

Critically Assessing Mechanisms for The Protection of Workers Against Unfair Dismissal in Cameroon

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Abstract: The ILO in order to bring to an end the concept of “at will” termination which was the practice in most countries adopted, the Termination of Employment Convention No 158 of 1982. The aim of this Convention was to do away with unfair dismissal situations which existed in most countries. Irrespective of the existence of the above Convention, the practice of determination of contracts of employment in Cameroon is employer -friendly as the employer is free to determine(terminate) the contract of his employee for a cause or no reason at all. This principle runs in contradiction with the ILO Convention No 158 of 1982, a treaty duly ratified by Cameroon which provides in Article 4 for termination based on a valid reason. Though there exist several structures such as the Labour inspectorate which are in place to ensure the protection of workers against unfair termination, unfair termination has remained a pertinent issue in the Cameroon economy. This is premise on the fact that the mechanisms put in place to afford protection to workers has failed to live up to expectation.

Keywords: Termination of Employment Contract, Protection, Determination, work, Unfair Dismissal.

Introduction

The practice of determination of contracts of employment in Cameroon is employer friendly. This is premised on the fact that the employer is free to determine (terminate) the contract of his employee for cause or no reason at all. This is in contradistinction with the law and practice across the world² or the ILO standards. This shows that the law and practice of determination of contract of employment in Cameroon differ with those of other countries. The difference is occasioned by the fact that, some countries across the world have moved away from dismissal “at will” which permits the employer to terminate the contract of employment of his employee for bad or for no reason at all³ but must give reasons for termination to a justified dismissal. The move away from unjustified dismissal saw the day light with the ILO which adopted the ILO Termination of Employment Recommendation and the ILO Termination of Employment Convention⁴. This convention in its article 5 states a good number of reasons not constituting valid reasons for termination of employment contracts⁵.

Article 7 of the same convention clearly stipulates that “*the employment of a worker shall not be terminated for the reasons related to the worker’s conductor performance before he is provided an opportunity to defend himself against the allegations made, unless the employer cannot reasonably be expected to provide his opportunity*”⁶.

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²A Mathew, “Termination of Contract of Employment: Applicability of the International Labour Organisation Standards on Unfair Dismissal in Nigeria”, Published PhD Thesis, Faculty of Law, University of Akwa, P1.A, 2014.

³ *Ibid.*

⁴ Article 7 of the ILO Termination of Employment Convention No. 158 adopted in 1982.

⁵ Per Article 5 of Convention No.158, the following inter alia, shall not constitute valid reasons for termination (a) union membership or participation in union activities outside working hours or, with the consent of the employer, within working hours; (b) seeking office as, or acting or having acted in the capacity of, a workers’ representative; (c) the filing of a complaint or the participation in proceedings against an employer involving alleged violations of laws or regulations or recourse to competent administrative authorities; (d) race, colour, sex, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin; (e) absence from during maternity leave.

⁶ About 36 countries of the world have ratified the convention while about 55 countries both of those who have ratified the convention and those who have not ratified the convention have embraced the provisions of the articles of the convention which contain the ILO standards on unfair dismissal.

Despite this effort by the ILO towards ensuring a policy of fair dismissal, Cameroon is still in full practice of at will termination of employment contracts by the employer contrary to the law, and at the detriment of the employee.⁷The none applicability of the convention containing ILO standards on unfair dismissal leave Cameroon with practices which are unfair in the global perspective. It is in this light that the right to terminate a contract of employment is subject to some limitations as per the International Organization Labour Convention⁸and the violation of this by employer is at his own peril.

The concept of “unfair” or “unjustified” dismissal was developed to restrict the scope of employers’ “at will” powers⁹ of terminating contracts of employment. The rise of labour movement, increasing levels of industrial disputes and the growing recognition of the need to protect workers sparked a change in the thinking of the legislators who at the dawn of the twentieth century, began to modify the substantive provisions of the regulation in this area establishing that dismissal should be based on valid reasons¹⁰.

Unfair dismissal is one of the problems plaguing employees in developing countries especially Cameroon. Unfair dismissal practices have put employees in Cameroon in a “begger has no choice”¹¹ situation as the Labour Code is employer-friendly giving superior powers to the employer. Although S.34 of the Labour Code specifically requires termination to be for cause, the fact that the remedies for unfair dismissal specifically provide only for damages, leaves much to be desired.

