AN APPRAISAL OF THE PROTECTION OF WORKERS' RIGHTS IN EMPLOYMENT CONTRACTS UNDER CAMEROONIAN LAW

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I further attest that the assistance received in preparing this work and sources of materials used have been duly acknowledged.

Dschang, the____________________

MOUTA Leslie MUSHILI
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DEDICATION

To my parents: **Grace YONCHE** and **Edward MUSHILI**.

ABSTRACT

The reemergence of individual employment contract as a central legal concept in the labour law of Cameroon has been highly acclaimed as it gives an important position to individual contracts, irrespective of whether employment is governed either by collective agreement or unilateral action of the employer. It stands as the basic source of protection for the employee against unscrupulous employers as it creates rights and obligations between the parties. Despite the freedom of parties to contract, the law sets minimum standards from which they may not derogate. The Labour Code and laws governing different aspects of employment have been enacted to accord additional protection to the worker. Nevertheless, social injustice, strife and abuses at the workplace are on the rise as observed by an increasing number of employment disputes recorded daily in the courts. This work seeks to make an appraisal of the protection of workers' rights in employment contracts by examining the extent to which workers' rights are guaranteed in employment contracts under Cameroonian law. We adopted the analytical approach of interpreting provisions of texts and the doctrinal method of research. Our findings showed that the worker in Cameroon is accorded sufficient and desirable protection under employment contracts and additional protection by the existing laws. However, the worrisome aspect is at the level of implementation and compliance on the part of employers, and enforcement on the part of the government. What obtains in practice is opposed to that which exist in the books. We, therefore, propose a strict implementation and enforcement of contractual terms and a general revision of the Labour Code since most of its articles are ambiguous and obsolete, and do not accord adequate protection to today's worker.

RESUME

La réémergence du contrat de travail individuel en tant que concept juridique central dans le droit du travail camerounais a été hautement saluée car elle accorde une place importante aux contrats individuels, que l'emploi soit régi par une convention collective ou par une action unilatérale de l'employeur. Il constitue la source fondamentale de protection pour les employés contre des employeurs peu scrupuleux, car il crée des droits et des obligations entre les parties. Malgré la liberté de contracter des parties, la loi fixe des normes minimales auxquelles elles ne peuvent déroger. Le Code du travail et les lois régissant différents aspects de l'emploi ont été promulgués afin d'accorder une protection supplémentaire au travailleur. Néanmoins, les injustices sociales, les conflits et les abus sur le lieu de travail sont en augmentation, comme en témoigne le nombre croissant de conflits du travail enregistrés quotidiennement devant les tribunaux. Ce travail cherche à évaluer la protection des droits des travailleurs dans les contrats de travail en examinant dans quelle mesure ces droits sont garantis dans les contrats de travail en vertu de la législation camerounaise. Nous avons adopté l'approche analytique consistant à interpréter les dispositions de textes et la méthode de recherche doctrinale. Nos conclusions ont montré qu'au Cameroun, le travailleur bénéficie d'une protection suffisante et souhaitable en vertu de contrats de travail et d'une protection supplémentaire en vertu des lois en vigueur. Cependant, l'aspect inquiétant est au niveau de la mise en œuvre et de la conformité de la part des employeurs et de la mise en application de la part du gouvernement. Ce qui est obtenu en pratique s'oppose à ce qui existe dans les livres. Nous, proposons, donc une application et un respect rigoureux des clauses contractuelles et une révision générale du Code du travail car la plupart de ses articles sont ambigus et obsolètes et n'accordent pas une protection adéquate au travailleur d'aujourd'hui.

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- *Lovell v. Blundell's and Crompton & Co. Ltd., (1978) 1 ALL ER 1026.*
- *Mears v. Safeguard Security Ltd, IRLR 75, 1982.*
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- OHADA Uniform Act on Contract Law (Preliminary Draft) 2007.
- Universal Declaration of Human Rights 1948.
- The Workers Representative Convention 1971 (No. 145).
- International Covenant on Civil and Political Rights 1966.

LIST OF ABBREVIATIONS

Art:	Article.
BCA:	Bamenda Court of Appeal.
CA:	Court of Appeal.
CASWP:	Court of Appeal South West Province.
CDC:	Cameroon Development Corporation.
CS:	Cour Supreme.
FSJP:	Faculty of Law and Political Science.
HCF:	High Court of Fako.
Ibid:	Ibidem.
ICCPR:	International Covenant on Civil and Political Rights.
ICESCR:	International Covenant on Economic, Social and Cultural Rights.
ILO:	International Labour Organization.
LJ:	Lord Justice.
OHADA:	Organization for the Harmonization of Business Law in Africa
Op.cit.:	Opere Citato (in the book referred to previously).
SCHCL:	Southern Cameroons High Court Law.
Ser :	Series.

SOPECAM :	Société de Presse et d'Éditions du Cameroun.
UDHR:	Universal Declaration on Human Rights.
UN:	United Nations.
XAF:	Central African CFA Franc

CHAPTER ONE

GENERAL INTRODUCTION

1.1. Background to the Study

The dawn of the industrial revolution in the 19th century, brought with it increasingly poor employment standards[1], where employers took advantage of their workers by providing them with little or no job security as well as no safety and health protection in the workplace, coupled with excessive exploitation of these workers[2]. These problems led to the development of labour and employment law, which aimed at regulating the employer/employee relationship in a bit to ensure that people work under dignified conditions and are not unduly exploited in the course of work[3].

Labour law was developed as a way of regulating and improving the life of people at work. It is the body of law which applies to matters such as employment, remuneration, working conditions, trade unions and industrial relations. In its most comprehensive sense, the term includes social security and disability insurance as well[4]. In addition to the individual contractual relationships growing out of the traditional employment situation, labour law deals with the statutory requirement and collective relationships that are increasingly important in mass-production societies, the legal relationships between organized economic interests and the state, and the various rights and obligations related to some types of social services[5].

Against the backdrop of continuous exploitation, manipulation and mistreatment of workers they came together to form small groups that requested various rights from employers. They gained more force by uniting to form trade unions[6] which pushed for the enforcement of such rights. Thus, the relationship between workers and employers at workplace was

[1] Halidu, F., (2016), "Echoes of Colonialism: Implications of Wrongful Dismissal Judgements in Nigeria and Canada", University of Northern British Columbia, p.5.
[2] Funmi, A.& Adebimpe A., (, 2010), *The State of Workers' rights in Nigeria: An Examination of the Banking, Oil and Gas and Telecommunication Sectors*, Friedrich-Ebert-Stiftung, p.1.
[3] *Ibid.*
[4] Chamboli, C, O., (2016), "Contracts of Employment and the Protection of Individual Rights: A Comparative Study of the Situation in Cameroon and England", Masters Dissertation, University of Dschang, p.1.
[5] *Ibid.*
[6] Zeitlin, J., (1987), "From Labour History to the History of Industrial Relation", *Economic History Review*, 2nd ser. XL, 2, P.159.

influenced largely by the actions of trade unions[7] and through the influence of binding collective labour contracts[8].

The importance of social justice in securing peace, against the exploitation of workers in the industrializing nations led to the creation of the International Labour Organization (ILO) in 1919[9]. The motivation behind this creation comprised security, humanitarian, political and economic considerations, and also the increasing understanding of the world's economic interdependence and the need for cooperation to obtain similar working conditions in states competing for same markets[10]. Article II Paragraph (a) of the International Labour Organization (ILO), Philadelphia Declaration 1958[11], provides that: "all human beings are entitled to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity"[12] These conditions are coded in conventions and recommendation of the ILO.

The number of individual disputes arising from day-to-day workers' grievances or complaints has been rising across the world[13]. The causes are complex, and vary across countries and regions. Common features include an increased range of individual rights protections; a decrease in trade union density and collective bargaining coverage; higher risks of termination of employment and unemployment; reduced job quality and security due to greater use of various contractual arrangements for employment and other forms of work; and increased inequality as a result of segmented labour markets[14]. This greater complexity and diversity of individual disputes is reflected in the evolution of processes and mechanisms for preventing and resolving them.

International labour standards, as well as national legislations regulating employment relations remain the main instruments to ensure that, in the course of employment people work

[7] *ibid*.
[8] Lucassen, J., "Outlines of a History of Labour", *IISH-Research Paper* 51, 213, p.29.
[9] *www.ilo.org,* accessed 25/02/2019 at 18:45.
[10] *Ibid.*
[11] Ratified by the State of Cameroon on June 7th, 1960.
[12] The World Summit for Social Development, 1995 adopted a commitment to promote full employment as a basic priority for economic and social policies of states and to ensure the attainment of sustainable livelihoods through freely chosen productive employment and work. This impacts on security of service during the period of crisis since workers are usually under employed and inadequately employed with attendant consequences.
[13] Minawa, E, et al., (2016), "Resolving Individual Labour Disputes: A comparative overview", International Labour Office, Geneva, p.1.
[14] *Ibid.*

with dignity and under humane conditions[15]. These instruments contain minimum conditions under which workers offer their labour while also conferring on them some basic rights[16] with regards to employment contracts and also sanctions for defaulters.

The Employment Program of the ILO recommends employment as socially beneficial in terms of the production of goods and services which, in turn, generates income. It calls for the establishment of specific programs in the interest of workers but the attitude of most states reflects a colonial mentality which was once expressed by Tom Mboya, the prominent Kenyan unionist turned minister, as follows; *"private wars between labour and management cannot be permitted in poor developing countries"*[17]. According to this logic, the costs are unbearable for poor states. Governments have placed restrictions on trade union freedom[18]. New legal dispensations seem to have been concerned more with protecting the old regime than with the furtherance of democracy and the strengthening of workers' freedoms and rights. This is however not the case in Cameroon. With the enactment of the 1990 liberty laws[19] which gives workers and employers the liberty to form or join trade unions and associations of their choice[20]. The source of freedom of association and assembly in Cameroon is its Constitution of 1972, as amended[21], whose preamble provides, inter alia, that *"the freedom of communication, of expression, of the press, of association, and of trade unionism ... shall be guaranteed under the conditions fixed by law."* By virtue of Article 65 of the Constitution, introduced by the 1996 Constitutional amendments, the preamble is part and parcel of the Constitution. There are two systems for setting up associations[22]. The first is the "authorization system" which applies to foreign and religious associations; the second is the "declaration system" which applies to all other associations.

The law imposes on states three obligations with regards to workers' rights. To respect, protect and fulfil[23]. The obligation to respect these rights requires states parties to refrain from

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[15] Funmi, A., & Adebimpe, A., *op.cit*, p.1.
[16] *Ibid.*
[17] Temngah, J. N., (2008), *The Evolution of Trade Unionism and the Prospects for Alternatives to the Labour Question,* Dakar, CODESRIA, p.69.
[18] *Ibid.*
[19]Law, No. 90/053 of 19 December, 1990, regulating the freedom of association, Law No. 90/55 of 19 December, 1990, regulation public meetings, etc.
[20] Section 3 of the Labour Code.
[21]Rutinwa, B., (2001}, "Freedom of Association and Assembly Unions, NGOs and Political Freedom in Sub-Saharan Africa" *ARTICLE 19 The Global Campaign for Free Expression,* p.12.
[22] *Ibid.*
[23] Article 6 of the International Covenant on Economic, Social and Cultural Rights, General Comment No. 18 Adopted on 24 November 2005.

interfering directly or indirectly with their enjoyment[24]. The obligation to protect requires states parties to take measures that prevent third parties from interfering with these rights[25] and administering sanctions to defaulters, and the obligation to fulfil includes the obligations to provide, facilitate and promote these rights. This implies that states parties should adopt appropriate legislative, administrative, budgetary, judicial and all other measures deemed necessary to ensure full protection and enforcement[26] of workers' rights. Exempted from these systems are "de facto economic or social-cultural associations" and political parties and trade unions, which are governed by separate laws[27].

Cameroon is one of the countries that have ratified most of the ILO's Recommendations and Conventions[28], and labour relations in Cameroon today are governed by the 1992 Labour Code. The colonial period saw the application of the French Labour Code of 1952 and English Common Law received from Nigeria in Former French and English Cameroons respectively. Since independence, the country has witnessed three Labour Codes (1967, 1974 and 1992)[29]. As a result of the economic crisis in the 80s firms did not respect the 1974 Code[30]. Owing to its rigidity, it was often considered by employers as source of inefficiency[31]. Faced with the privatization of state corporations and the abuses of rights of formers workers of these corporations, the local employers and international financial institution such as the World Bank and International Monetary Fund craved for an improved labour market[32] which led to the elaboration of Law N^{0}. 92/007 of 14 August 1992 establishing the Labour Code.

Cameroon has been going through a serious crisis since the early eighties with very disturbing impacts on employment[33], evidenced by a high decline in the job offer and the level of protection for workers. In normal times workers protection is very relative[34] and with poor

[24] *Ibid*.
[25] *Ibid*.
[26] *Ibid*.
[27] Article 5 of Law No. 90/053.
[28] Cameroon has ratified over **50** Conventions such as the Convention on Forced Labour, Freedom of Association and Protection of the Right to Organize Convention, both on 7th June 1970, Right to Organize and Collective Bargain Convention, on 3rd September, 1962, etc., *www.ilo.org*, accessed on 13/06/2019.
[29] Ngwafor, J. F., (2018), "*Assessing Employee's Awareness of Labour Law in Cameroon: A Case of ENEO Cameroon S.A. Limbe, South West Region Cameroon*", PAID-WA, Buea, p.4.
[30] Tjouen, A. F., (1996), "De la Participation du Personnels à la Gestion des Entreprises en Droit Camerounais : La Problématique des Comités d'Entreprise", *Revue Internationale de Droit Comparé*, Vol.2.
[31] *Ibid.*
[32] Pougoué, P. G., (1991), La Flexibilité du Marché du Travail et la Protection de l'Emploi au Cameroun, Mimeo, Ed., p.1.
[33] Pougoué, P. G., "*Situation de Travail et Protection des Travailleurs*", *www.ilo.org,* p.1.
[34] *Ibid.*

working conditions and strikes being endemic in Cameroon, it's a course of concern which warrants that we make an appraisal of the protection available to workers in employment contracts.

1.2. Definition of key terms.

Employment contract

According to the business dictionary, an employment contract is a voluntary, deliberate and legally enforceable agreement between and employer and an employee, covering a variety of procedures and/or policies that the employee must agree to as a condition for his/her employment[35].

Alison Doyle in his article[36] defines an employment contracts as a signed agreement between an employee and an employer which establishes both the rights and responsibilities of the two parties: the worker and the company.

Garner [37] defines an employment contract as contract between an employer and employee in which the terms and conditions of employment are stated.

Per the Labour Code, contract of employment is an agreement by which a worker undertakes to put his services under the authority and management of an employer against remuneration[38].

In the course of this work, we shall adopt the definition of the Labour Code.

Employment

It is a relationship between parties, usually based on contract where work is paid for, and where one party which may be a corporation, not-for-profit organization, or other entity is the employer and the other an employee[39].

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[35] *www.businessdictionary.org*, accessed on 13/06/2019 at 16:15.

[36] What is an Employment Contract?, *www.balancecareers.com*, accessed on 13/06/2019 at 16:20.

[37] Garner, B. A., (2004), Black's Law Dictionary, 8th Edition, Minnesota, Thomson West.

[38] Section 23(1) of the Labour Code.

[39] Chamboli, C. O., (2016), "Contracts of Employment and the Protection of Individual Rights: A Comparative Study of the Situation in Cameroon and England", Dissertation of Master Degree, University of Dschang.

Garner [40] defines employment as the relationship between master and servant, the act of employing, the state of being employed or work for which one has been hired and is being paid by an employer.

Justice Denna in *Patridge v Mallandaine*[41] defines employment as species of contract by which one person agrees to perform a job, service or task for another, with or without remuneration although, as with all contracts at common law, some form of consideration must flow. In relation to this work, we shall adopt the Garner's definition.

Rights

"Rights" are defined generally as "powers of free action[42]." A Right is a power, privilege, faculty, or demand, inherent in one person and incident upon another[43].

According to Black's Law Dictionary[44] a right is well defined as a capacity residing in one man of controlling, with the assent and assistance of the state, the actions of others.

We shall adopt the first definition in the course of this work.

1.3. Statement of problem

The International Labour Organization asserts that universal and lasting peace can be achieved only when workers receive decent treatment. This is founded in the idea that peace should be founded on social justice[45].

The International Covenant on Economic, Social and Cultural Rights (ICESCR) and other international labour conventions, together with the plethora of locally enacted laws[46] make provisions for the protection of the workers right in employment contracts. All these measures aim to safeguard workers' rights and promote social justice. Despite efforts by Governments to protect and promote workers' rights, courts, tribunals and institutions charged with the handling of labour and employment related disputes are flooded on a daily basis with

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[40] Garner, B. A., (2004), Black's Law Dictionary, 8th Edition, Minnesota, Thomson West.
[41] (1886) 2 TC 179.
[42] *www.lawnotes.in,* accessed on 15/0612079 at 19:05.
[43] *Ibid.*
[44] Garner, B. A., *Op. Cit.*
[45] Preamble of the International Labour Organization's Constitution.
[46] Such as Law N°. 92/007 of 14/08/1992 establishing the Labour Code, Law N°.77/11 of 13/07/1977 on Industrial Accident, Decree N°. 21/MTPS/SG/CJ of 26/05/1993, Order N°. 015/MTPS/SG/CJ of 26/05/1993 setting the conditions and duration of notice period, etc.

complaints in relation to breaches and abuses, strikes are frequent and working conditions are appalling. This work seeks to assess why these problems persist despite the existence of a highly acclaimed mechanism for the protection of workers' rights in Cameroon.

1.4. Research questions

Bearing in mind the problem raised above, answers to the following questions are imperative.

1.4.1. Main question

To what extent are workers' rights guaranteed in employment contracts?

1.4.2. Specific questions

- What are the legal mechanisms put in place to ensure their protection?
- Are these rights accessible to all workers?
- What sanctions are available in case of abuse or non-observance?
- What are the means available for an aggrieved party to seek redress?
- What are the limitations that plague access to these rights and how can they be overcome?

