

# The Protection of Workers' Rights in Cameroon; An Appraisal

A Research Project Submitted to the Department of English Law, Faculty of Laws and Political Sciences, University of Buea in Partial Fulfillment of the Requirement for the Award of a Bachelor of Laws (LL.B) Degree  
(2020)



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January 2021

## CERTIFICATION

This is to certify that this research work titled “**The Protection of Workers' Rights in Cameroon; An Appraisal**” Was carried out by **NGOE LEVISS ITOE** with registration number **SM17B569** in the Faculty of **Laws and Political Science**, Department of **English Law** as a partial fulfillment for an award of an LLB Degree in English Law

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## **DEDICATION**

This work is dedicated to my parents, Mr. and Mrs. Lyonga Tukwa Mbotake, my aunty, Ule Ngoe Perpetual, my uncle Blessed Efilo Ngoe and all other family members and friends who made it possible for me to run through this 3 years of trauma, political and social upheavals in achieving this work.

## ACKNOWLEDGEMENT

The success of this work is associated to the contributions of several dignified personalities. I therefore acknowledge my utmost indebtedness to them.

My sincere gratitude goes to my supervisor, Dr. CYRILLE MONKAM for affirming my choice of topic and also for his constant advice. Thanks a million sir

To my parents; Mr. Lyonga Tukwa Mbotake and Ngoe Prisca Bie, I say thank you for always being there for me

To my siblings and Friends, not forgetting Didan Ngoe, Ntui Oben Achaleoma, Njilefac Clinton Ebessoh and most especially my learned House of Lords I say a big thank you for your constant love and moral support.

Special appreciation and grace goes to my mentor, Shing Praise who has always been there for me throughout my days in school and other home activities and not living behind Almighty Mafanja Loba for giving me the strength and long life to see myself come to an end of this long journey of political and social upheavals and to say “Mafanja Loba Njomi o yomate ya omamboreã orongë, ekodise ebe odina dãbe.” (Thank you Lord for everything that you have done for me throughout these years and to say thanks you Lord.)

## ABSTRACT

This study focuses on the **protection of workers' rights in Cameroon: an appraisal**. The role of international laws and treaties and other national laws as well as the role of the courts, government, employers and employees in the protection of workers' rights has been expatiated in the course of this work. More still, an assessment on the role of the court, the government, employers and employees on the protection of workers' rights has been discussed. How successful and some loop-holes that arises in the course of protecting workers' rights in Cameroon.

The research method used in this work is purely doctrinal which is commonly used in law. This research adopts the qualitative method. This method is suitable for this research because it analysis the problem and does not make use of statistical data. The sources of data here are both primary and secondary data. Primary data is obtained from International Labour Organisation (ILO), International Universal Declaration of Human Rights (UDHR), International Covenant on Economic Social and Cultural Right, (ICESCR), Cameroon Labour Code (CLC), AND Cameroon Constitution, (CC). Secondary data include journals, newspapers, articles, and computerized work.

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- 2) The Constitution of the Republic of Cameroon, Law No. 96/06 of 18<sup>th</sup> January, 1996
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# CHAPTER ONE

## GENERAL INTRODUCTION

### Introduction

The putting in place of international and national regulations and institutions (Courts) to protect workers' rights in Cameroon has greatly improved on the working conditions of workers in Cameroon. These laws include; the Labour Code, the Constitution, ILO, UDHR, ICESCR. In spite of these regulations put in place, and ratified by the government of Cameroon, workers' rights are still being violated. There is therefore need to carry out an investigation on the rights of workers to be able to understand the challenges faced by the government in the respect, protection and fulfillment of these rights.

### 1.1 Background of the Study

Before the coming of the European in Africa, and Cameroon in particular, labour work has been one of the people's greatest activity especially among the coastal people in the form of subsistence farming or agriculture. During this period, work was done based on social participation to others farmlands. Though no form of payment existed during this period, work was done voluntarily out of the will of the parties carrying out the activity. But however, little payment existed as parties could carry back home some food crops without pay to their household. This system of labour and work continued till the introduction of the barter system of trade. This period brought a change in the labour activities of the coastal people as they wipe away the voluntary service and provision of food to their coastal population as a system of payment for work done. The Advent of the barter trade made it difficult for the less privilege to acquire food from the more privilege as such; those who could not acquire food for barter trade were force to undergo forced labour from the already privileged. This system was termed domestic or traditional form of slavery and slave trade.<sup>1</sup>

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<sup>1</sup> Volume 3 of The Advanced Level History Pathfinder: Enow Botela, published in 2010, publisher: Frankfils Comprehensive College

By 1800 century, another form of forced labour was introduced where people were transported from one country to other to work against their will. This system was encouraged by the already existing slave trade which many Africans and Cameroonian Coastal people were practicing. This system did not take into consideration the protection of workers right due to the lack of International and National conventions aimed at protecting workers right since there existed no payment for any work done. The notion of forced labour continued till the advent of the German annexation in the 1884-85 when they brought in a hidden agenda on the bases of respecting Article VI of the 1884 Berlin Conference<sup>2</sup> aimed at the abolition of slave trade and forced labour which they failed to respect. They introduced forced labour for much work done with little or no pay in their plantations.

By the end of the 19<sup>th</sup> Century, international community saw the effect of forced labour on the people and as such, Conventions were put in place to see on how labour and labourers can be protected at work place. They equally encourage them on the right to join trade unions and the right to strike as a means of protecting their rights. Some of these international conventions were ratified and put to action by other nations and Cameroon in particular. These International Conventions include; International Covenant on Economic Social and Cultural Rights, (ICESCR), International Labour Organisation (ILO), International Universal Declaration of Human Rights (UDHR).

At the National level, Cameroon has ratified and put in place these laws. Law No. 92/007 of 14 August, 1992 putting in place the Cameroon Labour Code<sup>3</sup>, and also the preamble of the Cameroon Constitution equally ratify these international conventions.

## **1.2. Statement of the Problem**

The respect and protection of workers' right is one of the greatest priorities of many states in the world and Cameroon in particular. Over the past years, Cameroon through it institutional mechanisms have failed in the protection and implementation of these rights regulating the protection of workers. It has been observed that instruments for the protection of workers' right

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<sup>2</sup>The Berlin Conference 1884-85

<sup>3</sup>Law No. 92/007 of 14 August, 1992 putting in place the Cameroon Labour Code

have some great progress in the field of drafting the legislations but acquire a great failure in their implementations. This is because there is no efficient regulatory force to implement the laws and even if they are available, they hardly carryout their activities effectively.

As a priority of every state to protect the rights of its workers, regulations have been put in place to protect workers' rights in time of crises like Civil Wars and general or serious Pandemic affecting the world like the COVID-19. As such, the government of Cameroon has put the measure of protecting workers' rights against the pandemic by closing institutions so as to fight the pandemic as per paragraph 21 of the preamble of the Cameroon constitution and per Part VI chapter(s) I and II of the Labour Code. But however, though serious measures have been put in place to protect workers against the pandemic, some workers like civil servants and those teaching in the private sectors have suffered greatly. For instance, teachers in the private sectors like those teaching in the Presbyterian Institutions have suffered greatly in the course of this pandemic as their salaries have greatly been deducted against the provisions of part iv, chapter iii, section 75(1) of the Labour Code as well as failure to pay them on time.

### **1.3. Research Question**

This research is geared in answering the following questions

- Are there National and International law regulating the Protection of Workers' Right?
- What is the role of the Cameroon courts in the protection of workers' right?
- Are the rights of workers' effectively protected by the Cameroon legislation?
- What are the policy recommendations that can be put in place to curb the challenges face in the protection of workers' rights

### **1.4. Research Objectives**

#### **1.4.1. General Objectives**

- The purpose of this research is to examine Cameroon's effectiveness in the protection of workers' rights

### **1.4.2. Specific Objectives**

- To examine the national laws regulating the protection of workers' right in Cameroon.
- To examine International Conventions regulating the protection of workers' right in Cameroon.
- To examine the role of courts in the protection of workers' right in Cameroon.
- To make policy recommendations to redress the problems raised.

