

# THE PROTECTION OF A WORKER'S RIGHT TO NON-DISCRIMINATION UNDER CAMEROONIAN LABOUR LAW

*Written by Nda Aubin Tamboli*

*3rd Year Ph.D. Candidate, University of Dschang, Cameroon*

## ABSTRACT

A worker's right to non-discrimination is a fundamental human right which has been guaranteed and enshrined in international, regional and national instruments. The protection of this right remains a global concern in ensuring that workers or employees are protected from discriminatory practices. In this connection, even though the 1992 Labour Code of Cameroon expressly prohibits discrimination on grounds of trade union activities, it fails to exhaustively address other grounds of employment discrimination such as: discrimination based on, race, sexual orientation, disability, age amongst others. The very narrow and inexhaustive manner with which a worker's right to non-discrimination has been treated in the Labour Code accounts for the blatant discriminatory practices in private sector employment in the country. To this end, the paper seeks to examine the protection of worker's right to non-discrimination as is confectioned under the 1992 Labour Code and the extent of its application in Cameroon. In this light, we adopted an in-depth content analysis and critical evaluation of the primary and secondary sources of data. This research concludes that the Cameroon Labour legislation to an extent, guarantees the right to non-discrimination, but its effective implementation leaves much to be desired. This has necessitated the suggestion of some policy recommendations for the way forward.

**Keywords:** Worker, Right, Non-discrimination, Protection, Labour Code, Cameroon.

## INTRODUCTION

A worker's right to non-discrimination is both a legal right, as well as an international recognised human right.<sup>i</sup> In this connection, the right to non-discrimination as a fundamental human right places greater importance in guaranteeing other rights of workers<sup>ii</sup>; such as remuneration, rest, safety and health. Moreover, the effects of discrimination in employment relationship are devastating and are felt by the workers, the employers/government and the society at large. It should be noted that when workers are discriminated upon, they become stressful, nurse the intention of seeking alternative employment positions elsewhere as there is decreased satisfaction and commitment in performing their functions. This in turn goes a long way to influence their efficiency, productivity and the employment relationship negatively in the sense that performance, productivity and morale will drop and there will generally be a lower profit margin for the employer.<sup>iii</sup> The importance of protecting a worker's right to non-discrimination in employment contract as a core human and labour right cannot be overemphasised. Such protection serves as the basis for upholding the dignity of workers whom according to Ben-Israel are equally human beings and are due the respect of their rights and dignity.<sup>iv</sup>

It is worth noting that employment and occupational discrimination falls within the scope of workplace injustices. It has been and is still a major societal problem and Cameroon is not an exception. In this light, Juan Somavia affirms that "Everyday around the world, discrimination at work is an unfortunate reality for hundreds of millions of people".<sup>v</sup> The worker's right to non-discrimination remains a global concern and for this reason, employees should be protected from this appalling malpractice.

In this connection, the government of Cameroon like any other state party to the ILO<sup>vi</sup> and the United Nations and by virtue of her ratification of ILO Convention 100 on Equal Remuneration 1951,<sup>vii</sup> Convention 111 on Discrimination (Employment and Occupation)<sup>viii</sup> and the International Covenant on Economic, Social and Cultural Rights 1966 (herein after referred to as ICESCR)<sup>ix</sup> has a duty to respect, protect and fulfil workers' right to non-discrimination in the country. This is guaranteed in the preamble of the Constitution of Cameroon<sup>x</sup> and the 1992 Labour Code of Cameroon.<sup>xi</sup> Though Cameroonian labour legislation prohibits employment and occupational discrimination on grounds of trade union activities, it fails to exhaustively address other grounds of employment discrimination such as: discrimination based on race,

sexual orientation, disability, age amongst others. This therefore, renders the Labour Code's discourse on employment discrimination very narrow and inexhaustive. The very narrow and inexhaustive manner with which the fundamental right of a worker to non-discrimination has been treated in the Labour Code does not augur well for this core right. This inexhaustiveness accounts for the blatant discriminatory practices in private sector employment in the country.<sup>xii</sup> Though the government of Cameroon has enacted a law to protect persons with disability against employment discrimination,<sup>xiii</sup> and equally criminalised discrimination on a wide range of issues in the Penal Code including employment and occupational discrimination,<sup>xiv</sup> these measures are inadequate. This explains why the UN Committee on Economic, Social and Cultural Rights in reviewing the country's report on the state of citizen's socio-economic rights in the country blamed the State for not adopting a general law to cover all aspects of discrimination as the basis for the prevalence of employment discrimination in the country.<sup>xv</sup>

In addressing the problems raised, it is of utmost importance to understand the meaning of some fundamental issues such as: what is the meaning of non-discrimination in employment? How effective is the legal framework for the protection of the right of a worker to non-discrimination under Cameroonian labour legislation? And what is the place of affirmative action in the face of discrimination? This paper therefore, sets out to examine the extent to which a worker's rights to non-discrimination has been consecrated and protected under Cameroonian labour legislation. Before delving into an assessment of the legal framework for the protection of a worker's right to non-discrimination, it is of utmost importance to understand the concept of discrimination.