1.5. Hypothesis

This work is based on the assumption that workers in Cameroon are accorded adequate protection under employment contracts owing to the highly acclaimed legal framework that exists, that these rights are accessible to them and adequate sanctions are administered to employers who do not observe workers' rights.

1.6. Aim and objectives of the study

1.6.1. General objective

To determine whether the protection of workers' rights in employment contracts have been achieved by existing legal and institutional mechanisms.

1.6.2. Specific objectives

- To ascertain whether workers are accorded adequate protection in employment contracts;
- To bring out the sanctions available to employers for abuse or non-respect of workers' rights;

- To bring out the means available to an aggrieved worker to seek redress;
- To identify the difficulties hindering the full enjoyment and enforcement of workers' rights;
- To establish strategies through which respect, protection and promotion of workers' rights can be ensured.

1.7. Significance of the study

We are of the opinion that this work will be commendable for the following motives:

It will attempt to shed light on the importance of protection and enforcement of workers' rights, in this era of globalization since workers are hired from all over the world.

It will attempt to highlight the drawbacks that hinder the protection and enforcement of workers' rights in employment contracts.

It will influence public policy with respect to the enforcement of workers' rights in relation to employment and labour contracts.

It will influence positive change in the way employers treat workers in spite of the terms of contract thus, improving working conditions and productivity.

It is hoped that, it will be a plus to existing literature in the domain of employment and labour law, and will serve as a springboard for students, lawyers, researchers, trade unionists and the general public as a reference tool and further research.

1.8. Literature review

This work will draw on diverse approaches to the safeguard and enforcement of workers' rights in employment contracts. Though a universal concept, workers' rights are interpreted differently in different states. What amounts to workers right in one state may not necessarily be the same in another.

In this section therefore, we shall analyze existing and established theories in relation to enforcement of workers' rights in employment and labour contracts. Considering the fact that this work is not a masterpiece, reference shall be made to borrowed academic materials which might assist in the understanding of the core issue under consideration.

Funmi & Adebimpe[47]assert that, International labour standards coded in Conventions and Recommendations, as well National Legislation regulating labour and employment relations remain the main instruments to ensure that in the course of employment, people work in dignity and humane conditions[48]. This is true because for any rights to be enforceable, there must exist legislation and legal mechanisms to ensure their protection and enforcement. In this light, the Constitutions of most states guarantee the respect of workers' rights thus, paving the way for other legislation to that effect. Our work therefore complements this assertion by evaluating the extent to which these consecrated rights have been implemented in Cameroon to guarantee the protection of workers' rights in employment and labour contracts.

Cohen & Moodley[49] in an article titled *"Achieving "Decent Work" In South Africa?"* affirm that, the ultimate goal of the International Labour Organization (ILO) is the attainment of decent and productive work for both women and men in conditions of freedom, equity, security and human dignity. This point is buttressed by the fact that, the concept of decent work is based on the understanding that, the motivation to work is not to earn income but more importantly a source of personal dignity, family stability, peace in community, and economic growth that develops opportunities for productive jobs and employment. These can only be achieved if workers are accorded adequate protection and enforcement of their rights, which is what our work seeks to ascertain.

Yanou[50] opines that, the complex relationship between the worker and the employer as well as the entire concept of the labour relationship is established on a foundation of the contract of employment. This is true since a contract of employment creates rights and obligations for parties to a contract. In an employment contract, any person irrespective of sex or nationality undertakes to place his services in return for remuneration under the directions of the employer. This picture depicts the subordination link (master and servant) which is characteristic of employment and labour contracts. Thus, the rights of the weak servant (employee) have to be guaranteed against the strong master (employer), and this can be ensured only by way of an employment contract. This work seeks to add flesh to Yanou's opinion by assessing the level of safeguard and enforceability of these rights under employment contracts.

[47] Funmi, A., & Adebimpe, A., *op.cit.*
[48] *Ibid*.
[49] Cohen, T., & Moodley, L., "Achieving "Decent Work" In South Africa?", *Potchefstroom Electronic Law Journal*, Vol. 15 No 2, (2012), p.320.
[50] Yanou, M. A., (2009), Labour Law: Principles and Practice in Cameroon, Buea, REDEF, p.19.

Tabe[51] brings out the differences between a worker and an independent contractor as concerns protection under contracts of employment. He further asserts that the Cameroonian Labour Code applies only to persons identified as workers who therefore benefit from its protection. The categorization of workers is a matter of procedure necessary to understand the employment relationship[52]. He fails to clearly bring out the sanctions that awaits employers who do not observe workers' rights. Our work sets out to contribute to bring to the lamplight sanctions available to defaulting employers who pay no respect to the rights of persons defined as workers in Cameroon.

Ogini & Adesanya[53] assert that, the scope of workers' rights is very broad but can be summarized to the protection and respect of human life in the workplace and the right to work itself. Workers' rights include among others the core rights of freedom of association, collective bargaining and prohibition of forced labour, child labour and discrimination in employment, rights to job safety, and equal pay for equal work. It is believed that workers' rights vary by countries. This buttresses the fact that for employment contracts to be valid, there must be proof of protection of these core rights and others determined by state policy. In this light, it will not be an overstatement if we say that, the mechanisms put in place and the level of enforcement of workers' rights depends on those rights considered by a given state as workers' rights. This work thus, aim at assessing how far such rights are protected, enforced and realized in employment contracts in Cameroon.

Andon[54] beliefs that, the degree of enforcement of workers' rights in a state is construed according to the level of its democracy. Democracy implies that, the people are well represented by persons they have freely chosen, who act according to the dictates of these people to maintain a stable society. This belief fits squarely with the assertion that, the motivation to work is not to earn income but a tool that guarantees peace, and economic growth, opportunities for productive jobs and employment, which are fruits of democracy. Thus, enforcing the protection of workers' rights is synonymous to promoting democracy. Our work

[51] Tabe, T. S., (2001), "Employer's Breach of Contract, Redundancy, Wrongful Termination and Notice", *Jurisdis Périodique N°. 44*, FSJP, University of Dschang.
[52] Yanou, M. A., *op. cit.*
[53] Ogini, B., & Adesanya, A., (2013), "The Workers' rights in Nigeria: Myth or Reality?", *International Journal of Business and Management Invention*, Volume 2 Issue 1, p.100.
[54] Andon. M., (2006*), "The Strikes as Social Phenomenon",* NU "Goce Delchev", Shtip, www.uni-kassel.de, accessed 13/06/2019 at 9:00.

examines the veracity of this statement by evaluating the extent of enforcement of workers' rights in employment contracts in Cameroon.

In an article entitled "*Revitalization Not Retreat: The Real Potential of the 1998 ILO Declaration for the Universal Protection of Workers' rights",* Maupain[55] assesses the impact of the Declaration on the achievement of fundamental rights themselves and on other workers' rights and asserts that more states have ratified the relevant ILO conventions since the Declaration, and compliance has been encouraging while for those states which have not yet ratified, the process of dialogue and technical cooperation are underway and there is remarkable progress[56]. This concurs the fact that, many states are aware of the need to protect and enforce workers' rights since its effects are a global issue. He fails to show how much these states have done to safeguard and enforce such rights. Our work sets out to verify what has been done by the state of Cameroon in this regard. Despite the view held by most writers which paint a positive picture with regard to the protection and enforcement of workers' rights in states, some do not buy this idea. They belong to the school of thought which holds that, states still need to do much to ensure the protection and enforcement of workers' rights.

McGeehan & Keane[57] in an article entitled *"Enforcing Migrant Workers' rights in the United Arab Emirates"* decry the ill-treatment of migrant workers in the United Arab Emirates (UAE) while the International community stays mute. They assert that the failure to protect and enforce workers' rights is as a result of weak domestic laws, poor enforcement mechanisms and lack of political will to address the issue[58]. This view buttresses the fact that fostering the protection and enforcement of workers' rights is synonymous to fostering democracy[59]. The UAE is not a democratic state *per se* and it has ratified only one International Convention in relation to human rights which is the International Convention on the Elimination of all Forms of Racial Discrimination, 1965. The study failed to show how far the existing weak institutions have attempted to safeguard and enforce workers right according to the UAE. Although this work is not based on migrant workers nor on the UAE, it is worth noting that a "worker is a worker". Thus, our work seeks to extend this study by evaluating the

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[55] Maupin, F., (2005) "Revitalization Not Retreat: The Real Potential of the 1998 ILO Declaration for the Universal Protection of Workers' Rights", *The European Journal of International Law, Vol. 16, no. 3*, EJIL, p. 439–465.
[56] *Ibid.*
[57] McGeehan, N., and Keane, D., (2008), "Enforcing Migrant Workers' Rights in the United Arab Emirates", *International Journal on Minority and Group Rights, Vol. 15, Issue 1*, p.1.
[58] *Ibid*.
[59] Andon., *op. cit.*

scope of protection and enforcement provided under employment contracts in a democratic state like Cameroon.

Anazetpouo[60] opines that the major innovation in the 1992 Labour Code concerned the flexibility in the legal identification of both the means of employment relations and the rights and duties of partners. This can be observed with the introduction of individual employment contracts in this code. This work seeks to bring out the rights and obligations of parties in these employment contracts and the means by which they are protected and enforced.

1.9. Scope of the study

This work is limited to workers in the formal and informal sectors whose access to work depend solely on the conclusion of employment contracts and how their rights are protected in such contracts, with emphasis on the Cameroonian experience.

1.10. Methodology

This research employed the analytical approach in interpreting provisions of texts and other relevant statutes relating to workers' rights in employment contracts. The doctrinal method of information collection was used. Thus, the primary sources constitute statutes such as the labour code and acts, the constitution, the International Covenant on Economic Social and Cultural Rights, the Universal Declaration of Human Rights, the International Labour Organization Conventions, and case law.

Meanwhile the use of text books, articles, newspapers, the internet, libraries, reports and official publications on the subject matter have been credible to build the secondary sources of data for this study.

1.11. Organizational layout

For easy reference and comprehension, this work is divided into five (5) chapters.

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[60] Anazetpouo, Z., (2010), *Le Système Camerounais des Relations Professionnelles*, Yaoundé Presses Universitaires d'Afrique.

Chapter one deals with a background to the study. It states the problem we are addressing, the objective of the study, the methodology used, the hypothesis adduced, reviews previous literature in this domain and demarcates the scope of the study.

Chapter two expatiates on the different aspects that have to be considered in the conclusion of an employment contract with respect to form and content to guarantee workers' rights.

Chapter three elaborates the legal framework that exist in order to ensure the safeguard, enforcement and protection of workers right in employment contracts at the national, regional and international levels.

Chapter four articulates on the control of the employer's powers and limitations, and also the challenges plaguing various stakeholders which hinder the observance and enforcement of workers right under employment contracts and

Chapter five concludes the work with proposed recommendations to the various stakeholders aimed at fostering and ensuring the full protection of workers' rights under employment contracts.

CHAPTER TWO

CONCLUSION OF EMPLOYMENT CONTRACTS AND OBLIGATIONS OF THE PARTIES

INTRODUCTION

In a contractual relationship, we have on the one hand the employee with a weak economic power and in dire need of a job, and on the other hand, the employer whose supremacy over the employee is well established economically coupled with the fact that he holds the job that the employee badly needs. In the face of this disequilibrium, the law steps in to strike a balance in the bargaining powers of the parties, to avoid exploitation of the employee by the employer[61].

The complex relationship between the employer and the employee is founded on a contract of employment[62]. The Civil Code in article 1101 defines a contract as "*a convention by which one or more persons are obliged towards one or more other persons to do or not to do something"* but is not clear on the definition of an employment contract as it makes mention of it passively as contract of hire[63]. We shall therefore turn our attention to our local laws for a clearer picture.

A contract of employment is an agreement by which a worker undertakes to put his services under the authority and management of an employer against remuneration[64]. It is negotiated freely by the parties as the Cameroonian Labour Code only sets the minimum standards from which they should not derogate. The main elements of an employment contract are work, salary and subordination[65]. Employment law is founded on contract law, thus, the payment of remuneration for services rendered falls in line with the Common Law principle that a promise must be supported by consideration. In common law, there are 3 basic essentials

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[61] Deya, B. I., (2006), "La Protection du Salarié dans l'avant-projet d'Acte Uniforme OHADA portant du Droit du Travail", Université de Douala, DESS Juriste Conseil d'Entreprise.
[62] Yanou, M. A., (2009), Labour Law: Principles and Practice in Cameroon*,* Buea, REDEF, p.19.
[63] Mathebeye, V. I., (2018), " La Famille et le Travail Salarie : Etude comparée des cas du Cameroun et du Tchad", Dissertation of Masters Degree, University of Dschang, p.2.
[64] Section 23(1) of the Labour Code.
[65] *www.cours-de-droit.net,* consulted on 28/05/2019 at 17:35.

to the creation of a contract: agreement; contractual intention; and consideration[66]. The first requisite of a contract is that the parties should have reached an agreement. Generally speaking, an agreement is reached when one party makes an offer, which is accepted by another party. The employment contract upon conclusion, creates rights and obligations between parties since it is synallagmatic in nature. The typical contractual character of an employment was recognized by the Supreme Court of Cameroon in *Etude de Me Nkili Martin v Abe Mvogo J.C.*[67] in which it was indicated that the worker receives the consideration for the work done and further added that, a worker who has been unpaid for several months can stop working without notice[68]. It is worth noting that, with the evolution of the concept of inactive wage, which demands payment for non-occupational illnesses, maternity leave and technical unemployment, the synallagmatic nature of the contract becomes questionable[69]. Nevertheless, to be protected under an employment contract and by the provisions of the Labour Code in Cameroon, a person must have the status of a worker or employee. Prior to the conclusion of a final contract of employment, the parties my agree to observe a trial period, known otherwise as probationary period.

2.1. Essential Elements for the Validity of an Employment Contract

For a contract to be legally enforceable, there are seven (7) essential elements that it must satisfy. These include, offer, acceptance, consideration, intention to create legal binding agreements, capacity and certainty. These preconditions aim at protecting the rights of the prospective employee from fraudsters and dubious individual against exploitation.

2.2.1. Intention to enter into a legal relation

An agreement, even if supported by consideration, is not binding as a contract if it was made without an intention to create legal obligations. That is, the parties must intend their agreement to be legally binding[70]. For two persons to enter into a legal relationship, the idea must however emanate from the intention of both parties to create a relationship which is enforceable. This intention could be express or inferred from the conduct of the parties, as no express rules exist as to what amount to intention. In the case of ordinary commercial

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[66] Allen, & Overy, *"Basic Principles of English Contract Law"*, Advocates for International Development, *www.a4id.org, accessed on the 15/06/2019 at 17:15.*
[67] Appeal N°. 66 of 30/05/1972.
[68] Yanou, M. A., *op. cit.* p.19.
[69] *www.cours-de-droit.net,* consulted on 28/05/2019 at 17:35.
[70] Allen, & Overy, *op cit.*

transactions, it is presumed that the parties intended to create legal relations. The onus of rebutting this presumption is on the party who asserts that no legal effect was intended, and the onus is a heavy one[71].

2.2.2. Offer and acceptance

When an offer has been accepted, it gives rise to a legally enforceable agreement.

2.2.2.1. Offer

An offer is the expression of willingness to contract on specified terms, made with the intention that is to become binding as soon as it is accepted by the person to whom it is address[72] while acceptance is a final and unequivocal expression of assent to the terms proposed. The idea that a contract of employment must be preceded by offer and acceptance was illustrated by the Supreme Court in *ICC v. Madam Gurrinaud*[73] where it was held that, the respondent could not on her own accord seek to introduce new terms on pay into her contract of employment. The workers attempt to unilaterally introduce new terms on pay in the instance case was treated by her prospective employer as a counter offer which could be legitimately rejected. Based on the above principle, the employer's refusal to employ her after her probation was indirectly regarded by the Supreme Court accordingly, as a rejection of the counter offer.

One interesting aspect of the offer component with regards to an employer is that, it does not need to be directed to a particular person, but rather, can be done through advertisement, such as on the internet, by notices, or posters. The party who initiates the offer is known as the offeror, while the party to whom the offer is made is known as the offeree. For the offer to be valid, it must be clear and unequivocal and not just and invitation to treat. There must be serious intent on the part of the offeror. The offer must contain definite terms or details. Some terms are clearly defined while others are implied. Also, an offer can be conditional unless the employer waives such conditions.

2.2.2.2. Acceptance

The offeree has the responsibility to clearly communicate his acceptance of the proposed contract. The acceptance must be on the same terms as those of the offer and must be

[71] *Edwards v Skyways Ltd, (1964) 1 WLR 349*.
[72] Treitel, G. H., (2007), *The Law of Contract*, 12th ed., London, Sweet & Maxwell, www.trove.nla.gov.au., accessed on 12/05/2019.
[73] Appeal N^0. 59 of 24/8/1978

unqualified. Therefore, if a contract of employment is conditional, the satisfactory adherence to the conditions must be met[74]. An offer in writing may be accepted orally or by conduct and such will be deemed to be sufficient communication of acceptance to the offer. It is imperative to note that, per section 2(1) of the Labour Code, all forced labour and or compulsory labour is forbidden. Thus, no court will give effect to a contract of employment to which one of the parties has been coerced into accepting. Forced labour is synonymous to slavery and is prohibited and punishable by the Penal Code[75].

2.2.3. Consideration

In common law, a promise is not, as a general rule, binding as a contract unless it is supported by consideration or made as a deed[76]. Consideration is "something of value" which is given for a promise and is required in order to make the promise enforceable as a contract. It is the inducement to enter into a contract of employment or the promise that is exchanged, “same right, and interest, profit accruing to one party, or detriment, loss or responsibility, given suffering by the other party”[77]. This is traditionally either some detriment to the promisee (in that he may give value) and/or some benefit to the promisor (in that he may receive value). For example, payment by a buyer is consideration for the seller's promise to deliver goods, and delivery of goods is consideration for the buyer's promise to pay. It follows that an informal gratuitous promise does not amount to a contract. With regards to employment, the employer usually offers payment in exchange for the employee’s service, which amounts to consideration. This is based on the principle of reciprocity. Consideration must be sufficient but need not be adequate. This means that something of value must be given in return for a promise but that which is given need not be of equal value to that promise. It must not be from the past and it must move from the promisee.