### **1.5. Research Methodology**

The research method used in this work is going to be purely doctrinal which is commonly used in law. This research adopts the qualitative method. This method is suitable for this research because it analysis the problem and does not make use of statistical data. The sources of data here are both primary and secondary data. Primary data is obtained from the International Labour Organisation (ILO), International Universal Declaration of Human Rights (UDHR), International Covenant on Economic Social and Cultural Right, (ICESCR), Cameroon Labour Code (CLC), AND Cameroon Constitution, (CC). Secondary data include journals, newspapers, articles, and computerized work.

### **1.6. Scope of the Study**

The research is confined to the role of the national and international laws regulating the protection of workers' right in Cameroon.

Geographically, though the research covers the state of Cameroon, it shall equally discuss on the role of international conventions regulating workers' right in the world since Cameroon has duly ratified some of these conventions.

This work shall be examined between the periods of 1992 when the state of Cameroon effectively ratified international laws regulating workers right in the Labour Code.

### **1.7. Justification for the Study**

This topic is aimed at ensuring the attainment of the following points listed below which with it been reached, it will be for the benefits of both the researcher and the reader. The following point goes thus;

- The protection of workers right is studied to know the international and national treaties, law, and conventions protecting workers.
- Also, in our society today, we are always been faced in a situation where workers are been maltreated poorly by their employers especially when it comes to payment of justified wages and unmerited dismissal or termination of contracts even though the employee has complied with the rules of contract and the work. So, this topic is to help the employee to know his right to fight according to law should it be he is wrongfully dismissed from his place of work.
- In addition, the aim of this topic is to give recommendations for the protection of workers' right where I think there are lapses in the Cameroonian legislation.

### **1.8. Significance of the Study**

The following points below brings out the importance of the study to; the academic world, the society, workers, and to the government.

- This piece of work is important scholars not just in the field of law, but from different school of thoughts around the globe to know more and understand what laws regulating workers' right and how they should be respected.
- This piece of work is important because it will help serve as a guide to workers' in the society to understand the laws regulating their rights and how they can go about protecting themselves against internal conflicts and their obligations they have to go about.
- To sum it all, this work is also important because it will help identify lapses of laws of the state protecting workers' right and bring out possible recommendations on what the government can do for effective protection of workers' right in the country.

### **1.9. Definition of Key Terms**

- **PROTECTION:** the act of protecting someone or something. A process of keeping something safe.<sup>4</sup>
- **WORKER:** anyone who performs labour for a living especially manual labour. Or anyone who is employed in a company or an industry who does physical work rather than organizing

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<sup>4</sup> Oxford Advanced Learner's Dictionary 8<sup>th</sup> Edition

things or managing people.<sup>5</sup> In other words, the Cameroonian Labour Code in its article 2(1) defines a worker as any person irrespective of his sex, or nationality who has undertaken to place his service in return for remuneration, under the direction and control of another person, whether an individual or a public or private corporation as the employer for the purpose of determining whether a person is a worker, non-account shall be taken of the legal position of employer or employee<sup>6</sup>

➤ **RIGHT:** A right is that freedom given to an individual to enjoy whatsoever he wishes to enjoy without restrictions. Especially those made or given by the law.

➤ **APPRAISAL:** a judgment of the value, performance or nature of some body or something. Or it is a discussion between employees and the employer on how work has been carried out.<sup>7</sup>

## 1.10 Synopsis of the Chapter

The thesis is made up of five chapters. Chapter one is the introductory chapter that explains the purpose, justification and the significance of the research. It also raises the problem of the research.

Chapter two dwells on the legal framework of the protection of workers' rights. This includes; national and international laws regulating the protection of workers' right in Cameroon.

Chapter three presents an examination of the role played by the Cameroon judiciary in the

Implementation of the laws regulating the protecting workers' right

Chapter four focuses on how effectively the Cameroonian legislation has protected the rights of workers in their territory, giving an appraisal.

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<sup>5</sup>Oxford Advanced Learner's Dictionary 8<sup>th</sup> Edition

<sup>6</sup> Cameroon Labour Code, law no. 92/007 of 14<sup>th</sup> August 1992

<sup>7</sup> Oxford Advanced Learner's Dictionary 8<sup>th</sup> Edition, pg 130

Chapter five is the conclusion and the recommendation. In the conclusion, findings arrived at with regards to the research question and objectives are presented.



## **CHAPTER TWO**

### **THE LEGAL FRAMEWORK OF THE PROTECTION OF WORKERS' RIGHTS**

#### **2.0. Introduction**

Over the years, after the long slavery, which the people of the world went through, which amounted or resulted to force and compulsory labour without pay, the international organs saw the need to establish rules and laws regulating the protection of workers' rights against their employees. Some of these regulations include; International Labour Organisation, International Covenant on Economic, Social and Cultural Rights, Universal Declaration on Human Rights and have been ratified by Cameroon as seen its Constitution, and the Labour Code.

#### **2.1. The National Protection**

##### **2.1.1. The Constitution**

This Cameroon Constitution has been put in place by law no. 2008/001 of 14<sup>th</sup> April 2008 to amend and supplement some of the provisions of la no. 96/6 of 18<sup>th</sup> January 1996 to amend the Constitution of 2 June 1972. This constitution in some of its provisions, for instance its preamble creates a sense of awareness in the minds of workers on their right to be protected by the state, the right to form and join trade unions, and the right to strike as well as the sense of belonging<sup>8</sup>. The Constitution in its preamble paragraph 16 stated clearly the freedom of communication, expression, press, assembly, association, trade unionism as well as the right to strike which the state has been granted to worker under the conditions fixed by the law. Paragraph 22 equally gives everyone the right and the obligation to work. Cameroon being one of the nations which have ratified some international conventions regulating the protection of workers' right, its constitution and legislation has played a greater role to see these provisions of the law to be put into practice. Moreover, in order to further protect the right of workers, the preamble still grant the right to healthy environment to every workers. However, though state the state ensures the protection and

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<sup>8</sup>The preamble of Cameroon Constitution; paragraph 16

improvement of the environment, the protection of the environment shall be the duty of every citizen<sup>9</sup>.

### **2.1.2. National legislation**

Most of their legislations originated from the English Common law and the French Civil law system. This is because Cameroon being a British and French colony, they are bound to practice the two systems of law. As a role to protect the right of workers, workers are entitled to good hygienic conditions while at work. To better facilitate this role, decrees or laws have been passed by national legislations protecting workers right at work place<sup>10</sup>. One of these decrees includes; decree No. / Arrête No.039/MTPS/IMT du 26 November 1984<sup>11</sup>. It contains the regulation of the respective obligations of employers and workers, the composition of the hygiene and the safety committees, the setting of general conditions of hygiene relating to, among other things, construction, ventilation, temperature, and lightening, the determination of safety measures and transportation, the definition of hazardous substances and rules of preventing and firefighting, the establishment of the means of control and sanctions

### **2.1.3. Decree No. / Arrête No. 039/MTPS/IMT du 26 November 1984<sup>12</sup>.**

It contains the regulation of the respective obligations of employers and workers, the composition of the hygiene and the safety committees, the setting of general conditions of hygiene relating to, among other things, construction, ventilation, temperature, and lightening, the determination of safety measures and transportation, the definition of hazardous substances and rules of preventing and firefighting, the establishment of the means of control and sanctions.

### **2.1.4. The Labour Code**

This law was put in place by law no. 92/007 of 14<sup>th</sup> August 1992. This law in some of its sections has greatly analyzed the protection of workers' right. Section 2(3) forbids any act of forced and

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<sup>9</sup>The preamble of Cameroon Constitution; paragraph 21

<sup>10</sup><https://www.ilo.org/cm>

<sup>11</sup>Arête N° 39/MTPS/IMT du 26 November 1984

<sup>12</sup>Arête N° 39/MTPS/IMT du 26 November 1984

compulsory labour against the wish of every worker. Section 3 goes forth to recognize the right of workers without distinction whatsoever, to set up freely and without prior authorisation trade unions. More still, section 4(2) (a & b) bring out instances where the state have protected the right of workers;- (2) workers shall be protected from: a) any acts of anti-union discrimination in respect of their employment; b) any practice tending;

To make their employment subject to their membership or non-membership in a trade union;

To cause their dismissal or other prejudice by reason of union membership or non-membership or participation in union activities

The right of workers has also be granted in section 5(1) where workers have been given full rights to draw up their constitution favourable to them provided the laws of the state are respected. Workers are also protected against their employers as they are forbidden to interfere into workers' activities<sup>13</sup>. Furthermore, in accordance with the provisions of law N<sup>o</sup>. 92/007 of 14<sup>th</sup> August 1992 in its Part V, Chapter IV section 88(1), the law provides weekly rest to every worker so as to protect them against their employers. Also, the law has protected workers right to good working condition especially to their safety and hygiene at the work place<sup>14</sup>.