There exists a number of mechanisms in Cameroon which are in place to ensure the protection of employees against wrongful discharge of contracts of employment the most eminent of which is the 1992 Labour Code which is the main legislative document regulating employments relations in Cameroon. In addition to the above, Cameroon is a signatory to the ILO Convention on Termination of Employment Contracts¹² which is the main law regulating Termination of employment contracts at the International level.

Despite Government efforts both municipal and international, unfair dismissal is still on the rise in Cameroon. Several reasons account for this prominent of which is the fact that the labour code is employer friendly leaving much to be desired in issues of determination of contracts of employment as it runs in contradictions with ratified treaties. For example, section 34 of the Code gives an upper hand for determination of an employment contract for no cause provided notice is issued contrary to the specification of the ILO Convention No 158 on determination based on valid reasons as stipulated in Article 4.

Based on this, this article critically analyses the mechanisms for the protection of workers’ rights particularly as it has immense potentials for problems.

Mechanisms for the Protection of Workers against Unfair Dismissal in Cameroon

Every worker has the right to protection against unjustified dismissal in accordance with the national laws and practices. The ILO in other to foster the protection of workers adopted the Convention No 158 on the Termination of Employment Contracts. This convention lays down guidelines on termination of contracts which must be respected by countries which are signatories to the said Convention. In response to this stipulation, Cameroon has laid down some mechanisms aimed at protecting workers against unfair dismissal.

This section shall be devoted to the appraisal of the role of the National Labour Advisory Board, the Labour Inspectorate and Social Security and the Regional Administrative Tribunal in the protection of workers against unfair termination.

⁷ Cameroon ratified the Convention No. 158 on Termination of Employment on the 13th of May, 1998. Per the Article 45 of the 1972 Cameroon Constitution, duly approved or ratified treaties and international agreements shall, following the publication, override national laws, provided the other party implements the said treaty or agreement.

⁸ Article 7 of the ILO Termination of Employment Convention No. 158 of 1982 provides that “ the employment of a worker shall not be terminated for reasons related to the workers conduct or performance before he is provided an opportunity to defend himself against the allegations made, unless the employer cannot reasonably be expected to provide this opportunity”.

⁹ See to this effect the ILO: Protection against unjustified dismissal, Committee of Experts on the Application of Conventions and Recommendations, Geneva Survey, International Labour Conference, 82nd session, Geneva, 1995, para. 85.

¹⁰ Bronstein L, “Protection against unjustified dismissal in Latin America” , in *International Labour Review*, (Geneva, ILO), Vol. 129, No. 5, 1990, pp. 593-610.

¹¹ M.A, Izuchukwu, “Termination of Contract of Employment: Applicability of the International Labour Organisation Standards on Unfair Dismissal in Nigeria, 2014.

¹² Convention No 158 of 1982, on the Termination of Contracts of Employment.

(A) The National Labour Advisory Board

The National Labour Advisory Board (herein after called the Board) is a body established under the Ministry in Charge of Labour to examine and make proposals relating to employment, working conditions, migration, social insurance, trade unions and employers' associations.¹³The Board also has as mandate to make recommendations and proposals relating to laws to be developed in the above mentioned areas.¹⁴In responds to the ILO tripartite requirement¹⁵, the board incorporates one representative each from the National Assembly, Economic and Social Council, Supreme Court as well as expert technicians sitting in advisory capacity¹⁶.The choice of representatives from these bodies is to reflect the socio-cultural reality and national practices in Cameroon, as grounded under Section 2(2) of the ILO Convention No 144 on Tripartite Consultation.

The Board has been very active in making recommendations for the general improvement of working conditions. The most recent of this was during its 16th session on August, 2013 that opened with the examination of two draft decrees for the extension of the Social Insurance Scheme to the informal and liberal sectors of Cameroon¹⁷.The role of the Board has been on a steady increase following government's wish to step up employment in the nation by putting into practice the requirements enlisted in the Growth and Employment Strategy Paper geared at driving Cameroon towards economic emergence by the year 2035.¹⁸

The Board's flexibility gives it the latitude to set up Standing and *Ad Hoc* Committees to make proposals and recommendations for matters falling within its province¹⁹.This renders the Board very effective in addressing issues falling within its jurisdiction but the problem has, however, been the relationship between the Board, Government and parliament. This is particularly so because of the reluctance by government on the one hand to put into place, recommendations from the Board and the considerable delay by parliament on the other hand to legislate on labour issues falling within its jurisdiction that has been recommended by the board.