2.2.4. Capacity

In every valid contract, both parties must have the ability, or capacity, to understand the terms and nature of the contract. Parties to a contract of employment must have contractual capacity. This is the ability of a person to perform a legally binding act. The condition of contractual capacity relates to the insane, infants and women. Contracting parties must be of contractual age for them to be vested with capacity to contract validly. The Nigerian Labour

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[74] *www.businessplannigeria.com.ng, accessed on 28/05/2019 at 19:25.*
[75] Section 293(1)(a) &(b) as read with Section 342 of the Penal Code. Criminalizes slavery and punishes offenders with imprisonment from 15 years.
[76] Allen, & Overy, *op cit.*
[77] Garner, B. A., *Op. Cit.*

Act Cap L1 of the Laws of the Federation of Nigeria 2004 provides that, "*except in the case of contract of apprenticeship, no person under the age of sixteen years shall be capable of entering in a contract of employment under this Act*"[78]. An exception to this rule applies to minors in the contracts for necessaries. It is recognized that minors, like everyone else, have certain basic requirements. The term 'necessary' in relation to goods is statutorily defined in the Sale of Goods Act 1979 as "*goods suitable to the condition in life of the minor ... and to his actual requirements at the time of the sale and delivery*". In *Peters v Fleming*[79] the court held that a watch and chain could be regarded as necessaries for an undergraduate, but that the jury must decide whether it was reasonable that the chains should be gold. In *Nash v Inman*[80], an undergraduate at Cambridge, already well-supplied with clothes, bought 11 fancy waistcoats on credit from a Saville Row tailor. It was held that the goods were not necessaries, so the tailor was unable to enforce the contract.

As far back as the 19th Century, the doctrine of coverture[81] actively restricted married women's contractual capacity but the situation is different today with the enactment of Marriage Act 1958[82] and women can now enter into contracts on their own accord.

Per this Act[83], no woman shall be employed on night work, in a public or private industrial undertaking or in any branch thereof, or in any agricultural undertaking or any branch thereof"[84].

Children are not employed in enterprises even as apprentices before the age of fourteen under Cameroonian law unless authorized by the Minister in charge of Labour, considering the local conditions and the job to be assigned the child[85]. Women and children cannot be kept on jobs which are judged to be strenuous for them and are transferred to more suitable jobs[86]. If

[78] Section 9(3) of the Nigerian Labour Act Cap L1 of Laws of the Federation of Nigeria, 2004.
[79] 1932), 329 Mo. 870.
[80] (1908) 2 KB 1.
[81] *Coverture* refers to women's legal status after marriage: legally, upon marriage, the husband and wife were treated as one entity. In essence, the wife's separate legal existence disappeared as far as property rights and certain other rights were concerned. A woman who was subject to coverture was called *feme covert*, and an unmarried woman or other woman able to own property and make contracts was called *feme solo*. The terms come from medieval Norman terms
[82] Section 156.
[83] The Nigerian Labour Act Cap L1 of the Laws of the Federation of Nigeria 2004.
[84] Section 3 of ILO Convention N°.4, 1919 on the Prohibition of Night work for Women.
[85] Section 86(1) of the Labour Code.
[86] Order No. 16 / MTLS / DEGRE of 27 May 1969 establishing the nature of work forbidden to women and children.

this is not feasible, the contract is terminated without notice and no party is responsible for breach.

2.2.5. Consent must be genuine

An employment contract must be concluded with genuine consent of both parties. There must be the meeting of minds by both parties, *"consensus ad idem"*[87]. An offree must completely understand the terms of the contract, therefore contracts that are made by mistake, misrepresentation, fraud, duress and undue influence may not constitute genuine consent.

2.2.6. Legality

A contract of employment must be legal and in accordance with the maxim *"extupi causa non oritur action"*[88]. The contract will be void if entered principally with the objective of performing an act prohibited by law. Both in its object and mode of execution, the proposed contract must be legal, thus, a contract for smuggling and procurement of arms or contraband goods would be null and void.

2.3. Terms of an Employment Contract

An employment contract usually contains terms and conditions. While terms derive from bilateral agreements, conditions are unilateral instructions laid down by the employer[89]. An employment contract will usually be made up of two types of terms; express and implied terms.

2.3.1. Express terms

Contracts of employment are usually reduced into writing to contain express terms defining the conditions of the employment. In other words, express terms in an employment contract are those that are explicitly agreed upon between the employee and the employer[90] and may include:

- The name of the employer or employment;
- The title and description of the employee's job;
- The date and duration of the employment;
- Amount of wages, including any overtime and or bonus pay;
- The interval between which wages shall be paid;

[87] Section 21 of the Labour Code.
[88] No cause of action may be found upon an immoral or illegal act.
[89] Yanou, *op cit*.
[90] Section 24(3) of the Labour Code.

- Confidentiality and fidelity clauses;
- Sick pay;
- Redundancy pay;
- Hours of work
- Pension, etc.

The company superior draws the internal rules of the company at work to manage the employment relationship[91]. The Cameroonian Labour Code authorizes the employer in this aspect. The optimism is that the Labour Code has to be revised to ameliorate this situation and to ensure that the work rules are drawn up by the employer and employee together. This section further states that, no matter the source, internal rules and regulations would invariably deal with rules relating to technical organization of work, disciplinary standards and procedures, safety and hygiene as necessary for the functioning of the enterprise.

It is worth noting that express contractual terms may not be in one written document, but they may be in a number of different documents. They may not be written at all. Express terms may be found in:

- The job advertisement;
- A written statement of main terms and conditions;
- An office manual or staff handbook;
- Pay slip, etc.

In *Ndip Aaron v Catholic Education Secretary*[92] the court relied on the workers pay slip for evidence of some of the terms of the employment.

2.3.2. Implied terms

Apart from case where the text expressly requires a habitual writing, the recruitment of a worker of professional qualification can be done verbally. Though concluded verbally, the parties to the contract are subjected to legislative and regulatory texts eventually applicable to collective conventions and to the internal rules and regulations the enterprise. The theory holds a term in question was obvious that the parties did not see the need to state it expressly; in *Mears v. Safeguard Security Ltd*[93], the Court of Appeal held that the correct approach was to

[91] Section 29 of the Labour Code.
[92] (2001) 2 CCLR 127.
[93] IRLR 75, 1982.

consider all the facts and circumstances before implying a term into the contract, including the way the parties had carried out the contract since it was formed[94].

Nevertheless, terms which have not been expressly agreed upon by parties may be incorporated into a contract. The Cameroonian Labour Code can create obligations that are implied in the parties' individual contract of employment. This could be so when the employment contract makes no reference to become a common practice such that common law terms may apply to cover up any loop holes on vital issues in the express terms of employment.

Lord Millet[95] in *Johnson (A.P.) v. Unisys Limited* [96] stated that the 'implied term' "must yield to the express provisions of the contract" and Lord Steyn[97] that "parties are free to exclude or modify" implied terms[98]. There is conceptual inconsistency in allowing modification or exclusion of a term implied by law as a result of the nature of the contract. Although in orthodox contract law an implied term cannot override an express term, it has been held that the express terms must be exercised in the light of those implied and they must be "capable of co-existence[99]". More in recent times it has been held that the 'implied term' could "supplement" express terms. In *United Bank v Akhtar*[100] it was stated that the 'implied term' controls the exercise of an employer's discretionary use of an express term. It therefore forms an 'umbrella' under which other implications fall and under which managerial decision-making may be regulated[101]

Terms may be implied by fact for business efficacy or because they are obvious to the officious bystander representing the intentions of the parties. They may also be implied by law. These are default rules inherent in the nature of the contract. They are based on wider considerations as a necessary incident to the employment relationship. The implied term of mutual trust and confidence between an employer and employee is such an incident and is said to have become the cornerstone and crucial, overarching principle of interpretation of such contracts[102].

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[94] Selwyn, N., (1982), Law of Employment, 4th Ed, Butterworth, London, p.45.
[95] Lord of Appeal in the House of Lords.
[96] (2001) UKHL 13.
[97] Lord of Appeal in the House of Lords.
[98] *www.lawteacher.net,* accessed on 02/05/2019 at 18:15.
[99] *Ibid.*
[100] (1989), IRLR 507, EAT
[101] *Ibid.*
[102] *www.lawteacher.net,* accessed 02/05 2019 at 18:25.

2.3.3. Variation of Employment Contract

An employment contract is a very dynamic agreement, changing with changing circumstances. Nevertheless, any variation in contractual terms requires the approval of both parties and should be supported by consideration. The employer or employee may wish to change the contractual terms for many reasons.

A unilateral variation which is not accepted will amount to breach and can result in the repudiation of the contract. However, such repudiations do not automatically terminate the contract. Where repudiation emanates from the employer, the employee might affirm the changes by continuing the employment or deny them and such repudiation will terminate the contract. In *Burdett Courts v. Hertfordshire County Council* [103] it was held that an employee who continues to work under protest after a unilateral variation by the employer will not be prevented from bringing a claim for damages for breach of contract. Before we proceed, let us consider the types of employment contracts that exist.

2.4. Types of Employment Contracts

A contract of employment is an arrangement by which a worker undertakes to put his services under the authority and management of an employer against remuneration[104]. They are negotiated freely[105]and may be concluded for specified or unspecified duration.

2.4.1. Employment Contracts for specified duration

Also known as a fixed-term contract, is one whose termination is fixed in advance by the parties[106]. Its termination is subject to the occurrence of a future but certain event that is precisely indicated, which does not depend exclusively on the will of the parties, or a contract concluded for the execution of a specified task. For example, a contract for the construction of a house terminates as soon as the building is completed. These terms protect the employee from undue exploitation by the employer because both parties know exactly when the contract terminates well ahead of time. An employment contract of specified duration can only be concluded for a period of two years, renewable once[107] and if working relations continue, the contract is transformed into one of unspecified duration. If the employment contract is

[103] (1984) IRLR 91.
[104] Section 23(1) of the Labour Code.
[105] *Ibid.,* section 23(2).
[106] *Ibid.,* section 25(1)(a).
[107] *Ibid.,* section 25(3).

concluded with a foreign worker, renewal shall be subject to the authorization of the minister in charge of labour. Every contract of employment of specified duration exceeding three months, or requiring the worker to live away from his usual place of residence, shall be written[108] and a copy of the contract forwarded to the Labour Inspector of the area. This is to the effect that, there are certain conditions that are implied in such a contract for example, an employee who works in a place other than his usual place of residence is to be paid transport allowance or provided lodging.

2.4.2. Employment Contracts for unspecified duration

Also known as contracts of indefinite duration are those whose durations are not fixed in advance by the parties. The duration of most employment contracts in Cameroon are indefinite. Such contracts are usually meant to last as long as the employee has not attained retirement age. However, they may legitimately be terminated at any time at the initiative of any of the parties on the condition that prior notice is given[109]. The termination notice must be in writing and must set out the reason for termination, and the notice period shall start running from the date of such[110] which cannot be during the leave period of the worker. The employee is further protected under this provision in that, where the termination notice is at the initiative of the employer, the employee is given one day off each week with full payment to look for another job[111]. Furthermore, if the employer terminates the contract without the full period of notice being observed, the employee shall be paid compensation[112].

The Cameroonian Labour Code also makes mention of other types of employment relationships as we shall discover in the course of this work.

2.4.3. Probationary Hiring

The Cameroonian Labour Code provides for a trial period prior to signing a final contract. During this period, the employer and the worker agree to appraise in particular, the workers quality of services and his output, as concerns the employer and as concerns the worker, the working, living, wage, safety and hygiene conditions as well as the climate under the

[108] *Ibid.,* section 27(1).
[109] *Ibid.,* section 31(1).
[110] *Ibid.,* section 31(2).
[111] *Ibid.,* section 35(2).
[112] *Ibid.,* section 36(1).

employer[113]. This probationary period must be evidenced in writing and must not exceed a period of 6 months and 8 months for non-managerial and managerial functions respectively[114].

The duration of probation depends on the category of the worker as follows:

- 15 days for categories 1 and 2;
- 1 month for categories 3 and 4;
- 2 months for categories 5 and 6;
- 3 months for categories 7 to 9;
- 4 months for categories 10 to 12.

At the end of the probationary period, the parties may decide to conclude the contract of employment or otherwise, depending on their appreciation. Nevertheless, the probationary period could be renewed without need of another contract[115]. According to section 28(5) of the Cameroonian Labour code, where the workers employment is maintained beyond expiry of the probationary hiring contract and no new contract is made, the parties shall be deemed to have entered into a final contract taking effect from the beginning of the trial period. Where a final contract has to be concluded, certain elements must be considered for the contract to be valid.

2.4.4. Temporary employment

It is a temporary job in replacement of an absent worker or one whose contract has been suspended, or the completion of a piece of work within a specific time limit and requiring additional manpower[116].

2.4.5. Occasional employment

This is an occasional job aimed at coping with unexpected growth in the activities of the company as a result of certain economic conditions or entailing urgent works to prevent imminent accidents, organizing emergency measures or repairing company equipment, facilities or buildings which are dangerous for the workers[117]; for example during the organization of sporting events such as the African Nations Cup.

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[113] *Ibid,* section 28(1).
[114] *Ibid,* section 28(2).
[115] *www.cours-de-droit.net*, consulted 28/05/2019 at 17:35.
[116] *Ibid.,* section 25(4)(a).
[117] Section 25(4)(b) of the Cameroonian Labour Code, 1992.

2.4.6. Seasonal employment

This refers to a seasonal job generated by the cyclical or climatic nature of company activities[118], for example season for the harvesting of cocoa.

2.4.7. Contract of apprenticeship

A contract of apprenticeship is a contract whereby the head of an industrial, commercial or agricultural establishment or a craftsman undertakes to give or cause to be given to another person complete and systematic training and whereby the later under takes in return to obey the instructions which he receives and to perform the tasks assigned to him for the purpose of his apprenticeship[119] and must be in writing else be considered null and void[120].

In Common Law, apprenticeship is not only and employment relationship, for the apprentice agrees to serve the master for the purpose also of learning and the master agrees to teach the apprentice[121]. Many old rules, such as the master's duty to provide medical care and right to chastise, apply to the institution which is less widely adopted now than in former years. It is now included in most statutory definitions of employment (EPCA 1978, s.153(1))[122].

2.4.8. Subcontractors

A subcontractor [123] is a person who enters into a written contract with a contractor to carry out a specified piece of work or supply specified services for an agreement price. The subcontractor shall himself recruit the necessary workers. For example, a contractor who undertakes to build a house, may enter into a sub-contract with a subcontractor for the fabrication of the doors and windows of the house.

2.6. Test for Employment

The common law remains applicable in the realm of labour law unless abrogated by clear, unequivocal and express provisions of statute or by necessary implication[124]. It is therefore necessary that the origin of the distinction of an employee from an independent contractor be

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[118] Section 25(4)(c) of the Cameroonian Labour Code, 1992.
[119] Section 45 of the Cameroonian Labour Code, 1992.
[120] Section 46 of the Cameroonian Labour Code,1992.
[121] Lockton, D., *Employment Law*, London, Macmilan,1999, p.18.
[122] *Ibid.*
[123] Section 48 of the Cameroonian Labour Code, 1992.
[124] Tapiwa, G. K., (2015), "The Definition of an "Employee" Under Labour Legislation: An Elusive Concept", Dissertation of Master Degree, University of South Africa, p.20.

traced. The tests for employment were developed by judges in the context of vicarious liability to determine who was and employee[125]. There are three main tests to this effect which include control, integration and economic reality tests.

2.5.1. The Control Test

Control is a critical test to establish whether employment exists. It was in the context of vicarious liability that the courts first considered who was an employee. It was natural that they saw the extent of control the master had not only to what the worker did but also how he did it[126]. This was demonstrated in *Nanga Emile Honore v. SCTA*[127] in which the Supreme Court of Cameroon held that, the primary features of employment contracts are subordination and control of the worker by the employer and payment of remuneration to the worker[128]. A similar opinion was held in the English case of *Yewens v. Noakes*[129] where Bramwell LJ stated that: "*a person was an employee if his employer has the right to control not only what work he does but the way in which that work is done. An employee is 'a person subject to the command of his master as to the manner in which he shall do his work', and the master is liable for his acts, neglects and defaults, to the extent specified".* The Bamenda Court of Appeal, following the principle laid down by the Supreme Court, stated in *UNVDA Ndop v. Ange Mando*[130] that control and pay are important elements in the definition of a worker. Thus, control is a fact that must be proven by the plaintiff in every labour case, lest the action be dismissed.

An independent contractor on the other hand is hired to achieve a certain result and has complete discretion as to how he effects it. This control also serves to differentiate a servant from an agent, who similarly chooses exactly how he goes about the tasked assigned by the principal[131].

The degree of control required for ascertaining the existence of employment was however indirectly dealt with in *Assurance Des Provinces Reunies v. Tiogum David*[132], where the Bamenda Court of Appeal indicated that what is required is supervisory management of the worker backed with the power to discipline for non-compliance.

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[125] Lockton, D., *op. cit.*
[126] *Ibid.*
[127] Arrêté N°. 48/S of 1st April 1982.
[128] Yanou, *op cit*., p.9.
[129] (1880) 6 QBD 530
[130] BCA/C/88 Unreported Decision of the Bamenda Court of Appeal.
[131] Lockton, D., *op. cit.*
[132] (1999) CCLR part 4 62.

From the authorities cited above and the Cameroonian Labour Code[133] it is indisputable that control is quite clearly the crucial factor which delimits the domain of a worker and an independent contractor or a self-employed. The latter who merely sells the end product of his labour is not subject to any detailed control in the manner in which he carries out work[134]. However, it is apparent that the proponents of this test have naively failed to notice that control has simply changed it face in modern industrial relations[135] from the technical and managerial superiority of the employer to his power of disciplining an erring worker[136].

2.5.2. The Integration Test

This test was developed as a result of the pitfalls of the control test to adequately address the issue of an employee. The test is founded in the consideration of Denning L.J. in 1952 that, the decisive question was whether the person under consideration was fully integrated into the employer's organization[137]. This involves considering the ways in which a person contributes to the organization and is part of the structure[138]; i.e. is the person "integrated" into the organization or "accessory" to it? To what extent does the person contribute to service delivery or the production of goods? It focuses on the organization of work and less on control and subordination. If integration is stablished, then a person is likely to be and "employee". The Buea Court of Appeal in *CDC v. Akem Besong Benbella*[139] was influenced by the decision of Denning L.J.