## **2.2. At the International Level**

### **2.2.1. The Universal Declaration of Human Rights (UDHR)**

Whereas the people of the United Nations (UN) in the charter reaffirmed their faith in the fundamental human rights, in the dignity and worth of the human person in the equal rights of men and women and have determined to promise social progress and the better standard of life in larger freedom. Its guiding principle is seen in its article 1 which states that all human beings are born free and equal in dignity and rights. They are endowed with reasons and should act towards one another in the spirit of brotherhood<sup>15</sup>. Since this law is geared at protecting the rights of

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<sup>13</sup>Section 5(2) of the Cameroon Labour Code (LC), 1992

<sup>14</sup> Part VI, Chapter 1, Section 95(1) of the Cameroon Labour Code, 1992.

<sup>15</sup>Article 1 of the UDHR

persons, everyone is equal before the law and are entitled without any discrimination to equal protect of the law. All are entitled to equal protection and against any discrimination in violation of this declaration and against any incitement to such discrimination<sup>16</sup>. Relating to the protection of workers' right, it is an obligation of every state to ensure the right to work of its citizens, right to free choice of employment, right to just and favourable conditions of work and to protection against unemployment<sup>17</sup>. Article 23(2) holds that everyone without any discrimination has the right to equal pay for equal work done. Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity and supplement, if necessary by other means of social protection as well as the right to form and join trade unions for the protection of his interest<sup>18</sup>.

### **2.2.2. The International Labour Organisation (ILO)**

It was established as part of the Versailles treaty of 1919 after the end of the First World War<sup>19</sup>. It was the only tripartite United Nation agency bringing together the government employers and workers' representative from all or several states. As part of its mission, the International Labour Organisation aim to achieve decent work for all by promoting social dialogue, social protection and employment creation as well as respect for international labour Standard. They are equally aimed at promoting workers right at work place as well as encourage decent employment opportunities<sup>20</sup>. International Labour Standard is an organisation set up by the ILO with conventions ratified by member states. These conventions are drawn up with input from workers, government and employers' groups at the ILO.

In an attempt to protect workers right, the ILO has put forth some fundamental principles and rights at work. These fundamental principles include;

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<sup>16</sup> Article 7 of the UDHR

<sup>17</sup> Article 23(1) of the UDHR

<sup>18</sup> Article 23(3 & 4) of the UDHR

<sup>19</sup> Jack Beadsworth: volunteer writers 29<sup>th</sup> October 2019

<sup>20</sup> <https://www.enterprise-development.org>>...

Freedom of association and the principle of collective bargaining<sup>21</sup>

The elimination of force or compulsory labour<sup>22</sup>

The abolition of child labour<sup>23</sup>

The elimination of discrimination in respect to employment and occupation<sup>24</sup>

In order to achieve the above principles, the ILO has played some supervisory roles in creating of committees to monitor the implementation of the conventions ratified by member states of the ILO. This is done through;

The committee of experts on the application of conventions and recommendations

The International Labour Conferences' Tripartite Committee on the application of conventions and recommendations.

Member states are equally required to send reports on the progress of the implementation of the conventions they have ratified.

But however, in order to bring transparency and justice in the ILO, member states are bound to bring up or file complaints against member states for not complying with the ILO conventions which they have ratified.

### **2.2.3. The International Covenant on Economic Social and Cultural Rights (ICESCR)**

It is a multicultural treaty adopted by the United Nations General Assembly on the 16<sup>th</sup> December 1966 through General Assembly Resolution 2200A (xx1) and came in force on the 3<sup>rd</sup> of January 1976.

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<sup>21</sup> Conventions N° 87 and 98

<sup>22</sup> Convention N° 29 and 105

<sup>23</sup> Convention N° 1338 and 182

<sup>24</sup> Conventions N° 100 and 111

The right to work is a fundamental right recognized in several International Legal Instruments. In an attempt to protect workers' rights, the ICESCR as laid down in its article 6 deal comprehensively than any other instrument with this right. According to this instrument, the right to work is essential in realizing other human rights and forms an inseparable and inherent part of human dignity. The right to work contributes at the same time to the survival of the individual and to that of his/her family and insofar as work is freely chosen or accepted to his/her recognition and development within the community. The right to just and favourable working conditions has been protected by the ICESCR<sup>25</sup>. The instrument equally protects workers' rights as it encourages every worker to join any trade union of his/her choice<sup>26</sup>.

Article 6 of the ICESCR explicitly protects workers right as it states that parties must recognize the right to work, which include the right of everyone to the opportunity to gain his living by work which he freely chooses and will take appropriate steps to safeguard this right including the right not to be deprived of work unfairly<sup>27</sup>. Furthermore, parties shall take steps to facilitate technical and vocational guardians and training programs, policies and techniques to achieve steady economic, social and cultural development and full productive employment under conditions safeguarding fundamental political and economic freedoms to individual workers<sup>28</sup>.

As a multicultural treaty adopted by the United Nations General Assembly, its objectives in the protection of workers right have been ratified by several universal and regional human rights instruments which has recognized the right to work.

Universal Human Rights Instrument:

U. N Charter article 1, paragraph 3 of the United Nations

Article 23 paragraph 1 of the Universal Declaration on Human Rights

Article 8 paragraph 3(a) of the International Covenant on Civil and Political Rights

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<sup>25</sup> Article 7 of the ICESCR, 1966

<sup>26</sup> Article 8 of the ICESCR, 1966

<sup>27</sup> Article 6, paragraph 1 of the ICESCR, 1966

<sup>28</sup> Article 6, paragraph 2 of the ICESCR, 1966

Article 5 paragraph e(1) of the International Covenant on the Elimination of All Form of Racial Discrimination

Article 11 paragraph 1(a) of the Convention on the Elimination of All Forms of Discrimination against Women

Article 32 of the Convention on the Right of the Child and

Articles 11, 25, 26, 40, 52, and 54 of the International Convention on the Protection of the Rights of All Migrant Workers and members of their families

Regional Instrument

European Social Charter of 1996<sup>29</sup>

Article 15 of the African Charter on Human and People's Rights

The Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, article 6 and

The United Nations General Assembly in the Declaration on Social and Cultural Progress and Development in its Resolution 2542 (xx iv) of 11<sup>th</sup> December, 1969 article 6<sup>30</sup>.

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<sup>29</sup> Part 2 article 1 of the European Social Charter

<sup>30</sup> <https://docstore.ohchr.org>, 12<sup>th</sup> July, 2020 at 7:30pm

## **CHAPTER THREE**

### **THE ROLE OF THE COURTS IN THE PROTECTION OF WORKERS' RIGHTS IN CAMEROON**

#### **3.0. Introduction**

The court plays a vital role in the protection of workers' rights in Cameroon by interpreting the meaning of the laws, how to apply them in real situations, and whether a law violates the rules of the Constitution. Before an employee seizes the court he or she must follow a particular procedure. This procedure can be achieved by going through the Labour Inspector as per section 139 of the LC. In this chapter, we shall be discussing on the Competent Court to hear and determine labour disputes, the Procedure to follow by the employee before seizing the court for hearing, the Possible Cases, Facts, and Judgment provided by the courts and Means of Enforcing these Judgments.

#### **3.1. The Competent Court to Hear and Determine Labour Matters.**

In discussing the competent court to handle labour dispute among individual employees and employers, certain criteria such as the quantum of claim, the territorial jurisdiction and other criterion need to be taking into consideration.

##### **3.1.1. The Subject Matter Jurisdiction**

The court dealing with labour disputes shall have jurisdiction to hear and determine any individual disputes arising from a contract of employment between workers and their employers and a contract of apprenticeship between employers and apprentices in their employment in accordance with the Legislation on Judicial Organisation<sup>31</sup>.