A clear case in point is the Board's constant call²⁰ on the government and parliament to completely overhaul the Labour Code, 1992 with particular attention on some pertinent sections that have been described as rendering workers vulnerable to unscrupulous entrepreneurs who exploit them to the fullest²¹.In the same way, Government is yet to react to the Board's call through memo No. CCATU/FAWU/9/10 addressed to the Head of State to remove CDC from the list of companies to be privatized²². The call came amid speculations that a French Company will be coming to lend technical assistance to the giant agro industrial sector and for which the arrangement could be easily transformed into privatization from the backdoor²³.Such is to guarantee the rights of workers in this establishment by preventing a similar misery that followed the privatization of the Tea sector to Brobron Finex whereby the new management embraced the benefits without the burden thereby making life more miserable to the workers as many were unfairly terminated from work.²⁴

In addition, through its recognition of decent work as one of the main tenets of the ILO, and in order to ensure the protection of workers, the Board has been mounting constant pressure on Government to ratify Convention No. 129 on Labour Inspection (Agriculture) Convention which will empower Labour Inspectors

¹³ See Sections 177(1) and 2(a) of the Labour Code.

¹⁴ *Ibid*, sub section 2(b).

¹⁵This involves consultation between representatives of Government, Employers' and workers' organizations to determine work related issues. See specifically the preamble of the ILO Convention No 144.

¹⁶ Section 119(1) of the Labour Code.

¹⁷ Njonguo Abel Zesung, (2014). "*The Protection of Workers' Rights in Cameroon under the International Labour Organisation's Tripartite Consultation Convention of 1976*", Unpublished LL.M Thesis, University of Buea. at pg 80.

¹⁸ *Ibid*.

¹⁹ See generally Section 118 of the Labour Code.

²⁰ N.A Zesung "*The Protection of Workers' Rights in Cameroon under the International Labour Organisation's Tripartite Consultation Convention of 1976*". Op Cit.

²¹ This follows a speech presented by a member of the Board who doubles as the General Secretary of FAWU on the International Labour Day Celebration in Limbe, 1 May, 2013.

²² *Ibid*.

²³ *Ibid*.

²⁴ N.A Zesung "*The Protection of Workers' Rights in Cameroon under the International Labour Organisation's Tripartite Consultation Convention of 1976*". Op Cit.

to visit enterprises without prior notice and to initiate sanctions against unscrupulous employers who violate laid down labour standards²⁵. Ratification of this Convention will bring remarkable improvement in the protection of workers against unfair dismissal which is particularly seen to be depleting in Cameroon. The Board's role as an advisory body to enable the Ministry of Labour and Social Security implement the provisions of the Labour Code reserved to it by parliament affords stronger protection to workers' rights most especially rights against unfair dismissal. This is so because the Board is tripartite oriented, bringing views from all the social actors which will lead to improved and sustained decisions by way of Decrees and Ministerial Orders.

(B) The Inspectorate of Labour and Social Security

A Labour and Social Insurance Administrator is any civil servant placed at the head of a labour and Social Insurance Inspectorate²⁶. This shows that the Labour Inspectorate is a State organ set up to determine labour issues at the Regional and Divisional levels. The labour inspector plays the role of a conciliator to determine labour issues between employers and workers.²⁷ Thus, such labour inspector has the responsibility to invoke the position of the ILO Convention No 158 on Termination of Employment to ensure against wrongful termination which is rampant in Cameroon. He also has the duty to do spot and notified checks at enterprises as well as bringing actions against default employers in a bid to ensure that employers adhere to their obligations of ensuring that workers are discharging their duties in a dignified manner.²⁸

Regarding the resolution of the labour grievances on an individual basis, the labour inspector plays the role of a conciliator by bringing together the employer and the employee to determine issues at stake such as wrongful termination which is the issue in this context. He must, however, have no interest whatsoever in the matter before him other than effectively attempting a resolution of the grievance in question²⁹