2.5.3. Economic Reality Test

More recently, the Courts have recognized that no one test or series of criteria can be decisive. Instead they have adopted something like the American notion of an "economic reality" composite test and the clearest illustration is the very full judgment in *Ready Mixed Concrete (South East) Ltd v. Minister of Pensions and National Insurance*[140] *(1968)* in which a driver contracted with a mixed concrete company for the delivery of concrete. The contract declared him an "independent contractor" and set out wages and expenses. He was required to purchase his own vehicle and paint it in the company's colour and to drive the vehicle himself in compliance with certain company's rules including, for example, the manner of vehicle

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[133] Sections 1(1), 23(1) of Labour Code.
[134] *Performing Rights Society v. Mitchell and Booker* Ltd, (1924) 1 KB 762.
[135] *Lane v. Shire Roofing Co. (Oxford) Ltd,* (1995) IRLR 493.
[136] Yanou, M. A., *op. cit.* p.10.
[137] *Stevenson, Jordan and Harrison Ltd v. Macdonald and Evans* (1952) 1TLR 101.
[138] Chamboli, C. O., *op. cit.*
[139] Suit Nº. CASWP/267/97
[140] (1968) 2 QB 497

repairs and payments. The question arose as to whether the worker was entitled to have his employer pay National Insurance contributions on his behalf which would apply if he were an employee. Firstly, the Court held that whether a contract creates a 'master and servant' relationship between an employer and employee is determined on the basis of contractual rights and duties, and that the nomenclature used in the contract is irrelevant. Thus, the fact that the contract termed the driver to be an "independent contractor" is not material. Secondly, the Court held that employment under a contract of service exists when a person agrees to perform a service for a company in exchange for remuneration; and a person agrees, expressly or impliedly, to subject himself to the control of the company to a sufficient degree to render the company his "master," including control over the task's performance, means, time; and the contractual provisions are consistent with ordinary contracts of service. On the facts, the Court held that the driver had sufficient freedom in the performance of his contractual obligations as he was free to decide the vehicle, his own labour, fuel, and other requirements in the performance of the task. In lieu of these freedoms, he was an independent contractor and not an employee of the company.

When the conditions essential for the formation of an employment contract have been fulfilled and the employment test carried out to ascertain the status of parties, the worker is thus protected under the contract.

2.6. Duties of the Parties

There are only two parties to an employment contract[141]; the employer and the employee. A number of implied terms form part of the employment contract, imposing duties on the parties, even if they have not expressly agreed to them. Prior to the conclusion of an employment contract, the parties have no rights to enforce against each other[142]. In this section of our work, we shall look at the duties the employer is obliged to perform and the rights these duties bestow on the employee, cognizant of the fact that the employer's duties culminate into the employee's rights.

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[141] Kelese, G. N., (2005), Cameroonian Labour Law: General Principles & Practical exercises, Bafoussam, SLOPP, p.20.
[142] *www.nusta.na*, accessed on 07/05/2019 at 18:02.

2.6.1. Obligations of the Employer towards the Employee

The employer's duties to his employee basically come under Common Law and Statutes[143]. The received English Common Law which include the Doctrine of Equity and the pre 1900 Statutes of General Application which were received in Nigeria and are applicable in Cameroon by virtue of Section 11 of the Southern Cameroons High Court Law (SCHL), 1955 introduced some duties in the employer/employee relationship.

The Cameroonian Labour Code has also imposed additional liability on the employer for the sake of the employee[144]. The rationale for these strict duties imposed on the employer is to protect the employee because a plaintiff (employee) may succeed in an action for breach of statutory duty even if he would have failed at Common Law. This is because the employee does not have to prove that his employer acted negligently, he only needs to show that statutes imposes a duty on the employer, that the duty is owed him, that the employer has committed the breach and that the breach has caused him damage[145].

2.6.1.1. Duty to pay wages

Sections 1(1) and 23(1) of the Cameroonian Labour Code place an obligation on the employer to remunerate anybody who has accepted to place his/her services under the employer's management and control[146]. Equally worthy of note is the fact that wages shall be payable in legal tender only[147]. Any other form of payment is void. In this light, it is imperative for an agreement on pay to be expressly stated in all employment contracts. Where such a term does not exist, the law will step in to insist on one. In establishing such a wage, the Court or Labour Inspector at the conciliation stage, shall ensure that it is comparable to what is normally paid in similar employments subject to the fact under no circumstances should what is fixed fall below the minimum wage of XAF 36.270 monthly.

Generally, workers' wages may be fixed or determined through negotiations within the framework of a collective agreement or company agreement[148]. The above principle was

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[143] *www.articlesng.com,* accessed on 07/05/2019 at 18:24.
[144] Chamboli, C. O., *op. cit.*
[145] Chibuzor, T., *op. cit.*
[146] Sama-Lang, (2014), "The Security of Private Sector Employment in the Post-Economic Crisis Period: The Case of Cameroon", Doctorate Thesis, University of Buea, p.99.
[147] Section 67 of the Labour Code.
[148] *Ibid.,* sections 62(1) & (2) of the Labour Code.

affirmed by the South West Court of appeal in *Societé UCB v. Allianhu Fidelle*[149]. These provisions are intended to protect ignorant workers who may be otherwise exploited by unscrupulous employers.

The emphasis on minimum wage is particularly significant because the payment of extremely low wages to workers has been judicially criticized as amounting to a violation of a country's treaty obligation. Since the ILO and contemporary thinking[150] extremely low wages to workers as a "cause of forced labour and debt bondage"[151].

2.6.1.2. Duty to provide work

The most basic obligation of and employer is to provide work for his/her employee[152], although he is not under a duty to provide such work so long as he pays him his wages. Although undeniably, section 61(1) of the Cameroon Labour Code defines and relates wages to "work done or services rendered or to be rendered", this in no way suggests that the employer is compelled to give the worker actual work to do. In *Lacore Jean v. Alubassa*[153], the Supreme Court appears to have suggested that there could be an obligation to provide work to a worker which is normally suspended during the period of leave[154].

The principle requiring the scrupulous respect for benefits and protection prescribed by the Labour Code was classically illustrated by the Supreme Court of Cameroon in *Guinness Cameroun v. Mbiaffeu Jacques*[155]. This principle was also followed in *Enongene Williams v. University of Buea*[156] where the court in Kumba awarded to the plaintiff special damages representing the extra hours he worked in excess of the statutory prescribes period.

Where a workers' remuneration depends on the amount of work done [157], refusal to offer work to such a worker could be translated as refusal of an opportunity to earn a salary under section 63 of the Cameroonian Labour Code.

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[149] Suit N°. CASWP/L20/2003.
[150] The Indian Supreme Court has held in *Bandhua Mukti Morcha v. Union of India and others* (1984) that workers paid below the minimum wage were bonded workers.
[151] Chamboli, C. O., *op. cit.*
[152] Sama-Lang, *op.cit.*
[153] Appeal N°. 177 of 25/4/1961.
[154] Section 63 of the Labour Code which gives practical expression to the spirit of non-discriminatory pay prescribed in section 61(2).
[155] Appeal N°. 5 of 16/11/1978.
[156] Decision of the Kumba High Court (Unreported).
[157] Such as in agricultural establishments and plantations.

Where payment is based on commission, there is an implied common law obligation to give work to the servant in spite of the decision of Asquith J. in *Collier v. Sunday Referee Publishing Co. Ltd*[158] that, contracts of employment do not oblige a master to give work to a servant so long as the servant has been paid. Such refusal may amount to constructive dismissal as was the case in *Breach v. Epslon Industries Limited*[159] where the contract for which the plaintiff was employed as a chief engineer[160] was transferred to an overseas office leaving him with no work to do. It was held that failure to provide him with work amounted to a constructive dismissal.

2.6.1.3. Weekly rest

The occupational life of a worker alternates between hours of work and rest[161]. "*weekly rest shall be compulsory. It shall consist of at least 24 (twenty-four) consecutive hours each week. Such rest shall fall as a rule on Sundays and may under no circumstances be replaced by a compensatory allowance*[162]". Nevertheless, employers could accord rest on days other than Sunday in establishments such as hospital and hotels.

Public holidays are legal public feasts regulated by law which are civil or religious. Rest on such days is compulsory but not for establishments whose functioning can't be interrupted such as firefighters. Also, exceptional permission for absence may be granted to a worker for personal reasons[163] of three working days and may not exceed 10 days per year.

This point is further highlighted by the Universal Declaration of Human Rights ILO Convention N°. 14 on Weekly Rest (Industry) Convention[164], 121, which Cameroon has ratified.

2.6.1.4. Paid leave

The employer is under a statutory duty to grant periodical holiday with pay to the employee[165]. This period is commonly known a leave[166]. The right to paid leave is provided by

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[158] (1940), 2KB 647.
[159] (1976), IRLR 180.
[160] Sama-Lang, *op. cit.*
[161] Kelese, G. N., *op. cit.*
[162] Section 88(1) of the Labour Code.
[163] As governed by Decree N°. 75/29 of 10/06/1975
[164] Article 24.
[165] Chibuzor, T., *op. cit.*
[166] Chamboli, C. O., *op. cit.*

section 89(1) of the Cameroonian Labour Code. Workers have the right to paid annual leave by the employer but this right is acquired on the condition that the worker has been working for at least one year with the employer[167].

Except for maternity leave pursuant to section90(2) of the Labour Code, the workers' rights to paid leave may not be taken in an arbitrary and disorderly manner. It was held in *Hannah Nganje v. University of Buea*[168] that a worker who after applying for leave took off without waiting for approval of her employer had acted unreasonably.

2.6.1.5. Provision of safe working environment

It is the obligation under common law of the employer to draw up a system of how work is to be done, the persons to do the work, when a particular thing is and is not to be done, the system of administration being reasonable[169]. Hence, the House of Lord's decision in *Wilson and Clyde Ltd v. English*[170], that the duty as to safe system is a personal duty which the master owes to his workers, a duty he cannot delegate in such a way as to absolve himself from personal liability. Thus, a "three pronged" duty was set on the employer; to provide safe machinery, safe working systems and responsible staff.

Section 95(1) of the Labour Code sets a high hygiene and safety standard in the Cameroonian workplace. While the employer is by this provision required to provide the worker with a safe working environment, the general modalities to this regard are fixed by Arrêté Nº. 039/MTPS/IMI of 26 November 1984.

The Judge, in dealing with his own rhetorical question on to whether an employer owes any duty of care to his servant in *CDC v. Akem Benbella*[171], pointed out that this duty exists. Identifying the duty as that enunciated in *Smith v. Baker & Sons*[172], Bawak J.C. identified the substance of this duty as requiring "reasonable care to provide proper appliances and to

[167] Kelese, G. N., *op cit.*
[168] HCB/18/98, the Court also held that the worker who herself resigned cannot turn around to claim damages for wrongful termination.
[169] Chibuzor, T. O., "Employer's Liability to his Employee under the Nigerian Contract of Employment", *www.studentarrive.com.ng*, accessed 07/05/2019 at 19:22.
[170] (1937) ALL ER 628.
[171] (1977) Suit Nº. CASWP/67/96.
[172] (1891) AC 325.

maintain them in proper condition, and to carry on his operations as not to subject those employed to unnecessary risk".

2.6.1.6. Provide workers certificate of service

The employer has a duty under section 44(1) of the Labour Code to issue to a departing worker a certificate of service. An employer who fails to provide a certificate of service as prescribed is liable under section 167(1) of the Labour Code to the payment of fine from XAF 100.000 to 1.000.000. In *Enongene Williams v. University of Buea*[173], the Court significantly held that the provision of section 44 could not be ignored even where the worker did not claim it. Vera Ngassa J siting at the High Court Buea criticized the tendency of employers to treat the duty to provide a certificate of service under section 44 in *Ndongo Fred Ebanja v. The Chambers of Agriculture*[174]

The critical question is; are these decisions sound in principle? Admittedly, although the decision to award damages to the worker who is the victim of the violation and a fine for the benefit of government which has suffered no loss makes no sense, it seemingly runs contrary to the express provisions of section 167(1) of the Labour Code. In *SONEL v. Menu Daho*[175], the Court of Appeal of Buea cleared the possibility of any doubt over this issue when it held that the failure to issue a certificate of service attracts the liability of a fine payable to the state treasury. A similar decision had also been taken by the same Court of Appeal Division in *Offa v. C.D.C*[176].

2.6.1.7. Provide proper tools and plants for work

The employer is under the duty to supply proper tools and maintain the necessary plants that will enable the employee to exercise his duties. In *Lovell v. Blundell's and Crompton & Co. Ltd*[177], the employer was found not to have provided the plants for the employee's work. In *Bowater v. Rowley Regis Cooperation*[178], even where the tools are purchased from a reputable dealer and an employer has knowledge of its dangerous character, he is liable to his servant who is injured. This obligation is a continuing obligation in the course of the contract.

[173] (1999) unreported decision of Kumba Magistrate Court.
[174] (2008) 1 CCLR PT 1262.
[175] CASWP/10/2000 Unreported.
[176] HCF/1023/2001 Unreported.
[177] (1978) 1 ALL ER 1026.
[178] (1982) IRLR 75.

2.6.1.8. Safe place of work

It is the duty of the employer to provide a safe working environment for his employees, where they will be safe to carry out their work effectively. If it is a production industry with plants, it should be a good structure with a fence securing it[179].

2.6.1.9. Competent staff with reasonable competent fellow employees

The employer must act reasonably or exercise reasonable care to employ reasonably competent and proficient staff and also competence fellow employees. The Court stated in *Hudson v. Ridge Manufacturing Co. Ltd*[180], per Streatfield J; "if a fellow workman…by his habitual conduct is likely to prove a source of danger to his fellow employees, a duty lies fairly and squarely on the employers to remove the source of danger". The employer must therefore select competent and suitably qualified people to do his work, providing training and necessary instructions as the case may be. He must ensure that those in charge have the knowledge and ability to see that the work is done safely. In *Smith v. Crossley Brothers Ltd*[181], the Court of Appeal however re-emphasized that the duty to provide competent staff includes the duty to supervise them properly. If an employer knows or can foresee that acts being done by employees might cause physical or psychiatric harm to a fellow employee, it is arguable that the employer could be in breach of duty to that employee if he did nothing to prevent those acts when it was in his power to do so[182].

Section 29 of the Cameroonian Labour Code, 1992 obliges the company head to draw up internal regulations for the functioning of the enterprise[183]. This document which is unilaterally conceived by the employer, bestows on him exorbitant powers of control and sanctions which must emanate from it[184]. Thus, it is the principal source of the employer's power[185]. In this light, the employer is under the obligation to conceive and produce the internal rules and

[179] Chamboli, C. O., *op. cit.*
[180] (1976) IRLR 50.
[181] (1951) 95 SJ 655.
[182] www.lawteacher.net, accessed on 12/06/2019 at16:05.
[183] Pougué, P.G., et Tchokomakoua, V., (1989), Jurisprudence Sociale Annotée, Tome II-1986-1987, SOPECAM, Yaoundé, p.11.
[184] *Ibid*.
[185] *Ibid*.

regulations, and to determine its content[186]. The internal regulation is the constitution of the enterprise[187].

Paradoxically, the internal regulations is the center of controversy today as some schools of thought hold that it is an instrument for the oppression of worker, a "judicial anomaly", "the average age of the 20th Century", a "retrograde and phased-out institution", which is supposed to belong to the past[188]. It usually consists of a long list of restrictions for the workers with no obligations for the employer[189].

2.6.2. Rights of the Employee

Many statutory employment rights are minimum terms. The employer and employee are free to agree better terms between themselves in a contract of employment or collective agreement. When the terms of a contract of employment are not adhered to, either the employee or the employer may have grounds to make a complaint of breach of contract[190]. The conclusion of the employment contract confers rights to the employee which amounts to their protection under such contracts. In Cameroon statutory protection is provided by the Cameroonian Labour Code. The employee enjoys the following protection: -

2.6.2.1. The right not to be unfairly dismissed

Unfair dismissal was a completely new concept when ushered in as a minor part of controversial English Industrial Relations Act 1971[191]. Unfair and wrongful dismissal are separate and distinct causes of action. Philip J. said in *Redbridge London Borough Council v. Fisher*[192] : "*The jurisdiction based on paragraph 6 (8) of Schedule 1 to the Trade Union and Labour Relations Act 1974 has not got much to do with contractual rights and duties. Many dismissals are unfair although the employer is contractually entitled to dismiss the employee. Contrariwise, some dismissals are not unfair although the employer was not contractually entitled to dismiss the employee. Although the contractual rights and duties are not irrelevant to the question posed by paragraph 6(8), they are not of the first importance".*

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[186] *Ibid.*
[187] Camerlynck, G, H., et Lyon-Caen, G., Droit du Travail, précis DALLOZ, 11e édition, No. 376, p. 631.
[188] Lyon-Caen, G., Une anomaie juridique : Le règlement intérieur, D. 1969, Chron, p. 247.
[189] Pougué, P.G., et Tchokomakoua, *op. cit.*, p.9.
[190] *www.equality-ne.co.uk* , accessed 08/05/2019 at 18:15.
[191] Andermann S.D., (2001), Labour law: Management Decisions and Workers' rights, 2nd ed, London, Butterworth p.35.
[192] (1978) ICR 569.

Under the Cameroonian Labour Code, dismissal occurs when an employment contract is terminated at the initiative of the employer with or without notice, by repudiation or where he fails to renew a fixed-term contract on the same terms[193].

As a protective measure, the Cameroonian Labour Code presumes every dismissal to be *prima facie* wrongful unless proven otherwise by the employer. Thus, when the employee is dismissed as a result of serious misconduct[194] it is for the employer to satisfy the Courts that the alleged misconduct is well-founded and this offers further protection to the worker from the whims and caprices of the employer[195].

2.6.2.2. The right to redundancy payments

Where there is a close-down of the business, there are few legal problems. The tribunal is merely required to see if in fact the business has been shut down and the reason for such shut down is not important[196]. Most employers use redundancy as a defense for terminating workers[197] owing to the closure of the employer's office[198].