It is of note that the Court of First Instance is the only court competent to entertain labour matters in cases where the quantum of claim is less or equal to 10 million franc as established by section 15 of the Law on Judicial Organisation of 2006. But it is also important to note that all trial courts

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<sup>31</sup> Section 131 LC



in Cameroon can hear and determine labour matter based on the quantum of claim. If the quantum is above 10 million franc, the High Court will be competent to hear the matter as established in section 18 of the Law on Judicial Organisation of 2006.

### **3.1.2. The Territorial Jurisdiction**

In entertaining labour matters, each court is competent within the territorial limits stated by the law creating it. By virtue of section 132 LC, the competent court to entertain labour dispute shall, in principle, be that of the place of employment, provided that a worker who no longer resides at the place where he or she was performing a contract of employment or before that of this place of residence, on condition that both courts are situated in Cameroon as established by the Appeal Court of Buea in the case of *Fotso v. Société Activa SA*<sup>32</sup>

## **3.2. The Legal Procedure For The Enforcement Of Workers' Rights Before The Competent Court**

Generally, it should be noted that labour disputes are commenced free of charge both in the First Instance, the High Court, on Appeal and the Supreme Court as established by section 138 LC. Thus, filing fees or taxation of 5% of claims paid in regular civil actions has been prohibited by the LC.

### **3.2.1. Procedure to follow**

Where any dispute arises from a contract of employment between worker and employers, the hearing shall fall within the jurisdiction of the court dealing with labour matter in accordance with the legislation on judicial organization<sup>33</sup>. This procedure is by going through the Labour Inspector (section 139 of the LC) where he or she will invite the both parties for the settlement in a non-conciliation, partial conciliation or total conciliation. In appearances as witnesses, the employer

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<sup>32</sup> The plaintiff was a married woman who has worked with the defendant company in Douala. Although she and her family were still living in their home in Douala, she rented a room in Buea for the purpose of bringing an action against her former employer.

<sup>33</sup> Section 131 of the LC

and his assessor, the employee and his assessor shall be present for them to resolve the matter out of court amicably.

Where an individual dispute arises between parties, a diligent party files a statement of partial or non-conciliation at the registry of a competent court. Here, the party makes an oral or written declaration before the registrar of the competent court that he or she requires that his case be heard. The declaration shall be followed by a statement of partial or total non-conciliation as established by section 140 (1) & (2) LC

It has been established that a case cannot be taken to the court directly without passing through the labour inspector for an attempt of an amicable settlement. Where a party files directly to the court without passing through the labour inspector, the files will be rendered inadmissible. As seen in *Yamb Laurent v Societe Plasticam*.

Where the labour inspector fails to draw up the relevant statement needed for enforcing a labour case, section 18 (1) (c) of the Judicial Organisation of 2006 as amended makes provision for the party to compel anyone vested with a duty to perform the act. At this instance, the High Court shall be competent to entertain matters whereby the application for an order commanding any person or authority to do or perform any act which he is required to do by law. This was established in *Abaken v Labour Inspector Kumba & Anor*, the Meme High Court issued a mandamus compelling the labour inspector to prepare a statement of partial conciliation for worker to comment his action.

For the court to intervene in the protection of these rights, the party involved must have suffered a damage in the course of his or her dismissal. That is to say the interest of the court comes in when the rights of the employees' have been violated. Some of these rights of workers which are always been violated include wrongful dismissal, wrongful termination of contracts without due process, breach of employment contracts, failure to pay worker on time in the course of employment, unannounced reduction of workers salary like in the case of the Presbyterian Church of Cameroon; due to the effect of the Corona Virus, discrimination at work place.

### **3.2.2. The Composition of the Competent Court**

This court shall be composed of the (a) president who shall be a judicial officer, (b) an employer and employee assessor chosen from the list drawn up in accordance with section 134 of the same law;<sup>34</sup> (c) a court registrar.

## **3.3. The Possible Cases and Judgment**

### **3.3.1. Wrongful Termination of Employment Contracts:**

The legal definition for wrongful termination of employment contract is quite specific. Wrongful termination however means the act of firing an employee without legal approval or reasons which may include contractual breach and the violation of anti - discrimination law. It is important to note that it is against the law to establish that an employee is dismissed based on race, gender, ethnic background, religion, sex, disability or political view<sup>35</sup>. However, wrongful termination exist when a party act outside or beyond acceptable limits that is to say when he or she terminate the contract without genuine reasons as such the provision of sections 39 of the Labour Code shall be invoked. The Cameroon legislation has however identified some specific objectives which must be put in place before establishing a ground for either lawful or unlawful termination of employment contract. These procedures include

- Those related to the workers' attitude that is to say those based on the workers' fault like refusal to follow lawful orders, unjustified absence from work and those attitudes without fault such as physical impairment and incompetence.

#### **3.3.1.0. *Ntongwe Donald Ntongwe v ETA COLLEGE KUMBA*<sup>36</sup>**

An appellant was dismissed on grounds of non-membership in a particular "Njangi" group which was later established that some members in the institution were not participant. In this case, the appellant applied as a teacher at ETA College Kumba in July 2014 on a monthly salary of 140.000

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<sup>34</sup> Section 133 of the LC

<sup>35</sup> <https://employment.findlaw.com>, June 20, 2016

<sup>36</sup> LCK/04/15

FCFA. By the terms of the employment contract, he was to teach Economics, Geography, and Mathematics as a category 10 worker with a first degree. His employment contract was terminated without notice on the *05<sup>th</sup> day of January, 2015* on the ground of gross misconduct without the payment of benefits. He asserts his dismissal wrongful claiming that the problem of gross misconduct had long been settled with the school administration. The plaintiff argued that his dismissal did not follow the measures of the school with regards to dismissal of staff members as a certificate of service was not issued to him before dismissal.

However, the respondent argued that a certificate of service was issued to the appellant twice which the appellant failed to reply. They again held that the appellant violates the school Constitution in its article 5 which punishes “any act of poor dressing and absence from school without absolute permission”, in establishing the facts for his dismissal, the provisions of section 38 LC were employed.

### **3.3.1.1. Ruling**

The Court of First Instance Kumba sitting for the Labour Matter therefore ruled based on the above facts established by the plaintiff and the defendant that due to the plaintiff’s repeated failure to respect the roles and regulations governing the school as per article 5 of the ETA COLLEGE KUMBA Constitution, the plaintiff’s dismissal shall however be based on the Continuous Gross Misconduct as punishable by section 36(2) of the Labour Code; provided that a contract may be terminated without notice in cases of serious or gross misconduct, subject to the findings of a competent court of law as regards the gravity of the misconduct.

### **3.3.1.2. Possible Judgment**

The court therefore ruled that the plaintiff’s claim of wrongful dismissal is not admissible for lack of sufficient grounds in fact and in law.

On appeal, the appellant appealed on the entire judgment made by the Examining Magistrate of Court of First Instance Kumba on the grounds that;

The Examining Magistrate erred at law by declaring the termination of employment of the appellant by the respondent as being summary than contemplated termination requiring a prior notice based on quarrel between the appellant and some members of staff of the respondent in a partly staff “Njangi” meeting declared by the judge in his judgment as not being part of the school curriculum of the respondent.

The Examining Magistrate erred at law by holding that the dismissal of the appellant was properly based on gross misconduct basing his facts on the Oral Testimonies of the respondent on late coming and unjustified absences from school for which the appellant argued that he had long been sanctioned.

The magistrate erred at law for dismissing the claims for non-issuance of certificate of service even though admitted by the respondent simply because the appellant did not convince him of how much he had suffered as a consequence.

The Magistrate erred at law by dismissing the claims for damages for wrongful dismissal for according to him the termination isn't wrongful.

### **3.3.1.3. Means of Enforcement:**

The Appeal Court therefore held that the judgment of the lower court should be kept aside and the respondent is held liable in the entire claim of the appellant as laid before the lower court. As such, the respondent was liable and bound to pay the damages as prescribed by the appellant.

Special Damages as established by the Divisional Delegate of Labour and Social Security of Meme amounting to 1.440.000 FCFA. It is important to note that special damage is awarded on loss actually suffered not loss of future earning as it was in the case of *Lay Private Education v Ebede Patrick Agi*<sup>37</sup>

General Damages for all inconveniences which has led his landlord to evict him in an amount of 3.560.000 FCFA

Though established by the Supreme Court of Cameroon in the case of *Moupe Soule & Ors v Mangou Jacques* that a party cannot claim at the trial court what was not claimed during conciliation process before the Labour Inspector. A similar decision was reached by the Supreme Court in the case of *Yamb Laurent v La Societe Plasticam*<sup>38</sup>. This provision is going in reference to the damages claimed by the plaintiff.

