal capacity to represent the said authority. This pre litigation application is an opportunity given to citizens to seek redress without necessarily going to court. It is only after the authority has refused to resolve the matter that the citizen can then seize a court to solve the matter.

To ensure justiciability, court decisions must be binding on the parties. In Cameroon this is ensured by the 1992 law⁸⁰ stating certain provisions on the execution of court decisions and the 1997 Law amending articles 3 and 4 of the above mentioned 1992 law⁸¹ have been enacted and promulgated in order to ensure that all court decisions are executed. These law states the conditions under which a court decision must be executed and when it must be stayed due to certain circumstances such as appeals. In the same light, the 2007 law instituting the judge of litigations on the execution of court decisions in Cameroon and foreign public acts as well as arbitral awards was enacted and promulgated in order to give the possibility to whosoever has a problem with a judgment to resolve the issue before the said judge and for those who have a foreign judgment to execute it in Cameroon. The Penal Code in its article 181 goes further to punish those who refuse to execute a final court judgment.

The Cameroon Water Code also gives the possibility for arbitration to be carried out in case of violation to the right to access to water. This law states in its articles 22 to 24 states that the water authority has full power to compromise. In order to do so, it must be duly seized by the offender. The amount of the transaction is determined in consultation with the finance administration. This amount may not be less than the minimum penal amount provided by the law. The settlement procedure shall be no earlier than any judicial proceedings parties to a water management dispute may settle them by mutual agreement for arbitration.

⁷⁸*Ibid.*

⁷⁹Law No 2006/022 of 29 December 2006 regulating the organisation and functioning of the Administrative Courts.

⁸⁰Law No. 92/008 of 14 August 1992 stating certain provisions on the execution of court decisions.

⁸¹Law No 97/18 of 7 August 1997 amending articles 3 and 4 of law No. 92/008 of 14 August 1992 stating certain provisions on the execution of court decisions.

Traditional authorities shall have the power to settle disputes relating to the use of water resources on the basis of local custom, without prejudice to the right of the parties to the dispute to bring it before the competent courts. Minutes shall be drawn up for the settlement of the dispute. A copy of the minutes duly signed by the traditional authority, the parties to the dispute or their representatives shall be filed with the Administrative Authority within the territorial jurisdiction of the village community where the dispute takes place.

More to that, article 12 of the Water Code gives MINEE the competence to control water being consumed by citizens in Cameroon. That is why it carries out monitoring of the management of water basins, monitoring of the groundwater management and monitoring of institutions responsible for regulation in the water and energy domains. in article 13 of the Water Code, it is stated that if it is noticed that any person has caused bodily injury or material damage resulting from poor quality of the water distribution by this person or authority, the latter will be liable for criminal sanctions as well as will be strictly liable notwithstanding the verifications made by the Administrations responsible for supervision. This means MINEE is expected to carry out verifications, investigation, detection and prosecution of violations of the right to access to water as stated in article 19 of the water Code. Any infringement found shall be the subject of a report. Minutes of the investigation/verification and detection of infringements carried out shall be kept. This record shall prevail until proven otherwise.

Any report of an infringement shall be transmitted immediately to the Water Administration which shall notify the offender. The latter shall have a period of 20 days from the date of such notification to contest the minutes. After this period, any dispute becomes inadmissible. In the event of a dispute within the said 20 day period, the complaint shall be examined by the Water Administration. If the objection is well founded, the record shall be dismissed. Otherwise, and in the absence of final transactions or arbitration, the Water Authority shall prosecute the infringer in conformity with the legislation in force.⁸²Article 14 provides for the payment for damages by any person who causes injury to someone or property as a result of poor water quality when it states that "*Without prejudice to the penalties applicable in terms of criminal responsibility and notwithstanding the verifications carried out by the supervising Administrations, responsible civilly, without the need to prove fault, any person who has caused injury to person or property resulting from poor water quality power supply that it distributes.*"

Another non- judicial mechanism to protect the right to access to water in Cameroon is performed by the National commission on Human Rights and freedoms This commission was setup by the 1990 Decree⁸³.The national Commission on Human Rights is the Cameroon National human rights institution. It advises the government and recommend policy or legislative changes, handle complaints, undertake investigations, ensure the ratification and implementation of international human rights treaties, and provide training and public education. It sometimes has

⁸² See article 21 of the Water Code.

⁸³Decree No. 90-1459 of 8 November 1990 to set up the National Commission on Human Rights and freedoms.

quasi-judicial functions and a mandate allowing them to contribute to the development of legislation. In some countries, NHRIs are increasingly focusing their work on ensuring protection of economic, social and cultural rights. As such, it provides another avenue for the protection of the right to water. The National Commission on Human rights and freedoms is in charge with the promotion and protection of human rights in the country.

V. CONCLUSION

Access to water is a fundamental inalienable human right essential for the full enjoyment of life and all other human rights. Cameroon has recognised the human right to safe drinking water on several occasions and has adopted a number of Human Rights Council resolutions and many other instruments at the international and regional levels

affirming that the human right to safe drinking water is derived from the right to an adequate standard of living. Cameroon thereby affirms implicitly and explicitly that the right to an adequate standard of living includes the human right to safe drinking water and sanitation. Cameroon recognises the right to access to water in several instruments. The recognition of this right imposes obligations on states since the fundamental right to access to water needs to be translated into specific national legal obligations and responsibilities. The explicit recognition of water as a human right could represent a usable tool for individuals and other stake holders to hold governments and any violator accountable and seek remedies either judicially or administratively. Simply speaking, notwithstanding the setbacks that may occur, the right to access to water is justified and is justiciable in Cameroon.