The view held in *Joseph L.M. Yemba v. The General Manager West Cameroon Electricity Corporation Victoria*[199] that a worker may also be declared redundant following a reduction in staff, but this reason must not be a capricious way of laying-off and unwanted worker. In *Namadina v. Grand Travaux de l'Est*[200], the Supreme Court worked out and adopted the view that and employer who alleges reduction in staff in order to frustrate a workers entitlement to length of service will be liable for wrongful termination, giving rise to and action for damages at the instance of the aggrieved party.

Section 40(5) of the Cameroonian Labour Code states that, where and employee who has been declared redundant states in writing that he does not accept the measures referred to in section 40(5), he shall be dismissed with pay in-lieu-of notice and severance pay, where he meets the conditions.

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[193] Section 34(1) of the Labour Code.
[194]*Ibid.,* section 37(1).
[195] *Smith v. City of Glasgow District Council* (1985) ICR 796.
[196] *Moon v. Homeworth Furniture* (Northern) (1976) IRLR 298.
[197] Tabe, T. S., "Employers' breach of contract, redundancy, wrongful dismissal and notice", The case of *TRAPP Groupement d'Entreprise v. Che Guza Cletus*, Appeal N°. BCA1/2. L/98 (Unreported).
[198] *John Angho v. Agip Cameroon S.A*., Suit N°. WC/11A/69 H.C. Buea (Unreported).
[199] Suit N°. WC/15A/69 H.C. Buea (Unreported).
[200] C.S. Arrêt N°. 37/S du 15 avril 1976, *bulletin de arrêts N°. 9*, 1976, p.4691.

2.6.2.3. The right to medical suspension pays

Under the Cameroonian Labour Code, during the workers absence in case of illness duly certified by a medical practitioner approved by the employer or to a hospital establishment recognized by the state, for a period not exceeding six months, this period shall be extended until such a time as the worker is replaced, and during such period, the employer shall be bound to pay the worker. If the contract is of unspecified duration, compensation equal either to compensation in-lieu-of notice when the period of absence is equal to or exceeds the period of notice, or to the remuneration to which the worker would have been entitled during his absence when the period of absence is shorter than the notice period. In the same case, if the contract is of specified duration, the compensation shall be granted within the above limit, by reference to the notice provided for contracts of unspecified duration, the length of service being deemed to run from the state of the contract in force. In such cases, suspension may not have the effect of extending the term of the contract initially provided for[201].

2.6.2.4. The right to maternity protection

Apart from the important protection from unfair dismissal resulting from pregnancy, the Cameroonian Labour Code offers more protection in relation to pregnancy to the worker.

Every pregnant female worker whose pregnancy has been medically certified may terminate her contract of employment without notice[202] and will not be oblige to pay compensation[203]. She is entitled to fourteen (14) weeks of maternity leave which takes effect four (4) week before the due date of confinement[204], and may be extended to six (6) weeks in case of illness and if the confinement occurs before the due date, the rest period shall be extended such that the worker benefits from the full fourteen (14) weeks. Apart from the various social and family welfare benefits provided for by legislation, the woman is duly entitled to an allowance payable by the National Social Insurance Fund, equal to the amount of wages actually received at the time of suspension of the employment contract during maternity leave. She retains the right to benefit in kind[205].

[201] Sections 32-34 of the Labour Code.
[202] Section 84(1) of the Labour Code.
[203] *Ibid.,* section 36.
[204] *Ibid.,* section 84(2).
[205] Article 24 of the Universal Declaration of Human Rights.

Also, for a period of fifteen (15) months after birth, the mother is entitled to nursing breaks[206] which are periods one hour per working day[207] during which the mother is allowed to go and breastfeed her child.

2.6.2.5. The right to be protected from night work

Per the Cameroonian Labour Code[208], any work done between ten p.m. and six a.m. shall be considered night work. In this regard, women and children are prohibited from such night work in industries as they are accorded a daily rest period of at least twelve (12) consecutive hours[209], excluding women with executive duties and those involved in services not involving manual labour[210]

Employers who defile the above provisions are punished with a fine ranging from XAF 200.000 to 1.500.000 or with imprisonment from 6days to 6 months[211].

2.6.2.6. The right to transport fare

Where an employee works away from his usual place of residence as a result of the employment contract or the employer, he has the right to travelling expenses for him, his spouse, minor children living with him as well as for the transportation of their luggage[212]. This right is enforced by Decree N°. 93/573/PM of 15th July, 1993 fixing conditions for payment of transport fare to displaced workers.

2.6.2.7. The right to join a trade union

Workers have the right to set up a trade union without prior authorization for the defense, promotion and protection of their rights[213]. In this light, the no prior authorization either from the state or the employer is need in so far as the association (trade union) formed aims to protect, promote and defend the economic, cultural and moral advancement of its members. The worker has the right to join any such association of his/her choice[214].

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[206] Section 85(1) of the Labour Code.
[207] *Ibid.,* section 85(2).
[208] *Ibid.,* section 81.
[209] *Ibid.,* section 82(1).
[210] *Ibid.,* section 82(3).
[211] Sections 168-170 of the Labour Code.
[212] *Ibid.,* section 94.
[213] *Ibid.,* Section 3.
[214] *Ibid.,* section 4.

They are also protected against any discriminations in relation to their employment or any practices which tend to make their employment subject to their membership or non-membership to a trade union, or their dismissal or suffer any prejudice because of their membership or non-membership or participation in union activities[215]

2.7. Duties of the Employee towards the Employer

Despite the numerous rights available to the employee, he also owes certain duties towards the employer.

2.7.1. The duty of obedience and respect

As a result of the contract, there exists a subordination link from which the duty of obedience emanates[216] and buttressed by sections 1(1) and 23(2) of the Cameroonian Labour Code. Disrespectfulness, disobedience and insolence are signs of insubordination, which leads to loss of confidence in the employee by the employer[217] and may result to dismissal. This was adopted in the 1974 Labour Code in the case of in the case of *Gwarak Jean v. Splangounias Stamatiuos*[218] where the Supreme Court of Cameroon held that an employee who responded rudely when questioned by the employer about the apparent negligence with which he had worked was justifiably dismissed. The worker in question was a night watchman who had been summarily dismissed because he answered that "I am not your boy, I am not your slave, I am neither your bodyguard leave me in peace" when told to do his job carefully[219].

This does not mean that the employee is bound to respect every order given by the employer since obedience and respect in the sense must be related to the job, he was employed for[220]. In *Laws v. London Chronicle*[221], a director said to and employee "stay where you are". She did not obey and walked away. She was summarily dismissed although she had been a good employee all through. On appeal it was held that, the workers conduct did not go to the root of the contract of employment to justify her dismissal and she was re-instated in her position in the company.

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[215] *Ibid.*, section 4(2).
[216] Kelese, G. N., *op. cit.*
[217] *Ibid.*
[218] Appeal N°. 18 of 31st January, 1974.
[219] Yanou, M. A., *op. cit.*
[220] Sama-Lang, I, F., *op. cit.*
[221] (1959) A11 ER 311.

Thus, a duty of obedience arises where the orders are reasonable and legal[222]. If the instructions are illegal or criminal in nature, failure to obey such order could be justified and any termination resulting from their disobedience amounts to termination[223].

2.7.2. The duty of fidelity and loyalty

Employment contracts are built on trust thus, the employee must be faithful and loyal towards the employer and must devote all his gainful activity to the undertaking[224]. This moral duty is often judged based on the professionality and the commitment with which the employee executes his job.

2.7.3. The obligation to preserve professional secret

Every profession, job or business has secrets or techniques which must not be disclosed to the public. Workers are called upon not to make these know to third party and/or exploit them for their own personal gain.

In establishments like hospitals that receive patients, information received from them must be kept secret and if a worker makes them reveals them to a third party, this may attract grave consequence which might culminate into termination[225]. There are certain implied terms in any contract of employment one of which is not to disclose secrets, i.e. an employee is under an implied obligation not to disclose or make public any professional or trade secrets or confidential information which he has learnt by reason of his employment. A doctor is bound to keep his patient's secrets as far as he lawfully can[226]. *In A.B. v. C.D.*[227], it was held that secrecy is an essential condition of the contract between a medical man and his employers, and that breach of secrecy affords a relevant ground for an action of damages.

Also, in *Tournier v. National Provincial Bank*[228], the bank disclosed information to the employer of one of its customers. As a result of this, the employer refused to renew employment. The customer sued the bank for slander and breach of its duty of secrecy. The

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[222] Kelese, G. N., *op. cit*.
[223] *Ibid.*
[224] Section 31 of the Cameroonian Labour Code, 1992.
[225] www.scielo.br, accessed on 17/25/2019 at 19:11.
[226] Lee, Y. K., (1967), "Professional Secrecy and the law" *Singapore Medical Journal*, Vol. 8, No.'2, June, p.87.
[227] (1851) 14 Dunlop 177
[228] (1924) 1 K.B. 641.

Court of Appeal held that there was an implied term in the contract that the bank should keep its clients' affairs secret.

The Cameroonian Penal Code[229] punishes the breach of secrecy with imprisonment of from 3 months to 3 years or fine from XAF 20,000 to 100,000. If it is a commercial secret, imprisonment is from 3 months to 3 years or fine of XAF 100,000 to 5,000,000 or both[230].

2.7.4. The duty of care and skill

Per the contract of employment, the employee is bound to exercise his duty with reasonable care and skill. This implies that he is not supposed to delegate the duty to a third party[231]and is supposed to take care of the employer's property such as tools and equipment[232]. If the employer's equipment is stolen or lost as a result of the employee's negligence, this will amount to breach and the employee will be liable to dismissal[233].

2.7.5. The duty to respect discipline and internal regulations

Every establishment has internal rules and regulation (workers handbook) by which its employees are govern and they are bound by it. They contain the organizational layout of the establishment and rights and obligation of employees including hygiene and safety conditions, security, working hours, rules of conduct, etc. Repeated non-observance of company rules and regulations is a legitimate cause for dismissal[234].

CONCLUSION

Identifying the employee under the common law has not always been easy. Several tests were developed by the courts but these tests never produced satisfactory results. Inconsistencies in its application has led to the development of an incoherent jurisprudence in distinguishing an employee from an independent contractor. Admittedly, the courts have failed to come up with a lasting solution to labour law's perennial problems giving the employer avenues to deny employees their rights due to the lack of a definite definition. Hence the need for statutory intervention as seen in section 1(1) of the Labour Code. It is only when one is clearly proven

[229] Section 310.
[230] Section 311.
[231] Sama-Lang, I, F., *op. cit.*
[232] Kelese, G. N., *op. cit.*
[233] *Ibid.*
[234] *Ibid.*

to be a worker that he/she can be protected by the Labour Code as evidenced by the rights and duties of the parties.

In the next chapter, we shall elaborate on the legal frameworks that exist in order to ensure the safeguard, enforcement and protection of workers right in employment contracts at the national, regional and international levels as far as Cameroon is concerned.

CHAPTER THREE

LEGAL AND INSTITUTIONAL FRAMEWORK FOR THE PROTECTION AND ENFORCEMENT OF WORKERS' RIGHTS

INTRODUCTION

States have enacted a number of laws as well as set up institutions mandated to safeguard workers' rights. There also exists a plethora of instruments at the international, regional, sub-regional and national levels that make provision for protection and enforcement of workers' rights. At the international level we have instruments such as the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights[235] (ICCPR), the International Covenant on Economic Social and Cultural Rights[236] (ICESCR), the Convention on Minimum Age for Admission to Employment[237] and the ILO Convention on Forced Labour[238], which all target various abuses of workers' rights in the course of employment. States are obliged to put in place legal and institutional frameworks to ensure the protection of workers' rights and to afford workers an opportunity to work in a decent and safe environment.

This chapter elaborates the legal framework that exist in order to ensure the safeguard, enforcement and protection of workers right in employment contracts and their effectiveness at the national, regional and international levels. It is subdivided into two sections. The first analyzes the legal framework while the second expatiates on the institutional mechanisms.

3.1. The Legal Framework for the Protection of Workers' rights

In this section of our work, we shall look at the legal mechanisms that regulate the protection and enforcement of workers' rights at the national, regional and international level as far as Cameroon concerned.

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[235] Ratified by Cameroon on 27th June, 1984.
[236] *Ibid.*
[237] Ratified by Cameroon on 13th August, 2001.
[238] Ratified by Cameroon on 7th June, 1960.

3.1.1. National Framework

In order to attract investors and boost its economic growth, Cameroon has taken special measures to guarantee protection of workers through the enactment of laws and policies. Workers in Cameroon are protected under contracts and by statutory means. Although this work concerns itself only with protection in employment contracts, statutory protection and the doctrines of equity apply to the enforcement of workers' rights. We shall therefore turn our focus to the laws that make up the national framework. The national framework includes state sources such as the Constitution, case law, the Labour Code and texts of application such as decrees and to a certain extent, orders, circulars and service notes[239], and professional sources such as collective agreements, contracts of employment, professional customs or usages, and internal rules and regulations of enterprises[240].

3.1.1.1. The Constitution

The Constitution is the supreme law of the land and provides for the protection of workers' rights by affirming its attachment to the fundamental freedoms enshrined in the Universal Declaration of Human Rights, the Charter of United Nations and the African Charter on Human and Peoples' Rights[241]. It provides among others that; the State shall provide all its citizens with the conditions necessary for their development, no person may be compelled to do what the law does not prescribe; every person shall have the right and the obligation to work[242]. As the Supreme Law of the State, it guarantees the protection and enforcement of all workers' rights, since all other legislation emanate from it.

3.1.1.2. The Labour Code

Law No. 92/007 of 11 August 1994 instituting the Labour Code is the main legislation governing labour relations between employees and employers as well as between employers and apprentices under their supervision[243]. It applies only to persons classified as workers[244] and clearly states persons to whom it does not apply[245].

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[239] Kelese, G. N., *op. cit*.
[240] *Ibid*.
[241] Preamble of the 1996 Constitution.
[242] *Ibid*.
[243] *www.ngouanalaw.com*, consulted on 12/04/2019 at 14:32.
[244] Section 1(2) of the Labour Code.
[245] *Ibid, se*ction 1(3).

Divided into 10 parts, it is comprised of 177 section and lays down the minimum standards required by law, to which employment contracts must conform[246]. It guarantees workers the freedom to create trade unions[247], to join a trade union of their choice[248], protects them against anti-union discrimination[249], imposition of contractual provisions[250], wrongful termination [251] and, provides for equal pay for same kind of work done without discrimination[252], not leaving out institutions that regulate, protect and enforce these rights.

The Labour Code lays down the rules governing contracts of employment[253], wages[254], conditions of employment[255], safety and hygiene at workplace[256], administrative bodies and measures of implementation[257], professional institutions[258], labour disputes[259], and penalties[260]. There also exists other legislation which govern the different aspects of labour law[261] such as decrees and ministerial orders such as Decree No. 93/574 of 15 July 1993 establishing the, Law No. 97/12 of 10 January 1997 to lay down the conditions for entry, stay and exit of foreigners in Cameroon, Law No. 2011/024 of 14 December 2011 on the fight against human trafficking and trading, Decree No.69/DF/287 of 30 July 1969 relative to the contract of apprenticeship. Decree No. 68 /DF /253 of 10 July 1968 laying down the terms and conditions of employment of domestic servants and staff, Decree No. 93/577 of 15 July 1993 laying down the conditions of employment of temporary, casual and seasonal workers and others that we will see in the course of our work.

3.1.2. Regional Framework

The regionalization of labour law can be conceived as the implementation of labour rules and institutions that are specific to a group of States from one part of the world. Although this phenomenon is quite distinct from that of labour law universalization, it is not necessarily in contradiction with it. Universalization is promoted and conducted essentially under the

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[246] Kelese, G.N., *op. cit.*
[247] Section 3 of the Labour Code.
[248] *Ibid.,* section 4(1).
[249] *Ibid.*, section 4(2)(a).
[250] *Ibid.*, section 23 (2).
[251] *Ibid.*, section 39 (1).
[252] *Ibid.*, section 61(2).
[253] *Ibid.,* Part I.
[254] *Ibid.*, Part IV.
[255] *Ibid.*, Part V.
[256] *Ibid.*, Part VI.
[257] *Ibid.*, Part VII.
[258] *Ibid.*, Part VIII.
[259] *Ibid.*, Part IX.
[260] *Ibid.*, Part X.
[261] Répertoire des textes en matière de travail et sécurité sociale, (2014), MINTSS.

guidance of the International Labour Organization. Through ratifications of its conventions and the application of its recommendations, significant moves are being made towards harmonization between the labour laws of Member States[262].

3.1.2.1. African Charter on Human and Peoples' Rights (African Charter)

The African Charter[263] is the main regional human rights instrument aimed at protecting human rights in Africa. Many African states have ratified this Charter which provides for the enjoyment of rights and freedoms without discrimination[264] as well as the right of workers to work under equitable and satisfactory conditions and the right to receive equal pay for equal work[265].

Labor law falls within the scope of the OHADA business law, in accordance with Article 2 of the founding Treaty which states: " In the implementation of this Treaty, the following shall fall within the scope of business laws: all regulations concerning company laws and the legal status of traders, debt recovery, security interests and enforcement proceedings, companies receivership and judicial liquidation, arbitration law, labor law, etc.[266]."

The idea of harmonizing labor law is also justified by the fact that domestic rules are not always sufficient. National instruments, the application of which is limited to national borders, are not suitable to adequately address cross-border issues and realities such as the mobility of labor within the Community or the restructuring of enterprises affecting different Member States. In such situations, rules are needed at the transnational level so that both the economy and law may work together. Presently, there exist a preliminary draft OHADA Uniform Act on Contract Law which is applicable to all contracts, both commercial and non-commercial. Because of the difficulty in laying hands on a copy, this document will be discussed in subsequent research.

3.3.1. International Framework

There exist many international instruments that regulate the protection and enforcement of workers right. We shall consider at this juncture some which Cameroon has ratified.