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<sup>37</sup>Michael A. Yanou; Labour Law Principle and Practice in Cameroon.  
Judgment by the Buea Appeal Court

<sup>38</sup>Michael A. Yanou; Labour Law Principle and Practice in Cameroon

### **3.3.2. The Right to Health and Safety Conditions at the Workplace**

Looking at the other group of Rights, Improvements in Health and Safety rules are a fundamental dimension. This has a welcoming effect on the statistics of Death and Injuries in our workplace. In regards to Statistic Injuries at the work place this is established in the case below.

### **3.3.2. The People of Cameroon and CDC v. Akum Fon Vivian & 6 Ors<sup>39</sup>**

In this case, the accounting department of CDC Ndongu was burgled in the night of 3<sup>rd</sup> June 2015 between 1a.m - 4a.m. The arm burglars burgled the office of the first defendant, Akum Vivian Fon aged 47 years old from which they asported a sum of 5.903.276 thousands franc being the property of the CDC and escaped soon thereafter. None of the thieves were caught or identified. None of first to the fifth defendant was present at the time of the first burglary but that the sixth and seventh defendant were over powered, neutralized and tied up by the thieves before operation. It was established that the thieves used a false key to open the main door leading into the first defendant's office; such evidence was sufficient to sustain the charges against the sixth and the seventh defendant who were poorly equipped to confront the thieves and as such, the provisions of section 256 (3) of the Criminal Procedure Code were applied in favour of the first to the seventh defendant on a no case ruling;-"the Examining Magistrate shall ascertain whether or not any offence is sustainable on the evidence against the defendant and shall make either a total or partial no case ruling or a committal order<sup>40</sup>."

#### **3.3.2.2. Ruling**

The court of First Instance sitting at Tiko under suit number CFIT/PI/14/15 followed the case critically and ruled that since none of the 1<sup>st</sup> to the 7<sup>th</sup> defendant were linked to the burglary, and none of the asported sum of money was converted to the defendant, no offense was sustainable against any of the defendant as such, they were discharged under the provisions of section 256 (3) of the Criminal Procedure Code (CPC).

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<sup>39</sup>CASWR/06<sup>ICC</sup>/2016

<sup>40</sup> Section 256(3) C.P.C

### **3.3.2.3. Possible Judgment.**

The examining magistrate at the CFIT held that;

- i. A copy of the ruling should be served to all parties
- ii. Any unsatisfied party has 48 hours within which he has to lodge an appeal before the control chambers of the Appeal Court for possible redress.
- iii. The sum of this proceeding assessed and fixed in the sum of 200,000 franc to be borne by the Tiko Public Treasury.
- iv. The 1<sup>st</sup> – the 7<sup>th</sup> defendant recognizance are hereby cancelled.

But however, though the Court of First Instance Tiko sustained the offenses against the 1<sup>st</sup> – the 7<sup>th</sup> defendant the 1<sup>st</sup> defendant, Akum Vivian was unsatisfied with the provision of the CFI as she was later dismissed by the CDC on grounds of misappropriation, she later seized the Court of Appeal for hearing. At the Appeal Court, the judge held that the judgment of the examining magistrate at the Court of First Instance Tiko lacked the bases of fact and the law but was established on the grounds of the evidence adduce by the prosecution and speculations as such, the Appeal Court ruled in favour of the 1<sup>st</sup> defendant.

### **3.3.2.4. Means of Enforcement.**

After the final ruling by the appeal court in favour of the first defendant against the CDC, the CDC was under the obligation to pay damages to the 1<sup>st</sup> defendant after which she was reinstated into her position as the accountant for the CDC Ndongo Unit. Upon the ruling of the Appeal Court, the other 6 employees were equally reinstated to work with the CDC.

Also, in the case of *CDC v. Akem Benbella*<sup>41</sup>, the Appeal Court of Buea held a judgment against the CDC for not providing the respondent with the appropriate weapons to ward off an attack of any nature they were exposed to. The judge held his judgment on the grounds that the master has a duty of care to ultimately protect his servant from any act he performs in the course of the employment. A breach of this duty will amount to a violation of section 95 of the Labour Code with the expected consequences<sup>42</sup>

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<sup>41</sup> Supra

<sup>42</sup> Michael A. Yanou; Labour Principle and Practice in Cameroon

### **3.3.3. Gender Dimension of Labour Law in The Protection Of Workers' Rights.**

Before now, women experienced much discrimination in the labour market. It has been proven without doubt that some employers dismiss newly pregnant employees or refuse to take them back after her absence on maternity leave, discrimination with women who are beyond childbearing age or merely presumed that “women with children tend to leave their jobs.” As such, an employer sees these pregnant women less performing in the job site.

Employment protection for women rights refers to her right as a female employee not to lose her job throughout pregnancy or maternity leave as well as during a period following her return to work according to the durations specified by the national laws. Maternity maybe considered as a source of discrimination in employment, concerning access to employment, equal opportunities, faire treatment at workplace and termination of employment.

Non-discrimination to maternity refers to the right of all women not to be treated less favourably in a work situation including access to employment due to their sex, or circumstances arising from their reproductive function. It should be noted that employers are not required to make use of pregnancy test as a condition of employment or, should they be allowed to question a job applicant about their plans for childbearing. This section of the law is important to women, guaranteeing, as it does equal pay for work of equal value and protection from sexual discrimination.

Though *article 7 of the Trade Code* gives or empower an employer or a husband to interrupt his wife’s working activities through notification of his opposition to the Trade Tribunal, *ruling No. 14/L, 1993* of the Supreme Court recognize women’s right to fair hearing at workplace and inheritance so as to help address the issue of discrimination.

### **3.3.4. The Right to Provide a Worker Certificate of Service**

The employer has a duty under section 44(1) of the Labour code to issue a worker a certificate of service though the law does not impose any format for the presentation of the certificate. The section nevertheless requires that the certificate contain information relating to the workers’ date of recruitment and departure. An employer who fails to provide a worker a certificate of service as prescribed by the above section will be liable under section 167(1) of the Labour Code to the



payment of a fine of 100.000 FCFA to 1.000.000 FCFA<sup>43</sup>. In *Enongene Williams v. the University of Buea*<sup>44</sup>, a security officer was dismissed due to negligence in performing his duties by the University of Buea was granted general damage on grounds that the University failed to issue a certificate of service. As established above, it was noted that the plaintiff's original claims of wrongful termination was rejected but however, the court significantly held that the provisions of section 44 of the code could not be ignored though the worker didn't claim it. In the case of *Ndongo Fred Ebanja v The Chambers of Agriculture*, Vera Ngassa J sitting at the High Court Buea criticized the tendency of employers to treat the duty to provide a certificate of service under section 44 of the Labour Code. She categorically noted that section 44 is not a suggestion but a commandment and a fundamental right of the employee on pain of penalty. And she finally awarded damage of a million francs against the defendant for breach of this duty. It was again established in *SONEL v. Menu Dabo*<sup>45</sup> where the Appeal Court of Buea cleared the possibility of any doubt over the issue as stated in section 44 LC when it held that the failure to issue a certificate of service attract the liability of a fine payable to the state treasury. A similar decision was taking by the same Appeal Court Division in the case of *Offa Enow v. CDC*<sup>46</sup>.

From the above mentioned facts and rulings, one can conclude without doubt that the courts in Cameroon play a vital role in the protection of workers' rights since every individual has the right to be heard before the court though with some loop-holes. This can be seen in the work and the ruling of the trial court which failed in protecting the right of the worker to enjoy a diligent procedure of terminating an employment contract but rather faded his judgment in favour of the employer against the employee as it was established in the case of *Ntongwe Donald Ntongwe v. ETA CLLOGE KUMBA*. However, the jurisdiction of the Appeal Court has provided an adequate ground to which the court protects workers' rights. On this ground, the Appeal Court ruled basing its argument on the grounds that the employer had the right to follow the due process by presenting to the employee a certificate of service on time stating the reason of his dismissal before finally

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<sup>43</sup>Michael A. Yanou; Labour Law Principles and Practice in Cameroon, published by LangaRPCIG, November 15<sup>th</sup>, 2011

<sup>44</sup>Supra

<sup>45</sup>CASWP/10/2000 Unreported

<sup>46</sup>HCF/L023/2001 Unreported

giving a verdict to his/her judgment as it was in the case of *Enongene Williams v. The University of Buea* as established in the above paragraphs.