The preliminary of reconciliation is a condition *sine qua non* for commencing an action in that the matters in contention between the parties are submitted to the Labour Inspector of the place of work of the employee for an amicable settlement. The non-fulfilment of this preliminary attempt at reconciliation before the competent Labour Inspector renders the proceedings if entertained, a nullity.³⁰ These are the exigencies of the Labour Code³¹. The Supreme Court of Cameroon has had the occasion to reiterate this requirement in a number of its judgments³² and in *Affair Maitre Penda v Evina Joseph*³³ it was emphatic in declaring that section 146(1) of the Labour Code imposes an absolute obligation on all employees and all employers to submit firstly the dispute to the Labour Inspector and Social Insurance for an amicable settlement.³⁴ The attempt at conciliation is mandatory in all labour matters. This dispensation provides a strong course of action to workers for the promotion and protection of their rights especially as the failure of any Labour Inspector to issue a Certificate of Non-Conciliation could have him compelled by way of a mandamus to produce same for the purpose of commencing the action.³⁵

(C) Regional Administrative Tribunals and the Protection of Workers against Unfair Termination

A major innovation in the judicial life of Cameroon is Law No.2006/022 of 29th December, 2006 instituting Administrative Courts at the Regional Head Quarters. The innovation brought about by this law is welcomed with both hind and foresight. In the foresight of it, the law is said to promote worker's rights for it will greatly decongest the Administrative Bench of the Supreme Court that was before now entertaining all

²⁵ *Ibid.*

²⁶ Section 105(1) of the Labour Code.

²⁷ N. A Zesung, "The protection of Workers' Rights in Cameroon Under the International Labour Organization's Tripartite Consultation Convention of 1976", 2015, Op cit. P: 94.

²⁸ See generally section 107-109.

²⁹ *Ibid*, section 105(3).

³⁰ Rt Honourable Joseph Mbah-Ndam "Practice and Procedure in Civil and Commercial Litigation", Presses Universitaires d'Afrique, 2003.

³¹ Section 146(1) of the Labour Code.

³² C.S judgment no 39/s of 8 February 1972, C.S 14 June 1972 p.621, C.S 14 December. 1978.

³³ C.S Judgment No 32/S OF 21 Jan. 1982.

³⁴ See; Cameroon Law Review, 2nd series, no 28, 1984, p.287

³⁵ See the Meme High Court's decision in *Abaken v. Labour Inspector of Kumba and Another*. Suit NoHCK/L.8/84 in which the order was applied.

administrative matters in the land.³⁶ This law will, thus, ensure speed and effectiveness in the determination of disputes while conserving and rendering administrators liable to their acts. Its success is already guaranteed given that administrators will not live in the belief that the Supreme Court is too far from litigants. Such a spirit of responsibility will automatically render administrators accountable for their acts while ensuring the protection of workers' rights.

The hindsight of the law on its part opens with the Supreme Court's decision in *National Social Insurance Fund(CNPS) v Kuma Ndumbe*³⁷ where the court stated clearly that complaints relating to Ministerial Acts go to the regular courts. The composite nature of the Labour Code has already spelled out the substantive and procedural law relating to Acts of the Minister of Labour and Social Security. Such is a debilitating suppression of workers' rights as it is not clear whether challenge to an Act of the Minister of Labour should be reverted to the labour courts in disrespect of a superior precedent set by the Supreme Court or to the Administrative Courts in disrespect of the Composite nature of the Labour Code, 1992 carefully deliberated and adopted by the legislature and for which the President of the Republic promulgated into law³⁸.

Given that the Supreme Court makes laws in the guise of interpreting³⁹, it would seem that the complaints pertaining to administrative acts is an exception to the general rule of procedure instituted under the Labour Code. However, such must be spelled out for the purpose of clarity and adaptability in judicial decisions.

Despite the role played by the Administrative Court in trying administrators who act contrary to the laid down laws on protection of workers against unfair dismissal, dismissal situations are still on the rise in Cameroon. This is just to portray the fact that the existence of this structure alone without a follow up measure to ensure proper implementation of the existing laws against unfair dismissal amounts to nothing. It is not enough for this structure to exist without guiding principles put in place to ensure proper execution of justice.

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³⁶*Ibid.*

³⁷ Appeal No.97/5/02-03 of 5 August, 1998.

³⁸ N. A Zesung, (2015) "The protection of Workers' Rights in Cameroon Under the International Labour Organization's Tripartite Consultation Convention of 1976", *Op cit.* P:105.

³⁹ Although it is not stated under Cameroonian law, article 4 of the French Civil Code stipulates that any judge who dismisses or stays a matter because parliament has not legislated on it shall be prosecuted. This is to say that judges who are confronted with such situations must make laws in the guise of interpreting. This practice is, however, trite in common law which operates on Doctrines and Principles and for which the same runs in Cameroon.

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