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[262] Auvergnon, P., (2015), "Regionalization of Labour Law in Africa: The OHADA Project" *E-Journal of International and Comparative Labour Studies*, Volume 4, No. 2, ADAPT University press, p.1.
[263] Ratified by Cameroon on 20th June 1989.
[264] Art. 2 of the African Charter.
[265] Article 15 of the African Charter.
[266] *Ibid.*

3.3.1.1. The Universal Declaration of Human Rights (UDHR)

The UDHR is the universal document adopted on the 10th December, 1948 by the UN General Assembly without any opposition[267]. It is not legally binding on states due the fact that, it is a General Assembly Resolution. But unlike all resolutions of General Assembly, UDHR is one of those exceptional Resolutions which has been passed unanimously without any opposition. For that reason, it has customary status like General Assembly Resolution 1963 applies to members without the need of formalities such as ratification. It is one of the initial international human rights instruments that recognizes workers' rights. It recognizes, among others, the right of every person to work, free choice of employment, just and favourable conditions of work and protection against unemployment[268]. It also guarantees the right of workers to form and join trade unions for the protection of their interests[269]. Furthermore, Article 24 guarantees the right of workers to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay. These rights fall well in place as far as the negotiation of terms under of employment contracts are concerned since their protection can be better guaranteed only under such contracts.

The application of the UDHR in a domestic case could be seen as announced by the Supreme Court of Bangladesh in *BNWLA vs. Government of Bangladesh and others*[270] where it was announced that: *"It has now been settled by several decisions of this subcontinent that when there is a gap in the municipal law in addressing any issue, the courts may take recourse to international conventions and protocols on that issue for the purpose of formulating effective directives and guidelines to be followed by all concerned until the national legislature enacts laws in this regard."* By virtue of its membership[271] of the United Nations and commitments to adhere to its principles, the UDHR applies to Cameroon.

The state of Cameroon is a member of the United Nations[272] and has ratified many United Nations Human Rights Convention and thus has made binding international commitments to adhere to the standards laid down in the UDHR.

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[267] Hosain, M., "Application of the UDHR by Supreme Court of Bangladesh: Analysis of Judgment" *Chancery Law Chronicle*, www.clcbd.org, accessed 28/04/2019 at 17:44.
[268] Art. 23(1) of the UDHR.
[269] Art. 23(4) of the UDHR.
[270] 14 BLC (2009) 703
[271] Member since 20th September 1960.
[272] Cameroon joined the UN on 20th September 1960.

3.3.1.2. International Covenant on Economic Social and Cultural Rights (ICESCR)

The International Covenant on Economic Social and Cultural Rights (ICESCR) was adopted in 1966 with the aim of addressing socio-economic rights in general. The right to work is a fundamental right, recognized in several international legal instruments[273]. The right to work is essential for enjoyment of other human rights and forms an inseparable and inherent part of human dignity. Every individual has the right to be able to work, allowing him/her to live in dignity. The right to work contributes at the same time to the survival of the individual and to that of his/her family in particular, and the community at large. The ICESCR defines the right to work to include the right of everyone to have an opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right[274]. Article 3 of the Covenant calls upon states to ensure equal rights for men and women in the enjoyment of all economic, social and cultural rights. General Comment No. 18 also calls for a comprehensive system of protection to combat gender discrimination and to ensure equal opportunities and treatment between men and women in relation to their right to work by ensuring equal pay for work of equal value[275]. In a bid to ensure non-discrimination on grounds of gender, there are attempts to offer protection to expectant workers. In particular, the ICESCR requires that pregnancy should not constitute an obstacle to employment and should not constitute justification for loss of employment[276]. In this light, Article 2(1) of the ICESCR refers to the progressive protection and enforcement of the rights enshrined in the treaty[277]. The treaty acknowledges, in this sense, that the full enforcement of the rights recognized within it in many circumstances requires gradual implementation.

However, the CESCR has made clear that not every duty arising from the obligations set out in the Covenant is qualified by this idea of progressive enforcement and that some duties have immediate effect[278] such as the duty to take steps or adopt measures directed towards the full protection and enforcement of rights contained in the ICESCR and the prohibition of

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[273] Preamble of the ILO Convention No. 168, (1988).
[274] Article 6(1) of the ICESCR.
[275] Para 13 General comment No. 18 on the Right to work.
[276] *Ibid.*
[277] Art. 2(1) ICESCR: "Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, *with a view to achieving progressively the full realization of the rights recognized in the present*"
[278] "*Courts and the Legal Enforcement of Economic, Social and Cultural Rights: Comparative Experience of justiciability"*, Human Rights and Rule of Law Series No. 2, International Commission of Jurists.

discrimination. In a case regarding the right to be free from forced labour[279], the European Committee of Social Rights reviewed the Greek Government's legislation which required scrupulous objectors to perform civil service in lieu of compulsory military service. The Committee found that the civil service requirements prescribed an excessive duration of service, compared to the duration of military service.

3.3.1.3. ILO Declaration on Fundamental Principles and Rights at Work

Adopted in 1998 the ILO Declaration on Fundamental Principles and Rights at Work[280] involves and addresses ILO member states. Nevertheless, as highlighted by the International Organization of Employers: Whereas ILO Conventions apply only to those member States which ratify them; the Declaration is relevant to all member States by virtue of their membership and Constitutional obligations towards the ILO. As such, the Declaration represents a political commitment by governments to respect, promote and realize the Declaration's principles[281]. Whether or not they have ratified the relevant Conventions, the 1998 Declaration commits member states to respect and promote principles in four categories of rights[282]:

a) freedom of association and the effective recognition of the right to collective bargaining[283];

b) the elimination of forced or compulsory labour[284],

c) the abolition of child labour; and

d) the elimination of discrimination in respect of employment and occupation[285].

In order to ensure its effective implementation, the 1998 Declaration is equipped with three follow-up mechanisms;

[279] European Committee of Social Rights, (2001), *Quaker Council for European Affairs (QCEA) v. Greece*, Complaint N° 8/2000.

[280] International Labour Organization *Declaration on Fundamental Principles and Rights at Work* (1998) International Labour Office, Geneva.

[281] International Organization of Employers, (2006), The ILO Declaration on Fundamental Principles and Rights at Work: *IOE Position Paper* 1.

[282] Tiemeni, T. G., (, 2015), "Labour Rights and Working Conditions in Corporate Codes of Conduct: An assessment of the legal dimension, in different national contexts, of selected multinational corporations" Corporate Social Responsibility commitments, Doctorate Thesis, University of the Western Cape.

[283] Convention C 87 Ratified on 7th June 1970

[284] *Ibid.*

[285] Discrimination Convention (C 111) ratified on 13th May 1988.

- Annual Review Reports composed of reports from countries that have not yet ratified one or more of the ILO Conventions that directly relate to the specific principles and rights stated in the Declaration. This reporting process provides Governments with an opportunity to state what measures they have taken towards achieving respect for the Declaration. It also gives organizations of employers and workers a chance to voice their views on progress made and actions taken;

- Global Reports which provides a dynamic global picture of the current situation of the principles and rights expressed in the Declaration. The Global Report is an objective view of the global and regional trends on the issues relevant to the Declaration and serves to highlight those areas that require greater attention. It serves as a basis for determining priorities for technical cooperation and;

- Technical Cooperation Projects, the third way to give effect to the Declaration, are designed to address identifiable needs in relation to the Declaration and to strengthen local capacities thereby translating principles into practice.

3.2. Institutional Framework

Employment relations cannot be totally subjected to the dictates of the parties under the pretext of freedom of contracts. This is not practicable because they are not capable on their own to ameliorate working conditions, ensure the promotion and preservation of decent jobs[286]. In order to ensure the protection of workers' rights in Cameroon, administrative as well as professional institutions have been created to monitor, manage, regulate and enforce these rights.

3.2.1 Administrative Bodies

These are governmental agencies or organizations charged with the management and implementation of regulations, laws and government policies[287]. There are to ministerial departments and the Labour and Social Insurance Administration charged with relations concerning workers.

[286] Anazetpouo, Z., (2010) Le Système Camerounais des Relations Professionnelles, Yaoundé, Presses Universitaires d'Afrique, p.316.
[287] *www.eionet.europa.eu,* consulted on 12/06/2019 at 13:15.

3.2.1.1. The Ministry of Labour and Social Security

The Ministry of Labour and Social Security is in charge of the development and implementation of government policy in the fields of professional relationship, workers status and social security[288]. Its duties include, developing and implementing the social insurance and social security policy of the state; enforcing the Labour Code and international agreements ratified by Cameroon in relation to labour; connecting, Government and trade unions and employers' organizations; Connecting institutions of the United Nations system and African Union specialized in the field of work, in conjunction with the Minister of External Relations. It liaises between the Government and the International Labour Organization (ILO) as well as international agencies in its jurisdiction, in conjunction with the Minister of External Relations. It supervises the National Social Insurance Fund (CNPS) and public or semi-public agencies within its sector. The implication of this ministerial department in labour relations influences the promptness with which decisions are made and executed[289].

3.2.1.2. The Ministry of Employment and Vocational Training

The Ministry of Employment and Vocational Training intervenes in many aspects related to employment[290], vocational training, internships and apprenticeship[291]. Per Decree N°. 2005/123 of 15th April 2005, organizing the ministry, it is charged with the elaboration of employment policies, protection and promotion of employment, orientation of workforce, carrying out studies on the evolution of the employment and the job market, evolution of work related qualifications, conception and organization of activities for speedy professional training, definition of norms organizing the system of apprenticeship, the organization and follow-up of professional insertion of youths, and organization of recycling or requalification of workers who had lost their jobs.

Considering the task assigned these ministerial departments, it is worth noting that, their prerogatives and domain of application seems the same thus, there is urgent need for government action to clarify this ambiguity[292]

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[288] *www.mintss.gov.cm,* accessed on 17/06/2019 at 16:45.
[289] Anazetpouo, Z., *op. cit.* p.317.
[290] *Ibid.*
[291] Law N°. 2018/010 of 11th July 20118 governing vocational training in Cameroon, Order N°. 246/MINEFOP/SG/DFOP of 7th August, 2018 to lay down rules for the management of internships for private and public vocational training institution learners, for instance.
[292] Anazetpouo, Z., *op. cit.*

3.2.1.3. Labour and Social Insurance Administration

The Labour and Social Insurance Administration comprises all services responsible for matters relating to the condition of workers, labour relations employment, manpower, movements, vocational guidance and training, placement, the protection of workers'' health as well as social insurance problems[293]. It is headed by a Labour Inspector who is a civil servant of the labour administration corps placed at the head of a labour and social insurance inspectorate or his delegate[294]. He is charged among others with the following duties[295]:

To enter any establishment liable to inspection, freely and without warning at any time of the day or night, for the purpose of inspection. This goes a long way to protect the workers because certain categories of workers such as women and children who are prohibited form night work[296] could still be found at work at such hours and the type of work they could be carrying out[297]. To enter for the purpose of inspection any infirmary of an establishment or any canteen, sanitary installation or any facility supplying workers with water because the workers health is very important as for as work is concerned. To carry out any examination, control or inquiry which they consider necessary to ascertain that the laws regulations in force are strictly complied with and, in particular; to interrogate, alone or in the present of witnesses, the employer or the staff of the enterprise on any matters concerning the application of the laws and regulations in force. This is a very important aspect in the protection of the worker because it prevents the employer from giving false information as the Labour Inspector is able to evaluate the situation on ground. To ask for any books, registers and documents the keeping of which is prescribed by laws or regulations relating to conditions of employment, in order to ensure that they conform with the laws and regulations in force and to copy such documents or make extracts from them since they are absent in some establishment and when they do exist, the content most often does not conform to the law. To enforce the posting of notices where this is required by the laws and regulations in force so as to keep workers informed.

The Labour Inspectors may record in official reports having the force of prima facie evidence, any infringement of labour laws and regulations and are empowered to take direct

[293] Section 104(1) of Labour Code.
[294] *Ibid,* section 105 (1).
[295] *Ibid,* section 108(1).
[296] C6 Night Work of Young Persons (Industry) Convention, 1919, Ratified on the 07/06/60.
[297] Order N°. 16 / MTLS / DEGRE of 27 May 1969 establishing the nature of work forbidden to women and children.

legal action before the competent court against any persons infringing the provisions of this law and its implementation instruments[298].

3.3. Professional Institutions

These are the societies and associations that promote and further a career and the people who practice in it[299]. The Labour Code provides for three as we shall see in the course of our work with the first two exercising purely consultative roles[300]

3.3.1. The National Labour Advisory Board

The National Labour Advisory Board is established under the Ministry of Labour[301] is a tripartite body made up of the government, employers' and employees' associations and is charged with examining matters relating to working conditions, employment, vocational guidance and training, placement, manpower movements, migration, improvement of the material conditions of workers, social insurance, trade unions and employers' associations thus, it works in collaboration with the Ministries in charge of Labour and Vocational Training to ensure that the rights of workers are protected and enforced. The composition[302] of this organ shows that it plays a very influential role as far as labour relations are concerned[303] In a meeting that held on the 17th of October 2017 in Yaounde, members of the Board examined a bill relating to Social security benefits offered to workers under the labour code and the percentage of social insurance funds, proposed increase of old age, disability and death pension, terms and conditions for the exercise of the duties of staff representatives and to reform nomenclature of business in Cameroon[304]. It makes recommendations and proposals relating to laws and regulations to be made in the above areas, in accordance with existing laws. Its organization and functioning are defined by Law N°. 93/084 of 26th January, 1993.

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[298] *Ibid,* section 109(1).
[299] www.targetjobs.co.uk, accessed on 17/06/2019 at 16:15.
[300] Anazetpouo, Z., *op. cit.,* p.324.
[301] Section 117(1) of the Labour Code.
[302] Decree N°. 93/084 of 26th January, 1993 on the organization and functioning of the National Labour Advisory Board.
[303] Anazetpouo, Z., *op. cit.*
[304] www.crtv.cm, accessed on 17/06/2019 at 17:15.

3.3.2. The National Commission on Industrial Health and Safety

In order to emphasize the importance of workers health over employer's profit[305] and enforce the duty of care by the employer[306], the National Commission on Industrial Health and Safety has been established under the Ministry in charge of Labour[307]. It is charged with problems related to industrial medicine and the hygiene and safety of workers[308]. It is responsible for making suggestions and recommendations concerning laws and regulations to be made in relation to industrial health and safety, recommendations for the benefit of employers and workers, insurance bodies and various ministries concerning the protection of the health of workers, making proposals concerning the approval of dangerous machinery and manufacturing processes likely to endanger the health of workers and to carry out or participate in any work of a scientific nature falling within its sphere of activity.

3.3.3. Staff Representatives

Workers have the right to approach the employer to discuss issues relate to their work and make suggestions to ameliorate working conditions[309]. This right cannot be exercised by all the workers especially in an enterprise that employs many workers thus, they need to delegate a staff representative. They are persons who fulfil certain conditions[310], elected in any establishment located within the national territory, employing, on a regular basis, at least twenty workers governed by the Labour Code, irrespective of the nature of the establishment or of the employer, be it public or private, lay or religious, civilian or military[311] for a two-year term[312]. They act as a link between the employer and employees channeling any individual or collective demands in respect of conditions of employment, workers' protection, the application of collective agreements, classification of occupations and wage rates which have not been directly acceded to, refer to the Labour Inspectorate any complaint or claim in respect of the application of the laws and regulations which the said inspectorate is responsible for enforcing, ensure that the rules relating to the hygiene and safety of workers and to social insurance are

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[305] Abunaw, A. N., (2015), "Management of Occupational Health and Safety in selected Organizations of the South West Region of Cameroon", Dissertation of Master, Pan-African Institute for Development, West Africa, Buea.
[306] *Ibid.*
[307] Section 120(1) of the Labour Code.
[308] *Ibid,* section 120(2).
[309] Anazetpouo, Z., *op. cit.*
[310] Section 122 (2) of the Labour Code.
[311] *Ibid,* section 122 (1).
[312] *Ibid,* section 122 (3).

observed, and to recommend any necessary action in these matters and submit to the employer any useful suggestions for improving the organization and output of the enterprise.

CONCLUSION

A vivid look at the legal and institutional framework for the protection and enforcement of workers' rights in Cameroon shows that, the Legislator accords great importance to the workers welfare in the surge to promote social justice and improve living standards. We shall in the chapter that follow turn our attention to discuss the control of the employer's powers, its limitations and factors that hinder the effective protection and enforcement of workers' rights.

CHAPTER FOUR

CONTROL OF THE EMPLOYER'S POWERS AND LIMITATIONS TO THE PROTECTION OF WORKERS' RIGHTS

INTRODUCTION

The contract of employ creates rights and obligations between the parties[313] with the employer possessing managerial powers over the employee, as sanctioned by section 1(1) and 23 of the Labour Code, 1992[314] without which the existence of an employment contract will be doubtful. Thus, an employer could be defined as one possessing managerial powers over the employee. As it stands, the obligations and responsibilities of the employer translate into the rights of the employee. These duties fall both under Common Law and Statutes and constitute implied terms of the contract if they are not expressly mentioned[315]. An employer could be a physical person i.e. an individual or a moral person i.e. a corporation[316]. In this section of our work we shall expatiate on the powers of control and management of the employer as contained in the internal regulations of the enterprise, how these powers are controlled, sanctions against him when he fails in such duties and the mechanisms available to the parties to enforce their rights.

4.1. Formalities for drawing-up the Internal Regulations and its Content

The drawing-up of the internal regulations by the employer is sanctioned by legislation. Per section 29 (1) of the Cameroonian Labour Code, 1992, it is the exclusive prerogative of the employer to draw up the internal regulation in a unilateral manner without associating the staff representative[317]. He determines the scope of application depending on the nature of the company, where a single internal regulation may govern the whole company or different internal regulation for different sections of the enterprise, cognizant of the fact that the rules relate to the technical organization of work, disciplinary standards and procedure, safety and hygiene at work which are necessary for the proper functioning of the company[318]. If any other

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[313] Yanou, M. A., *op. cit.*
[314] *Ibid.*
[315] *Ibid.,* p.41.
[316] Guery, G., (1987), Pratique du Droit du Travail, 4e édition, CLET, Paris, p.64.
[317] Pougué, P.G., et Tchokomakoua, *op. cit.*, p.11.
[318] Pougué, P.G., et Tchokomakoua, *op. cit.*, p.12.

regulations are included (in particular, regulations respecting remuneration) they shall be deemed to be null and void, subject to the provisions of Section 68 (4) of the Cameroonian Labour Code, 1992.