## CHAPTER FOUR

### AN ASSESSMENT OF THE PROTECTION OF WORKERS' RIGHTS IN CAMEROON

#### 4.0. Introduction

This chapter answers the fourth research question on how effectively has the Cameroon legislation protects the workers' rights. Therefore under this chapter, we shall look at the effectiveness of the Country in the protection of workers' right, the role of the employers in the protection of workers' rights; how effective has the Cameroon courts protects workers' rights as well as the role of the workers in the fight for the protection of their rights. Articles or laws such as the Cameroon Constitution, and the labour code will be used in the cause of this finding. Hence, after looking at all these laws, it will be appropriate to say that the fourth research question has been answered.

#### 4.1. The Role of the Government in the Protection of Workers' Rights in Cameroon

As established in paragraph 22 of the preamble of Cameroon constitution, and by virtue of article 23 of the UDHR, as well as article 6(1)<sup>47</sup>, 7 and 8 of the ICESCR, everyone, as an obligation of the state, has the right to work and a right to be protected at workplace against unemployment, discrimination and the right to equal pay for equal work done as well as the right to just and favorable remuneration ensuring for himself and his family<sup>48</sup>. As such, in an attempt of the Cameroon government to respect these provisions of the above mentioned articles, certain laws, decrees, conventions, and Ministerial Orders<sup>49</sup> in the effective protection of workers' rights have

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<sup>47</sup> The state parties to the present covenant recognize the right to work which include the right of everyone to the opportunity to gain his living by work which he freely chooses or accept and will take appropriate steps to safeguard these rights.

<sup>48</sup>Section 2 (103) of the Cameroon labour code also grant the right to work as an obligation of the state to provide work to its citizens and avoid any act of forced labour since the right to work is a national duty of every state incumbent on every able-bodies adult citizen.

<sup>49</sup> Law No. 92/007 of 14<sup>th</sup> August 1992; section 3... the law recognizes the right of workers without distinction whatsoever, to set up freely and without prior authorization (trade unions),

been put in place. These laws, decrees and conventions are aimed at protecting labour standards. Section 1(1) and 23 of the labour code provide for the rights of workers<sup>50</sup>. Section 4 (1) of the labour code gives every worker the right to join any trade union of his choice subsection 2(a) goes further to protect workers' rights against any form of anti-union discrimination in respect of their employment (b)(i and ii) any practice tending to make their employment subject to non-membership or membership in a trade union or to cause their dismissal or other prejudice by reason of union membership or non-membership or participation in union activities like it was in the case of *Ntongwe Donald Ntongwe v. ETA College Kumba*<sup>51</sup>. In the attempt to protect workers' rights against what the law considers forced labour is the fact that the Cameroon labour code prescribes a certain amount of money which is the minimum wage which every worker must earn to 36270 FRS as such, any amount less than the prescribed amount is deemed forced labour especially on employment contracts which are being entered into by deed.

The Cameroon government has equally protects workers' rights against poor working conditions, safety and hygienic condition at work place. As seen in section 95 and 98<sup>52</sup> of the labour code. More still, the government of Cameroon in protecting workers' rights preserve an accurate weekly rest<sup>53</sup> and article 24 of the UDHR for any work done as well as providing workers with leave<sup>54</sup> at work place and regulating the numbers of hours a worker will undergo work per day. It equally provides that where a worker works above the prescribed hour which the law has prescribed, the worker shall be bound to receive extra allowance.

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association for the study, defense, promotion and protection of their interest, particularly those of an economic, industrial, commercial or agricultural nature, and for social, economic, cultural and moral advancement of their members

All activities by such unions and associations which is not connected with the furtherance of the above objectives shall be prohibited.

<sup>50</sup>Assessing the Implementation of Labour Regulations in Public Organisations of Cameroon J Entrepren OrganizManag 8: 259 doi: 100.4172/2169-02x.1000259

<sup>51</sup>Suit N°. LCK/04/15

<sup>52</sup> Every enterprise and establishment of any kind, public or private, lay or religious, civilian or military, including those where persons are employed in connection with work in the profession and those belonging to trade unions or professional associations, shall provide medical and health services for their employees.

<sup>53</sup> Section 88 of the Labour Code

<sup>54</sup> Section 89 of the Labour Code

In addition, the government has put in measures to protect workers' right especially in the case of night worker. It is stated clearly in section 82(1) of the labour code that the rest period for women and children shall be not less than 12 hours; (2) night work in industries shall be prohibited for women and children. Without hesitation one can clearly say that the state of Cameroon has effectively protected the workers' rights. Moreover, in protecting the right of workers, the state of Cameroon has put in measures for the protection of the right of a child to work<sup>55</sup> by stating the minimum age<sup>56</sup> for employment of a child to work as well as protecting them against any harm to their health, education or development<sup>57</sup>.

Furthermore, the state of Cameroon has ensure the protection of workers' right by providing that workers are allow to join any trade union of their choice as well as the right to strike. All these provisions are measures taking by the government in the protection of workers' rights<sup>58</sup>. The right to strike has been established as one of the essential means through which workers and their organisations can promote and defend their economic and social interests<sup>59</sup> it is also an intrinsic corollary to the right to organize protected by Convention No. 87

In an attempt for the government to protect workers' rights, the government of Cameroon, following the 22<sup>nd</sup> November 2016 teachers strike for the fight against the transfer of Francophone teachers in the English Region of the territory, the government of Cameroon put in place regulations to recruit a number of bilingual teachers into the sector of teaching so as to protect the workers against further clamor. Also, following the ongoing fight for the protection of the right of a worker against the spread of the covid-19 pandemic, the government of Cameroon played a vital rule in the protection of the PCC teachers against the reduction of salary and their subsequent attempt to strike and as such, the government of Cameroon through the intervention of the City Mayor of Bamenda, Paul Achobang, June 10<sup>th</sup> and the Senior Divisional Officer of Mezam

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<sup>55</sup>The protection of children's rights in Cameroon; Lovet Ekwen, visited on the 20<sup>th</sup> June 2020; 12:40a.m

<sup>56</sup> ILO Convention No. 138, on the Minimum Age for Admission to Employment 1973; ratified by Cameroon on 14<sup>th</sup> April 1998, visited on the 20<sup>th</sup> June 2020; 12a.m

<sup>57</sup> Article 32 of the Convention on the Right of the Child

<sup>58</sup>Paragraph 16 of the preamble of the Cameroon constitution

<sup>59</sup>Importance of the right to strike and its legitimate exercise; completion of decisions of the committee on freedom of association

Division, Simon Emile Mooh on June 12<sup>th</sup>, 2020 respectively<sup>60</sup> has put measures in preventing or convincing the teachers from entering the street. The state of Cameroon has again in paragraph 16 of the preamble of the 1996 law granted the right to strike of every worker as well as the right to collective bargaining<sup>61</sup>. It is important to note that the right to collective bargaining do not bind civil servants but rather reserved for employee.

Further, the government of Cameroon has played a series of role in the protection of workers' rights against the spread of the covid-19 pandemic. On March 18<sup>th</sup>, 2020, in an attempt of the Cameroon government to fight against the pandemic and to prevent the spread among workers, she halted all public and private institutions and equally prevented the gathering of more than 50 persons while bars where prevented to operate from 6pm<sup>62</sup>.

Regardless of the existence of these laws, decrees, and ministerial orders, there still exist some challenges faced by the Cameroon government in the protection of workers' rights among which are; the payment of low salaries below the minimum wage rate, exploitation, manipulation, corruption and the management of the labour market institution is constituted with incompetence and bribery, result of which arises to inefficacy of rules and regulations. The Cameroonian labour law recognizes the employees' right of collective bargaining for the protection of their legitimate interests though the legal mechanism for enforcing collective bargaining is insufficient<sup>63</sup>. Also, the failure of the government in the granting of the right of collective bargaining to workers is seen from a periodical censors taking from 1996 where it was stated that no effective collective bargaining has been put in place by the government in an attempt to protect workers' rights. Though the government of Cameroon grant the right to collective bargaining as well as the organisation of social dialogue for collective bargaining for it workers, the outcome of the negotiations are rarely honored. Some agreements with the government have been ignored after being negotiated. With this explanation, it is clear to establish the rule that the state of Cameroon

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<sup>60</sup> The guardian post newspaper

<sup>61</sup> Collective bargaining is the coming together of representatives of trade unions and management, usually to negotiate over wages or wage rates, protection norms and other working conditions and what both parties agrees on is reduced to writing; Trade Union Freedom of Association and Collective Bargaining "The Cameroon Experience; Mbide Charles Kude"

<sup>62</sup>Linus Unah& Comfort Mussa, <https://www.aljazeera.com>, 12<sup>th</sup> June, 2020. 6:39a.m

<sup>63</sup> The Eight Labour Law Standards of the ILO, pg 17

has greatly failed to protect workers' right to collective bargaining<sup>64</sup>. The protection of the employees at work is protected by legal certainty or how much employees' have knowledge of their rights and responsibilities and the extent to which they are pleased with their rights and to carry out their responsibilities or duties<sup>65</sup>.

In addition to this, the Cameroon constitution and the labour code has respectively granted the right to strike of unsatisfied workers in the state but however, these rights are not effectively granted. This can be clearly established in 2006 where 163 workers working in the road construction linking Yaounde in Cameroon and Moundou in Chad were dismissed by the Cameroon government for organizing a strike action and the subsequent arrest of the union spokesperson who initiated the strike. He was arrested and convicted by the state on the 22<sup>nd</sup> day of May 2006<sup>66</sup>. By the term of the strike, workers requested for their right to good working conditions as well as accommodation allowance which the government violated against the provisions of sections 94(1-4), 95, and 98 of the labour code and paragraph 16 of the constitution as well as international laws. Also, the failure of the state to grant the right to strike, the leader of the Pharmaceutical Workers' Federation was dismissed for performing his legal right to strike<sup>67</sup>.

#### **4.2. The Role of the Employers in the Protection of the Employees' Right.**

In a general sense, employee and employer holds a duty or a responsibility for his or her actions. But however, an employer holds a greater duty to take reasonable care to ensure the safety of their employees and other person who can be affected in the course of the business. He must equally consult the employees on health and safety issues. It is important to note that these duties are personal and are non-delegable as seen in the case of *Wilson & Clyde Co. Ltd v. English*<sup>68</sup>, thus,

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<sup>64</sup>The Eight Labour Law Standards of the ILO, pg 18

<sup>65</sup>Mfondo M (2019) Assessing the Implementation of Labour Regulations in Public Organisations of Cameroon. *J EntreprenOrganizManag* 8: 259 doi: 100.4172/2169-02x.1000259; volume 8, page 2

<sup>66</sup>The Eight Labour Law Standards of the ILO, pg 18

<sup>67</sup>The Eight Labour Law Standards of the ILO, pg 17

<sup>68</sup> A defendant employed the complainant, Mr. English who was working on a repair to an airway on the mine jigger brae which was used as part of the haulage system. He was going to the bottom of the mine pit when the haulage was started. Although he had tried to evade the danger through a manhole, he was trapped by machinery and it crushed him to death. The defendant tried to claim that it was Mr. English's negligence that had resulted to his death; he could have taking an alternative route or alerted the employee in-charge of machinery for it to be stopped. It was held by the House of Lords that, *Wilson & Clyde Co.*

the employers always remain responsible for a safe workplace for their employees and are vicariously liable for any negligence of another. For a place of employment to be considered safe, there must exist safe premises in a safe working environment. Also, where employees are task with off-site work in places not controlled by their employers, but are been assigned by their employers, their employers shall however employ the same level of protection as to those who work in the same location every day<sup>69</sup> as established by the Cameroon Labour Code in its section 94.

More still, in protecting the right of workers by the employer, the employer has to take into consideration the safety of the working equipment employed for the employee to make use as it was in *Knowle v. Liverpool Council*<sup>70</sup>, this was also upheld in the case of *CDC v. Akem B. Benbella*<sup>71</sup> where *Bawak JCA*, citing *Smith v. Baker & Sons* stated that the employer's duty requires reasonable care on his part to provide proper appliances and to maintain them in proper conditions and not to carry on his operations in a manner as not to subject those employed to unnecessary risk thus, holding the CDC liable for failing to provide the respondent with appropriate weapons towards an attack of the nature they were exposed to, the location of the work to be done, the expertise and experience of the employee, the degree of control which they might be expected from the employers, and whether the employer is aware of any particular danger which might manifest themselves as it was in the case of *Pape v. Cumbria County Council* (1992) 2 All ER 211<sup>72</sup>

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Ltd, as an employer has a duty of care to ensure a safe system of work and this duty could not be fully delegated to another employee

<sup>69</sup> *Wilson v. Tyneside Window Cleaning Co.* (1958) 2 AB 110; held by the court that employers still have a duty of care to their employees even when they are working outside of their employer's premises.

And also in the case of *Cook v. Square D Ltd* (1992)ICR 262

<sup>70</sup> It was held by the House of Lords that the purpose of the Act was to protect the employees who are injured by exposure to dangerous materials in the course of their employment

<sup>71</sup> Suit no. CASWP/267/97

<sup>72</sup> In that case, a plaintiff was employed as a cleaner for many years and her job involves the use of chemical cleaning detergents. The employer had bought them rubber gloves which she rarely wears and the employer had failed to warn her of the consequences inherent with frequent contact of the skin with the chemicals. She had not been encouraged to wear gloves and she suffered from dermatitis in 1982 which later spread to her whole body forcing her to leave her job in 1989. She sued for damages and the court held that the employer owed a duty of care to instruct on the dangers of using the unprotected hands and the need to use gloves at all times.



In addition, employers protect workers against any inconvenience at workplace as she plays the role of consulting all her employees on their health and safety at workplace. This is done through talks she organizes with her employees on the health and safety as well as discussing on the kind of work they do and how risk can be control<sup>73</sup>. Under the Management of Health and Safety at Work Regulations of 1999, the employer has taking into consideration to protect workers' rights at workplace by identifying what could cause injury or illness to her workers. The employer must equally take absolute duty to protect workers right to health and treatment in case of illness or injury incur in the course of the employment. Further, employer plays a greater role in the protection of workers' right in the health care at workplace especially in the recent outbreak of the covid-19 pandemic. One of the roles played by the employer is the social distancing which all workers respected<sup>74</sup>.

Regardless the provisions of the law regulating the protection of workers' rights and the role of the employer in protecting workers right, it has been established that before terminating any employment contract, an employer must take into consideration in presenting to the employee a written notice for a period of 3 days stating clearly the reasons for his or her dismissal before terminating the contract. But however, this provision was violated by the University of Buea in the case of *Enongene Williams v. the University of Buea*<sup>75</sup> where the university dismissed it security guard without providing a certificate of notice. This was also seen in the case of *Ntongwe Donald Ntongwe v. ETA College Kumba*

### **4.3. The Role Of The Employees In The Protection Of Their Right To Work**

In assessing the role of the employees in the protection of their rights at workplace, it is important to note that a sense of belonging must be initiated among them. An employee must make sure that he or she belongs in a trade union so as to collectively provide solutions relating to problems

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<sup>73</sup>The employer gives clear instructions and information as well as adequate training at workplace. Training needs such as new recruits, changing of jobs as well as taking on extra responsibilities to workers.

<sup>74</sup> Safety works rights and responsibilities; <https://www.safetyworksmainw.gov>> right... 15:10pm, 31<sup>st</sup> July, 2020

<sup>75</sup>A security officer was dismissed due to negligence in performing his duties by the University of Buea was granted general damage on grounds that the University failed to issue a certificate of service.

faced at workplace and their experiences as well as the right to be heard before the court. A Trade Union can be defined as an organized association of workers in a trade or group of trades or professions, formed to protect and further their rights and interests<sup>76</sup>. This union plays the role of helping workers on issues like fairness of pay, good working environment, hours of work and benefits as well as social and political status through collective bargaining<sup>77</sup>. Also, the trade union is formed to regulate and defend the interest of workers by serving as a mediator between the workers and their employers or companies. It also influence or help workers to have a collective voice of influence. The trade union has some objectives which she carries out for the good of its employees. Some of which include; to improve the economic lot of workers by securing them better wages, secure the workers with good or better working conditions as well as securing benefits and bonus for the workers from profits of the enterprise or organisation. Also, all workers must be part of a trade union for reasons been that it is very essential for the protection of their rights in the world of work. Where there exists no trade union in an organisation, or a company, it will be difficult for an individual to carry out a strike action when he or she has been exploited by his or her employer. Employers sometimes use an opportunity to exploit an employee who is not aware of the importance of a trade union belonging. A successful trade union is going to ensure that workers' rights are respected, by working towards the achievements of the trade union objectives.