Despite the unilateral powers of the employer to draw up the internal regulations, there are certain obligations which he is has to fulfill once the rules have been made. Prior to the enforcement of these rules, the company head is supposed to communicate them to the staff representatives (if any) for their opinion. This does not mean to accord the document a bilateral nature[319]. He is also obliged to submit it to the Labour Inspector of the jurisdiction who may order the deletion of or amendment to any provisions which may be repugnant to the laws and regulations as sanctioned by section 29(3) of the Cameroonian Labour Code, 1992, for endorsement. Once endorsed, the rules become binding

Although its content is limited to the technical organization of work, discipline and rules of hygiene and security[320], the internal rules vest in the employer exorbitant powers which must be checked less he uses it as a tool of oppression since it contains disciplinary faults and sanctions for employees[321]. Thus, the principle of "*nullum crimen, nulla poena, sine lege"* must be applied to control how the employer exercises these powers against the employee.

4.2. Control of the Employers Disciplinary Powers

In a bid to protect the rights of the employee in employment contracts, there exist two main way by which the exorbitant powers of the employer as sanctioned by law and the internal regulations are controlled[322]. First of all, by the Labour Inspector and then the Labour Judge.

4.2.1. Control by the Labour Inspector and Sanctions

As sanctioned by section 29(3) of the Cameroonian Labour Code, 1992, the Labour Inspector in the area of jurisdiction of the employer is empowered to control and endorse the internal regulations prior to enforcement. He controls the legality of the rules to make sure that they are in conformity with the law and is authorized to make proposal and modifications of certain dispositions as the case maybe. After making the necessary modifications and

[319] Blanc-Jouvan., (1977), Règlement intérieur, in Encyclopédie DALLOZ de droit du travail, Nº. 19.
[320] Pougué, P. G., & Tchokomakoua, V., *op. ci.,* p.15.
[321] *Ibid.*
[322] *Ibid,* p.18.

corrections, the employer is required to adopt them as prescribed by the Labour Inspector and to follow the rules for communicating, registering and posting up of the internal regulations[323].

After verifying the internal regulations, the Labour Inspector may demand the removal or modification of certain clauses which are repugnant to the law and as that moment, the internal regulations are suspended until the corrections are made[324]. This is a temporal sanction to prevent its application[325].

A recalcitrant employer who does not observe the recommendations of the Labour Inspection is exposed to penal sanction. According to section 167 (5) is punished with a fine of from XAF 100.000 to 1.000.000.

Also, provision of the penal code shall apply to persons guilty of acts of resistance, abuse and force against inspectors of labour and social insurance and medical inspectors of labour and social insurance; persons impersonating inspectors of labour and social insurance and medical inspectors of labour and social insurance[326].

4.2.2. Control by the Judge and Sanctions

The Judge's exercises a three-fold *a posteriori* control of the employer[327]. He controls the legality of the internal regulations; the effectiveness of the fault committed by the worker and controls the merit of the sanction pronounced by the employer[328].

The control of legality does not imply that the Labour Inspector did not do his job but amounts to the right of the worker who can challenge a provision of the internal regulation before the Judge, which the latter did not declare illegal[329]. This judicial control amount to a very important aspect in the protection of workers' rights as it is determining factor for the qualification of grave misconducts[330]. The intervention of the judge guards against abusive faults and sanctions that employers insert in the internal regulations[331].

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[323] Section 29(4) of the Labour Code.
[324] Pougué, P.G., & Tchokomakoua, V., *op. cit.,* p.21.
[325] *Ibid.*
[326] Section 171(1)(3) of the Labour Code.
[327] Pougué, P.G., & Tchokomakoua, V., *op. cit.,* p.22.
[328] *Ibid.*
[329] Pelissier, J., (1982), " Le Règlement Intérieur et les Notes de Service", Dr. SOC., N°. 1, p.79.
[330] Pougué, P.G., & Tchokomakoua, V., *op. cit.* p.23.
[331] *Ibid.*

The violation of the internal regulations attracts sanction but when the sanction amounts to wrongful termination, the competent court may ascertain the wrongful nature of the termination by investigating the causes and circumstances thereof[332]. The judgment must expressly mention the reason put forward by the party terminating the contract and it shall be up to the employer to show that the grounds for dismissal alleged by him are well-founded[333]. This empowers the judge to inquire to know the fault committed by the worker and qualify the sanction administered by the employer if it is objective and necessitates the termination of the contract[334].

One of the greatest problems that exist today as far as Labour law is concerned is whether the judge can esteem that the sanction awarded by the employer is not commensurate to the fault committed by the worker[335]. The Supreme Court sitting in for the for the French Court of Cassation decided that except in the case of grave misconduct, the judge can never substitute his appreciation of the sanction for a fault to that of the employer[336].

In a nutshell, all these control mechanisms are put in place to protect the worker against the employer, to ensure that the worker is protected against abusive sanctions from the employer in the execution of the employment contract.

4.3. Other sanctions against the Employer for non-observance of obligations

There are only two parties to an employment contract[337]; the employer and the employee. A number of implied terms form part of the contract of employment, imposing duties on the parties, even if they have not expressly agreed to them. This is due to the fact that an employment contract is a contract of adhesion[338]. Prior to its conclusion, the parties have no rights to enforce against each other[339]. In this section of our work, we shall look at the obligations of the employer *vis-à-vis* the employee, whose failure attracts civil and penal sanctions.

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[332] Section 39(2) of the Labour Code.
[333] Section 39(3) of the Labour Code.
[334] Pougoué, P. G., (1988), *Droit du Travail*, Tome I, PUC N°. 378, p.162.
[335] Pougué, P. G., et Tchokomakoua, V., *op. cit.,* p.24.
[336] C.S., arrêt N°. 44/S du 17 Janvier 1967, *S.C.B. v. /NDOUMBE David Nestor*.
[337] Kelese, G. N., *op. cit*.
[338] Pierre, B., (2003), *Guide Juridique de l'Employeur*, éditions avenir, Douala, Cameroun, p.5.
[339] *www.nusta.na,* accessed on 07/05/2019 at 18:02.

4.3.1. Failure to Evidence certain Contracts in Writing

According to section 23(4) of the Cameroonian Labour Code, 1992 read together with section 27, the existence of an employment contract could be recorded in whatever manner deemed necessary by the parties[340] and creates the same effect whether concluded formally or informally. But there exist certain forms that must be evidenced in writing. They include contracts of probationary hiring,[341] temporary, occasional and seasonal contracts, contracts of more than 3 months or those which requires the worker to execute his duties away from his usual place of residence[342]. Contracts for the performance of a specific job, those whose terms are subjected to the occurrence of a future or certain event and contracts of apprenticeship, must be written. A written contract eases the burden of proof in case of dispute. The Cameroonian courts have relied on a variety of evidence to proof the existence of a contract of employment. In *Poissonnerie Populaire du Cameroun v Shey Ndi*[343] the Court of Appeal of Bamenda held that a contract of employment need not be written. However, section 27 of the Cameroonian Labour Code, 1992 requires contract of a specified duration exceeding three months or requiring the worker to live out of his usual place of residence and of foreign workers to be in writing[344] and the employer is under the obligation to transmit a copy of the employment contract to the Inspector of Labour of the jurisdiction.

If the employer fails to make the contract in writing, sanction will amount to the transformation of the employment contract into a contract of unspecified duration which cannot not be terminated without notice. In the case of a contract of apprenticeship which is not evidenced in writing it shall simply be considered null and void[345].

In *Enongchong Memorial College v Edward Joachim Ngale*[346] the employer contended that the worker was employed subject to the approval of the Minister of National Education and it was argued on his behalf that such approval was a requirement for the validity of the employment since it was prescribed by section 4(1) of Law N°. 76/15 which derogates from section 27 of the Cameroonian Labour Code, 1992. The Court of Appeal Buea nevertheless held that the worker was still entitled to claim damages for wrongful dismissal regardless of

[340] Yanou, M. A., *op. cit.* p.24.
[341] Section 28(1)(2) of the Labour Code.
[342] *Ibid.,* Section 27(1).
[343] (2001) 2 CCLR 127.
[344] Yanou, M. A., *op. cit.* p.25.
[345] Section 46 of the Labour Code.
[346] Suit N°. CASWP/L.8/87 Unreported.

the fact that the approval of the minister was not given for his employment. The court applied the equitable principle of estoppel to stop the employer from challenging the employment of the worker[347]. This decision needs to be applauded because a party should not be allowed to take advantage of his own deliberate failings[348].

If the employment contract involved a foreign worker, the employer must obtain an authorization of the Minister in charge of Labour prior to the conclusion of the contract and in cases of renewals before the commencement of such contracts. Default of which will attract a fine of XAF 200.000 to 1.500.000[349] and in the event of a repetition of the offence, imprisonment of 6 days to 6 months[350].

4.3.2. Failure to Observe Obligations relating to Probationary period

If the employer fails to respect the maximum probation period which is usually between 15 days and 4 months[351] depending on the category of worker and cannot produce a written contract, the trial period is conclusive and the worker is considered as engaged on a contract of unspecified duration.

4.3.3. Failure to provide Work

The employer is under the obligation to provide work to the employer. Where he fails to provide such work or provides work that does not corresponds to the employee's job description, it will be implied that he has unilaterally modified the terms of the contract. If the worker resigns, this will amount to serious misconduct on the part of the employer and to a larger extent construed as wrongful termination warranting that the employer pays damages as sanction.

4.3.4. Failure to pay salaries and other financial obligations

The employee possesses many rights which have financial implications which the employer is under the obligation to fulfil in order to avoid sanctions. in *Etude de Me Nkili Martin v Abe Mvogo J.C.*[352] the Supreme Court indicated that the worker receives the consideration for the work done and further added that, a worker who has been unpaid for

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[347] Yanou, M. A., *op. cit.*
[348] *Ibid.*
[349] Section 168(8) of the Labour Code.
[350] *Ibid.,* section 170.
[351] Ministerial Order N°. 017 of 26/05/1993
[352] Appeal N°. 66 of 30/05/1972.

several months can stop working without notice[353]. Based on this, the action brought by the employer for damages against the worker was dismissed by the Court of Appeal was further affirmed by the Supreme Court[354]. From this it could be reasoned that failure to pay salaries by the employer amounts to failure to provide consideration for the services of the worker and this is clearly regarded as a repudiation of the employment by the employer justifying the worker to stop working. Although the Supreme Court did not so expressly, this decision is phenomenal because it suggests that the failure to pay salary is regarded as discharging the worker from the obligation of written notice as stipulated by section 34 of the Labour Code[355].

Considering that workers conditions, qualification and professional aptitude are equal, salaries must be equal for all workers without discrimination as to origin, sex and age[356], and such salaries must be due at most 8 days after the end of the month[357] in consideration. In the case of delay or lateness in payment of salary, payment in another form other than in cash, non-respect of place of payment, illegal retention of salary, this will attract an imprisonment of 12 days to 1 year and a fine of XAF 2.000.000 to 4.000.000 and the monies retained on the workers salary in non-compliance of the law at protection of salary shall be claimed with interest at the current rate as sanction.

Persons who salaries less than the stipulated minimum wage shall be punished with a fine of from XAF 100.000 to 1.000.000[358].

Failure to post minimum wage rates and the conditions of remuneration for piecework in the places where workers are paid[359] will attract imprisonment of 6 days to 6 months and a fine of from XAF 1.000.000 to 2.000.000.

4.3.5. Failure to observe Health and Safety Rules

All enterprises irrespective of their nature, must have health and medical services for the benefit of its workers[360]. When the employer fails to provide for such services to employees and does not observe health and safety as stipulated by Ministerial Order Nº. 30/MTPS/IMT of 24/11/84, he will be sanctioned with a fine of XAF 1.000.000 to 2.000.000 and imprisonment

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353 Yanou, M. A., *op.cit.* p.19.
354 *Ibid.*
355 *Ibid,* p.20.
356 Section 61(2) of the Labour Code.
357 *Ibid.,* section 68(2).
358 *Ibid.,* section 167(4).
359 *Ibid.,* section 64.
360 *Ibid,* section 98(1).

of 6 days to 6 months[361], while non-observance of other provisions will attract a fine of XAF 100.000 to 1.000.000.

4.3.6. Failure to observe Hygiene and Security rules

The employer is under the responsibility to take all necessary measures to ensure that in the place of work, all conditions of hygiene and security are met in conformity with the norms of the International Labour Organization[362]. If the employer fails in this duty, he will be exposed to diverse sanctions depending on the offence committed. For example, the bringing in and consumption of alcohol during working hour in the workplace is punishable with a fine of XAF 100.000 to 1.000.000.

The employer may be pursued for involuntary homicide where the non-respect of security rules leads to the death of a worker.

4.3.7. Failure to pay Social Insurance Dues

It is the right of the employee to be registered with the National Social Insurance Fund by the employer at most 8 days after the 8th month of recruitment[363] and to be subscribed to family allowances, old age pension, invalidity and in case of death[364].

Where the employer fails to register the worker, the National Social Insurance Fund shall take charge of the work-related accident and the illness of the non-registered worker and shall claim from the employer expenses incurred[365] and in the case of late payment of insurance dues, a penalty of 10% will accrue.

4.3.8. Failure to pay Union Dues and prohibiting workers from joining trade Unions

Every worker has the right to join any trade union of his choice[366] and the employer is under the obligation to pay subscription and dues to such unions which must have been deducted from the workers salary failure of which with attract civil action for recovery and claim for damage and penal sanctions for breach of confidence may ensue.

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[361] Sections 98 and 170(1) of the Labour Code.
[362] *Ibid.,* section 95 (1)(2).
[363] Decree N°. 74/733 of 19/08/74.
[364] Decree N^0. 90/1198 of 03/08/1990 setting out rates and assessment of subscription to the CNPS as to family allowance, old age pension insurance, invalidity and death.
[365] Articles 46 and 47 of Law N^0. 77/11 of 13/07/1977.
[366] Section 4 of the Labour Code.

Section 66 of the Cameroonian Labour Code, 1992, punishes this crime with a fine from XAF 50.000 to 500.000.

4.3.9. Failure to Provide worker with Internal Rules and Regulations

As part of his obligations, the employer is required to write out the internal rules and regulations of the enterprise, whose content is limited to the technical organization of work and make available copies to employees[367] by communicating them to the staff representative if present and to the Labour Inspector of the jurisdiction for endorsement as stipulated by Section 29(3) of the Cameroonian Labour Code, 1992. Where the internal rules and regulations contains clauses related to remuneration, it shall be considered null and void[368]. And if the employer fails to provide them as stipulated by law, he will liable to a fine of XAF 100.000 to 1.000.000.

4.3.10. Failure to give Adequate Notice prior to Dismissal

A contract of employment of unspecified duration may be terminated at any time at the will of either party. Such termination shall be subject to the condition that previous notice is given by the party taking the initiative of terminating the contract. Notification of termination shall be made in writing to the other party and shall set out the reason for the termination[369]. In the event where the employer judges that the employee is guilty of an offence and intends to terminate him, he must notify him in writing, stating the reason for such termination and observing all other provisions as provided for by law. Non-respect of formality will result to the termination being declared as wrongful and he shall be liable to damages[370] of up to one month's salary of the worker.

4.3.11. Failure to give a Work Certificate

It is incumbent on the employer at the expiry of the contract irrespective of the reason for termination to hand to the worker a certificate of work mentioning exclusively the date of commencement and termination of work, the nature and dates of functions held by the employee during his time in the enterprise[371]. If the employer fails to issue such certificates, he will be required to pay damages from XAF 100.000 to 1.000.000[372].

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[367] Section 29(1) of the Labour Code.
[368] *Ibid.,* sections 68(4) and 29(2).
[369] *Ibid.,* section 34(1).
[370] *Ibid.,* section 39.
[371] Section 44 of the Labour Code.
[372] *Ibid.,* section 167(5).

4.3.12. Failure to observe Maternity Rights

Female workers who have been certified pregnant have the right to terminate their contracts of employment without prior notice and will not be liable to pay compensation[373] as per Section of 36 of the Cameroonian Labour Code but employers on the other hand do not have the right to terminate such contracts because of pregnancy. If they do, this will attract a fine from XAF 200.000 to 1.500.000[374].

The employer is under the obligation to put the pregnant woman on maternity leave for 14 weeks which could be extended by 6 weeks in the event of sickness certified to be resulting from the pregnancy and childbirth[375] and not to terminate the employment contract during maternity leave. If he defaults, he will be liable to a fine from XAF 200.000 to 1.500.000 and imprisonment from 6 days to 6 months in case of repetition of the offence[376].

Also, the employer must preserve her allowances in kind[377] and must permit her to benefit from breast feeding hour for a period of 15 months at the rate of one hour per day of work. Non-respect will lead to a fine from XAF 4.000 to 25.000 and imprisonment from 5 days to 10 days or one of the punishments.

4.3.13. Failure to respect Legal Working Hours

The employer is required to respect the legal working hours as provided for by law, i.e. 40 hours a week in agricultural and related establishments, 56 hours a week in security and cleaning services, 45 hours a week in hospitals, retail enterprises, and 54 hours in hotels, restaurants and domestic work[378]. The non-observance of this provision will be sanctioned by a fine from 4.000 to 25.000 and imprisonment of 5 to 10 days.

4.3.14. Failure to provide Weekly Rest and Permission of Absence

The worker is entitled to a minimum weekly rest of 24 successive hours[379] and to remunerated leave of one and a half day each month[380] and also paid exceptional permission of absence not deductible from annual leave of 10 day so as to attend to family needs[381]. In the

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[373] *Ibid.,* section 84(1).
[374] *Ibid.,* section 168.
[375] *Ibid.,* section 84(2).
[376] Section 170 of the Cameroonian Penal Code, 2016.
[377] Section 84(5) of the Labour Code.
[378] *Ibid.,* section 80(1).
[379] Section 88 of the Labour Code.
[380] *Ibid.,* section 89(1).
[381] *Ibid.* section 99(4).

event where the employer fails to fulfill these obligations, he will be exposed to a fine from XAF 100.000 to 1.000.000 and in the occurrence of a repetition of the offence, imprisonment from 6 days to 6 months[382]. The same sanctions ensue if the employer fails to pay the worker leave allowance[383].

4.3.15. Failure to observe Rules Relating to Women and Children in the Workplace

Women and children are accorded special protection under employment contracts which grants them certain rights and privileges which the employer must respect meticulously. Per section 86 of the Cameroonian Labour Code, any person less the 14 years is not allowed to be employed in an enterprise even as an apprentice.

Also, women and children must not be kept on a job this is beyond their force[384]. If the employer fails to observe these provisions, he will be exposed to a fine from XAF 100.000 to 1.000.000[385] and in the event of repetition of the offence, imprisonment from 6 days to 6 months[386].

The employer is under the obligation to grant them daily rest of a least 12 hours[387] and they must not be exempted from night work[388]. The abuse of these rights will be punished with a fine from XAF 200.000 to 1.500.000[389].

4.4. Mechanisms available to the parties to enforce their rights

The employment relationship like any other human endeavor is bound to encounter turbulent moments when things don't go as planned or agreed. This situation arises when one of the parties holds a different opinion, feels that his rights has been abused or the obligation owed him has not been fulfilled. This gives rise a labour dispute.

A labour dispute is defined as any differences of opinions arising from employment legal relations or related to employment legal relations between an employee, employees (a group of employees) or representatives of employees and an employer, employers (a group of

[382] *Ibid.,* section 170.
[383] *Ibid.,* section 93.
[384] *Ibid.,* section 87.
[385] *Ibid.,* section 167.
[386] *Ibid.,* section 170.
[387] *Ibid.,* section 82(1).
[388] *Ibid.,* section 82(2).
[389] *Ibid.,* section 168(1).

employers), an organization of employers or an association of such organizations, or the administrative authority of the sector[390].

However, the Labour Code prescribes that any individual dispute arising from a contract of employment between workers and their employers or from a contract of apprenticeship shall fall within the jurisdiction of the court dealing with the labour disputes in accordance with the legislation on judicial organization[391]. In this light, the aggrieved party in an employment dispute can take a civil against the defaulting party and the nature and gravity of the offence determines the competent jurisdiction. This does not mean that crimes may not arise from employment contract. It is the prerogative of the state who is the guarantor of public order to prosecute criminal actions.

4.4.1. Cause of action that can be initiated by an aggrieved party

Disputes originating from employment contracts are classified as labour disputes and fall under civil actions. An aggrieved party can initiate a civil action against the other party. A civil action usually begins when one person the plaintiff, claims to have been injured or suffer damage by the actions of another person the defendant, seeks relief from the court by filing a complaint and starting a court case. The plaintiff may ask the court to award damages i.e. monetary compensation for the harm suffered, or may ask for an injunction to prevent the defendant from doing something or to requiring him to do something, or may seek a declaratory judgment in which the court determines the parties' rights under a contract or statute. Eventually, to resolve the case, the court by way of a judge or jury will determine the facts of the case and will apply the appropriate law to those facts. It is worthy of note that labour courts made up of a jury[392] in nature. Based on this application of the law to the facts, the court or jury will decide what legal consequences which result from the parties' actions.

A case also might be resolved amicably by the parties themselves. At any time during the course of a case, the parties can agree to resolve their disputes and reach a compromise to avoid the expense of trial or the risk of losing at trial. Settlement often involves the payment of money and can even be structured to result in an enforceable judgment.

[390] Section 2(1) of the Latvian Law on Labour dispute Resolution.
[391] Section131 of the Labour Code.
[392] Per section 133(1)(a)(b)(c) of the Labour Code a president and two assessors, one for the employer and the other for the employee and a registrar.

Parties can bring actions in torts, a wrongful act other than a breach of contract, that results in injury to someone's person, property, reputation, or the like, for which the injured person is entitled to compensation. Cases involving claims for personal injury, battery, negligence, defamation, medical malpractice, fraud, and many others, fall within tortuous acts.

Also, an action can be initiate in breach of contractual terms. A breach of contract case typically results from a person's failure to perform some term of a contract, whether the contract is written or oral, without some legitimate legal excuse. Cases involving claims non-completion of a job, non-payment in full or on time, failing to deliver goods sold or promised, and many others amount to breach of contract.

Equitable claims are those in which the plaintiff asks the court to order a party to take some action or stop some action. It may or may not be joined with a claim for monetary damages. Cases where a party is seeking a temporary restraining order or injunction to stop something, perhaps the destruction of property, the improper transfer of land, the solicitation of a business' customers are example of equitable claims.

4.4.2. Jurisdictions Competent to hear Labour Disputes

Per the Law on Judicial Organization in Cameroon[393] the Court of First Instance and the High Court are competent to hear labour disputes at first instance. While labour matters in the amount claimed does not exceed XAF 10.000.000 fall within the competence of the Court of First Instance[394], the High Court on the other hand is competent to entertain all labour disputes in which the amount claimed exceeds XAF 10.000.000[395]. The competent court to entertain such disputes must be that of the place of employment of the worker, provided that a worker who no longer resides at the place where he was performing a contract of employment or before that of this place of residence, on condition that both courts are situated in Cameroon[396]. If parties are not satisfied with the judgment at first instance, they can proceed to the Appeal Court where there is a bench to hear labour matters[397].

It is worth noting that before resolving to commence a court action, either of the parties may seek an out of court settle at the instance of the Labour Inspector of the jurisdiction[398], who is competent to determine the fact in issue between the parties and his decision is binding

[393] Law N°. 2006/015 of 29th December, 2006 as amended.
[394] *Ibid.,* Section 15(b).
[395] *Ibid.,* Section 18(3)(b).
[396] Section 132 of the Labour Code.
[397] *Ibid.,* section 20(2)(b).
[398] *Ibid.,* section 139(1).

on the parties as confirmed by the Supreme Court of Cameroon in *Aff. Plantation Fotso Victor v. Megna Moïse*[399] that the "*number of recommendations from the labor inspector for requests deriving from an employment contract between the same parties is unlimited as long as these requests are different each time*". In the case where the parties fail to reach an out of court agreement, the Labour Inspector shall make a report on the outcome and the parties may proceed with the action to the competent court.

4.5. Challenges that hinder the effective enforcement of Workers' rights

A vivid look at protection of the workers right depicts a remarkable distortion between theory and practice[400]. The existing legal mechanism to ensure the enforcement of workers' rights is satisfactory as it conforms to international standards but its application leaves much to be desired[401]. In this section of our work, we shall look at the challenges faced by the different stakeholders which make the enforcement of workers' rights difficult.

4.5.1. Challenges faced by Workers

Most workers are not aware of their rights talk less of pushing for their enforcement. This is because of the unpopularity of the Labour Code and the difficulty in acquiring one. Those who are aware of the existence of such rights are usually powerless in front of the employer as they are usually badly in need of the job. The powerful employer who holds the keys to the job therefore takes advantage of the employee's disadvantaged position to coerce him to contract on whatever bases.

They usually lack knowledge of labour laws and do not even know which right to claim.

Also, the minimum salary of XAF 36,270[402] received by the employee is insignificant in relation to the expenses required to follow-up a court process till the end. Thus, most employees abandon, withdraw or care less about enforcing their rights because of financial difficulties.

Workers are authorized by law to join any trade union of their choice for the protection and promotion of their rights. They usually face threats of dismissal if they do join such trade unions against the wish of the employer. Some workers' representatives are usually to weak

[399] Order N°. 56/S of 24 November 2005 of the Supreme Court of Cameroon.
[400] Pougoué, P. G., *op. cit.*
[401] *Ibid.*
[402] Decree N°. 2014/2217 establishing the basic minimum wage.

and not knowledgeable enough in matters relating to workers right, while some usually end up colluding with the employer against the workers they are called to represent.

The enforcement of occupational safety and health standards in places of work is weak due to irregular and limited visits of labour inspectors. In addition, some employers do not provide safety gear for employees' protection.

The economic hardship, difficulty in getting a job and the fear of losing the one at hand hinders the employee from pushing for his right for fear of the unknown.

Some employers do not appreciate their employees joining trade and labour unions. This is against the backdrop of the fact that the importance of collective bargaining is to enable the workers negotiate to improve the working conditions and quality of services. The labour laws provide strong protection for workers' rights to form or join trade unions and participate in industrial actions. However, the employer's refusal to recognize and negotiate with trade unions remains widespread since the unions hardly take decisions that favour them.

Some workers are employed by non-regularized contractors who have the liberty to set the terms and conditions of service for them. These terms are often unfavourable and some employees working under the same employer receive different treatment regarding terms and conditions of work including health insurance and a grant of annual leave. Employees working under sub-contractors are paid low wages, have no access to sick leave or any entitlement to annual leave and face job insecurity due to the temporary nature of their work.

The employment of casual labourers has further weakened the ability of workers to enforce their rights as employees since casual labourers are not given written contracts of employment and have no job security or union representation.

Poor public relations between the management and staff results into a communication gap that makes it impossible to resolve complaints affecting staff.

4.5.2. Challenges faced by employers

The rising cost of production and economic hardship faced by some employers makes it difficult to increase wages even when workers complained. This makes it difficult for them to provide conducive working environment for workers.

High taxes imposed by the state on enterprises makes it difficult for the employers to raise enough money to satisfy the ever-increasing needs of the employee in respect to their rights.

Most employers find it difficult to enforce the observance of safety measures at the workplace due to the reluctance of some employees to wear protective gear under the guise of flimsy excuses.

Most employees abandon work after achieving their goals e.g. raising school fees, raising capital, etc. This poses a great problem to employers because time and resources are spent on training workers who will sooner or later leave the company. Thus, employers are reluctant enforcing certain rights for fear of investing money that will not yield profit for their enterprises.

The limited or lack of knowledge of labour laws by some employers makes the enforcement of workers' rights a challenge since they do not know the labour standards they are expected to comply with.

4.5.3. Challenges faced by Labour Inspectors

Most of the time, employers do not respond to the convocations of Labour Inspectors resulting from the complaints raised by employee. This makes it difficult for such matters to be resolved.

Most employers are political bigwigs who can cause the transfer or frustrate the career of a Labour Inspector thus, in matters concerning or involving them, the Labour Inspectors prefers not to bring them up.

The corrupt nature of some Labour Inspector usually causes them to decide a case in favour of the highest bidder who is most often than not, the employer. This is due to the low salaries they receive and lack of motivation from the state.

It is funny to note that some Labour Inspectors are not versed with the Labour laws and are usually confused when confronted with a problem, not knowing where to start and which way to go.

Labour Inspectors lack logistical support (means of transportation and adequate funds) to effectively train, sensitize and propagate information on labour law, rights and responsibilities of employees and employer.

The shortage in the number of trained Labour Inspectors is another difficulty as a single Labour Inspector is in charge of a very vast area that makes it practically impossible for adequate and effective control of all enterprises within his jurisdiction.

Despite the fact that Cameroon has ratified several international conventions and enacted domestic legislation aimed at ensuring protection of workers' rights, this has not been sufficient to guarantee such protection. Both the employer and the employee are not very conversant with labour laws while others despite having knowledge of the law, ignored the legal requirements, for instance, for ensuring occupational safety of workers. Labour Inspectors and unions are equally incapacitated in ensuring that workers' rights are respected by employers as a result of political and logistical reasons.

In face of these challenges there is need for a comprehensive and adaptive solutions to ensure that workers' rights are indeed enforced or at least ameliorated.

CONCLUSION

With regards to the wide powers that the employer holds with regards to an employment contract, the putting in place mechanisms to regulate and control them is proof that the protection of workers right occupies a very important place in employment relation. Sanctions against the employer for abuse and for failing in his obligation serve a double function of punishment and deterrence. The right of the employee to take action against the employer in torts, breach of contract or for equitable remedy boosts the level of protection and enforcement of these rights. We can say, the Cameroonian legislator is the guarantor of the protection and enforcement of workers right in employment contracts.

CHAPTER FIVE

GENERAL CONCLUSION AND RECOMMENDATIONS

In this chapter of our work which meticulously investigated the availability, accessibility, protection and enforcement of workers' rights in employment contracts, we shall draw the conclusion to this study while making our humble recommendations to the various stakeholders for the protection and enforcement of these rights.

5.1. Conclusion

The protection of workers' rights in employment contracts is a cause for concern in states especially in Cameroon. In the course of this work, we found out that the Cameroonian legislator has enacted very good laws which are to an extent, satisfactory as compared to international standards but, in practice, the reverse is true. The enforcement of the workers' rights in Cameroon can be said to be a myth to an extent.

Despite the fact that some employers do their best in the fulfillment of their duties toward the employees, the majority do not know what constitute their duties while a majority consciously neglect such duties because of their proximity to the powers that be and political affinities.

On their part, most employees do not know what amounts to their right talk less of pushing for their enforcement. Due to the economic hardship and the need to make ends meet, they are usually powerless in front of the employer and are ready to contract on whatever terms just to secure a job.

There are also those employees who have an idea of what constitute their rights but are unwilling to press for their enforcement, preferring to be abused than to lose their job.

Most trade unions do not play the role they are accorded. This is usually as a result of corrupt practices initiated by the employers, or threats of dismissal made to workers' representatives, or for political reason. Worst still is the fact that, some workers representatives are not knowledgeable as far as workers' rights are concerned and thus serve no purpose in such unions.

Labour Inspectors on their part visit most of the time only those well-established enterprises that are situated in the urban areas and the reports they usually produce do not paint a true picture of the situation as most workers, especially those in the suburbs informal sector are suffocating under deplorable working conditions.

In a nutshell, the protection and enforcement of workers' rights is still a far-fetch dream in our context, owing to the socio-political and economic nature of our society which influences labour relations. Based on the theoretical framework, one may be tempted to say that such rights are well enforced but there exists a large margin between what really entails in practice. Cognizant of the above short comings, we humbly submit some recommendations for consideration by the powers that be to ameliorate and foster the protection and enforcement of workers' rights.

5.2. Recommendations

5.2.1. To Employees

There is need for all workers to be aware of their rights. Thus, it is recommended that all they should be conversant with what amounts to their rights before taking up a job to avoid unnecessary exploitation form dubious employers.

They should press for the enforcement of their rights especially those concerning health and safety because they cannot work so hard just to pay exorbitant hospital bills. And as the saying goes, "health is wealth".

Employees should be enabled to join trade unions of their choice in accordance with the provisions of section 3 of the Cameroonian Labour so that, they would be able to utilize the power of collective bargaining to ensure participatory decision making when making company policy and in areas where it is difficult for a single employee to venture.

Employees should be informed and empowered on their labour rights, duties and responsibilities to ensure that they can claim their rights and fulfil their responsibilities.

5.2.2. To the Employers

Employers are called upon to fulfill their duties toward the employees as provided for by the Cameroonian Labour Code in order to provide a conducive working environment for workers which will serve as a motivation.

They should endeavor to provide written contracts of employment for all workers under their employment. This way, workers will be in a position to determine their rights and duties as provided for in the contract.

They should observe the minimum pay stipulated by the state and provide fairer terms of employment for casual labourers in order to improve their welfare.

They should make provisions formal agreements with subcontractors which require adherence to and observance of basic labour rights for their workers.

Employers should support and encourage their employees in forming and joining trade unions so that they can benefit from collective bargaining to resolve crucial matters including determination of their basic pay and enforcement of their rights.

There is need for employers to conduct more on job training for workers. This would not only improve their efficiency in executing tasks but would also assist in minimizing accidents as the workers would be better trained on how to handle, manipulate and operate their working tools and machine. Such trainings should also include routine management training to empower managers to handle staff issues better. This would also include communication skills as effective communication would lead to the resolution of any dispute that could arise.

Enterprises that offer housing to their employees, there is a need to ensure that dilapidated buildings are renovated and in other instances, the construction of habitable housing facilities with access to clean water is made available for the workers. There is a need to ensure that the current housing structures are clean to ensure the health of the occupants.

5.2.3. To Trade Unions

Trade unions are called upon to truly represent and protect the workers’ interest, cultivate and maintain good working relationships with management, labour inspectors and workers in order to enhance success in negotiations between the parties to resolve issues affecting workers in a given institution.

They should sensitize and raise workers’ awareness on their rights and avenues for enforcement.

They need to organize frequent engagements between the union and employers to harmonize and agree on positions for the betterment of the workers and the employers' business.

They should give efficient, relevant and timely feedback to their members in order to anticipate industrial action caused by lack of information on how their grievances are being handled.

There is a need for trade unions to create deconcentrated structures in the suburbs to attain a wider coverage of the national territory and get closer to those workers who need protection the most.

Trade unions should avoid siding with certain political parties and inter-union fighting which, weakens their position in negotiations and reduces their credibility.

5.2.4. To the Government

Government should ensure that all employment contract be concluded in writing and not orally. This will help to ensure that contractual terms are well spelled out contrary to contracts concluded orally whose terms are always uncertain and means of proof sometimes difficult.

The observance of the provisions of the Cameroonian Labour Code by employers should be ensured by the powers that be in a bit to foster the enforcement of workers' rights and safety regulations in the work place should be strictly complied with.

The drawing up of the internal regulations should not be a unilateral act emanating from the employer but the worker should be directly involved or represented.

The state should endeavor to train more Labour Inspectors and ensure that they are present in all parts of the national territory. They should also be provided the necessary logistics and finances to carry out their job in order to avoid bribery and corruption for powerful employers against their employees, thus, ensuring their neutrality in handling disputes that may arise from the contract.

Lessons and course on workers' rights should be introduced at all level of education so that the future workers can be abreast with their rights before entering the job market. Daily

slots on workers right could also be introduce on national tv and radio to raise awareness and this could go a long way to foster the protection and enforcement of workers right.

A general revision of the Cameroonian Labour Code is necessary considering the fact that the present code was enacted in 1992, it no longer meets the present dispensation in relation to labour relations. This is evidence in the ambiguous and confusing nature of some sections such as sections 3 and 6 relating to trade unions, and failure to define certain concepts such an independent worker for example.

5.3. Suggestions for further Research

In the course of our work, we noticed certain areas in which further research is necessary in order to ensure that workers' rights are fully protected and enforced. We hereby humbly submit them.

- Discriminative practices in employment contracts in Cameroon;
- Protection of workers' rights in the internal rules and regulations of Cameroonian enterprises;
- Punishing the punisher in employment contract.

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