Insofar as it is clearly established that an employer has the responsibility to educate an employee on the effects of working in an unsecured working environment, the employee is supposed to take a one step responsibility to carry out a research on the working environment as well as taking responsibilities of reading journals, international conventions, ministerial orders and decrees, demanding for organizational constitution, the state constitution, the labour code as well as reading or visiting the organizational website for better development of their knowledge and their self-rights as well as educating themselves on the effects of uncondusive working and measures

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<sup>76</sup> Trade Union can again be define as an organisation formed by workers from related fields that work for the common interest of its members

<sup>77</sup>Collective bargaining is the coming together of representatives of trade unions and management, usually to negotiate over wages or wage rates, protection norms and other working conditions and what both parties agrees on is reduced to writing; Trade Union Freedom of Association and Collective Bargaining "The Cameroon Experience; Mbide Charles Kude"

which they can take to prevent injuries and illnesses at workplace. Though established in the case of *CDC v Akem Benbella* that the employer had the responsibilities to provide the respondent with good working instruments to carry out work, it is important to again note that the employee would have been blamed for negligence for not reasonably taking a close investigation on the working materials presented to them to carry out the work. This can again be illustrated in the case of *Pape v. Cumbria County Council (1992) 2 All ER 211* where an employee played a negligent role after knowing fully well the effects of chemical detergents on the bear surface body of an individual and negligently refused to make use of the gloves. It will be unreasonable for a judge to rule in benefits of the employee on grounds that every reasonable man would have taking into consideration that with the availability of gloves, one had to make use of them so as to prevent a direct contact with the chemical and the body. In addition, all employees to an organisation must as of right request of copy of the organizational constitution and the copy of national and international laws relating to labour and safety at workplace so as to understand the roles guiding an organisation as well as preventing oneself to know what he or she is required to, and not to do at a particular period of time at workplace without sensitization from their employers. Some rules and regulations guiding any company which a worker is entitle to have clue knowledge is the respect to the employment contract, taking the work employed seriously for failure to respect these provisions is tantamount to fired or discipline, especially when a worker often come late at work or where he or she absent from work too often or without an adequate reason as it established in the case of *Ntongwe Donald Ntongwe v. ETA College Kumba*<sup>78</sup>

In the nutshell, despite the several laws put in place by the government to protect workers' rights in Cameroon, it has been noticed that these laws are always violated by employers and the government. For instance, the law has granted maternity leave for women employees isn't respected by the employers as most often the number of period isn't followed or respected. Also, in most circumstances, workers who go out on strike to demand for their legal rights are often been violated and sometimes described by their employers and the government and terrorists. This is clearly stated in the 2014 Anti-Terrorism Law. More still, in the case of the Nextel workers in Cameroon, employer dismissed their employees for organizing a strike action for good working

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<sup>78</sup> Suit N°. LCK/04/15

condition. Also, 163 workers constructing the Yaounde, Cameroon and Moundou, Chad road were dismissed by the Cameroon government for carrying out a strike action. Their leaders were arrested and convicted by the government as terrorists. Also, section 80 of the labour code has effectively prescribed the working hours of workers in every organisation not to exceed forty hours per week, but in certain circumstances, ignorant workers work more than this prescribed hours and their employers does nothing to protect the employees.

Furthermore, in April 2017, the governments delegate to the Douala City Council Dr. Fritz Ntone Ntone dismissed 11 workers representatives affiliated with the Wouri Divisional Union of Council Workers following a strike action they held on the same month. These employees demanded for health insurance for themselves and their immediate relatives. Despite the provision of the law that state that workers have their right to strike, the government delegate fired the complainants but his decision was overruled by the Minister of Labour and Social Security. Despite the ruling of the minister, the government delegate did not reinstate the employees in their positions. In February 2018, the workers staged a hunger strike requesting their reinstatements and 10 months arrears though it fails to bring out a positive outcome.

On September 27<sup>th</sup>, the Littoral Court of Appeal delivered a verdict requesting that the government delegate immediately reinstate and pay the eleven workers' representatives. The court however threatened to impose a 20,000 frs per day for anyone daily. As of mid-November, the eleven workers representatives have not been reinstated nor had they received their salaries following the court decisions<sup>79</sup>. From the above explanations, it will be difficult to conclude that laws made by the government in the protection of workers' rights is been respected. But however, the new mayor has reinstated the workers.

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<sup>79</sup> Cameroon Human Rights Report, 2018; pg 40-41

## CHAPTER FIVE

### CONCLUSION AND RECOMMENDATIONS

#### 5.1. Conclusion

The right to work as well as the right of workers to be protected is the most important priority of every nation to its citizens. This can be clearly seen in section 23 of the Universal Declaration of Human Rights, article 6 and 7 of the ICESCR, article 15 of the Africa Charter on Human and People's Rights as well as paragraph 16 of the Cameroon Constitution.

We have discussing on the general introduction touching points on the statement of the problem the general objectives as well as justifications and the definition of the terms.

We have also been discussing on the role of Ratified International Laws and Treaties such as the ILO, UDHR, ICESCR as well as National Laws and Decrees such as the Constitution, the Labour Code and Decree No./Arête No.039/MTPS/IMT du 26 Novembre 1984 in the protection of workers' rights in Cameroon.

Moreover, the role of the courts in the protection of workers' rights has been discussed. Here, instances on how the court successfully protected workers' rights that is; by deciding the meaning of laws, how to apply them in real situations, and whether a law breaks the rules of the constitution and equally instances to which the courts failed in the protection of workers' rights.

Furthermore, an assessment on the role of the employers, employees, and the state in the protection of workers' rights has been discussed. Instances where the state the employer and the employees effectively protected workers' rights as well as how they failed in the protection of workers' rights

In the nutshell, one can hold that the protection of workers' rights, though effectively protected by the state as established in section 95 and 98 of the Labour Code, many industries and institutions have failed in preserving healthy working conditions for its workers.

Also, the preamble of the Cameroon constitution in its paragraph 16 establishes instances whereby workers are required to strike where they find their rights violated. But however, these rights are

not granted to the workers as the states and private institutions turn to dismiss workers who perform the act of strike. This was established in the case of the workers constructing the road linking *Yaoundé in Cameroon and Moundou in Chad as well as the Cameroon Nextel\_workers* who seek for a good working condition at workplace as per section 98 of the Labour Code were dismissed by the state as well as their private institutions.

## **5. 2. Recommendation**

In order for the rights of workers in Cameroon to be protected as it has clearly been established in the above paragraphs, the state of Cameroon should make sure that workers, especially the illiterate ones be given oral sensitization on the importance of belonging in a trade union. Educate them on the role of the trade unions in regards to filing of individual complaints against the state or individual employers.

Also, in order to effectively protect workers' rights especially at the level of individual and state employers, the state as well as the individual employers should sensitize the workers on the importance of going through companies constitutions as well as the importance of having the laws regulating the protection of workers' rights such as the Cameroon Constitution, the Labour Code, the ILO, ICESCR, the UDHR, as well as the Africa Charter on Human and People's Rights. This will enable them understand the procedure to take when their rights have been violated at the workplace and will equally help to prevent them from engaging into acts that will go beyond their employment duties

More still, I hold a ground to recommend that the state of Cameroon in order to protect workers' rights should put in place effective organs aimed at regulating the protection of workers' rights on the spot check so that they will stand as intermediary between the employers and the employees where conflict arises and shall be able to easily redress the problems faced by the workers.

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### **WEBSITES**

<https://employment.findlaw.com> Employment Law; the United State laws that determine how employees and employers can worker together

Linus Unah and Comfort Mussa <https://www.aljazeera.com>

<https://www.safetyworksmeninw.gov> safety work rights and responsibilities.