## **THE MEANING, TYPES AND THE NEED OF PROTECTING A WORKER'S RIGHT TO NON-DISCRIMINATION IN EMPLOYMENT CONTRACT**

It is important for all employees and employers to understand what workplace discrimination is, what to do if discrimination occurs, and the critical importance of maintaining workplaces free from discrimination. In this regard, understanding the concept of discrimination and non-discrimination, the types as well as the necessity to protect employees from this practice remains indispensable.

### ***A. Understanding the concept of discrimination and non-discrimination***

Discrimination in contract of employment takes many forms and occurs in all kinds of work settings. In neoclassical economics theory,<sup>xvi</sup> labour market discrimination is defined as the different treatment of two equally qualified individuals on account of their gender, race, age, disability, and religion. Article 1 of the Discrimination (Employment and Occupation) Convention, 1958 (N<sup>o</sup>. 111), defines discrimination as “any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation”. Through this broad definition, the Convention covers all discrimination that may affect equality of opportunity and treatment in employment. In the context of this study, the distinction we are referring to is limited to the treatment of two employees of equal status differently in an employment relationship.

### ***B. Types of discrimination in employment contract in Cameroon***

The distinctions, exclusions or preferences covered under Convention 111 may have their origin in law or in practice. It can be direct or indirect discrimination.

#### ***a. Direct discrimination***

Discrimination in employment can be direct when rules, practices and policies exclude or give preference to certain individuals just because they belong to a particular group, for example, job advertisements which indicate that only men should apply. Not only is this form of treatment morally wrong in the workplace; it presents a legal issue in the context of employment law. For this reason, section 6(1) (c) of the Sex Discrimination Act 1975; an English Statute, considers refusing or deliberately omitting to offer employment because of a person’s sex is unlawful.

#### ***b. Indirect discrimination***

Indirect discrimination refers to apparently neutral situations, regulations, or practices, which in fact result in unequal treatment of persons with certain characteristics. This discrimination occurs when the same condition, treatment or criterion is applied to everyone, but results in a disproportionately harsh impact on some persons on the basis of certain characteristics. It could be on persons who belong to certain classes with specific characteristics such as race, sex or religion, and this discrimination is not closely related to the inherent requirement of the job.

An example is requiring applicants to be of a certain stature, which could disproportionately exclude women and members of some ethnic groups. In this light, article 1(2) of same Convention excludes three categories of measures, which shall not be deemed to be discrimination. These are: (i) those based on the inherent requirements of a particular job,<sup>xvii</sup> (ii) those warranted by the protection of the security of the State,<sup>xviii</sup> and (iii) measures of protection or assistance.<sup>xix</sup>

### ***C. The Need of Protecting a Worker's Right to Non-Discrimination in Employment Contract***

Discriminatory practice is not only a violation of the fundamental right of a worker to be free from discrimination, but also adversely affects the job satisfaction of all employees, not just those who are discriminated against. It should be noted that if an employee consistently sees promotions being given on the basis of gender, race, age or other discriminatory factors, his or her drive to advance within the organisation or perform to the best of his ability is negatively affected.<sup>xx</sup> Moreover, discriminatory practices have negative consequences for the normal functioning of an enterprise in many instances. Firstly, enterprises are vulnerable to legal action and associated financial consequences because discrimination against individuals of protected classes, such as racial, religious, or gender-based classes, is illegal. Secondly, discriminatory practices have consequences for employee productivity in an enterprise. The discrimination of a worker in the workplace may lead to greater employee absenteeism and withdrawal from work which negatively affects performance, productivity and employee turnover as well as the profit margin of the employer.<sup>xxi</sup>

From the above analysis, the practice of discrimination in employment contract is not only a violation of the fundamental right of a worker,<sup>xxii</sup> but also acts adversely against an employer (the enterprise) who encourages such practices. For this reason, ILO Convention 111 provides that each Member for which this Convention is in force should undertake to declare and pursue a national policy designed to promote, by methods appropriate to national conditions and practice, equality of opportunity and treatment in respect of employment and occupation, with a view to eliminate any discrimination in respect thereof. In this regard, the State of Cameroon has consecrated the right of a worker to non-discrimination under national legislation.<sup>xxiii</sup>

## THE LEGAL FRAMEWORK FOR THE PROTECTION OF A WORKER'S RIGHT TO NON-DISCRIMINATION IN CAMEROON

The recognition of the right to non-discrimination is not new in Cameroonian labour legislation.<sup>xxiv</sup> The desire to protect the fundamental right of a worker to non-discrimination has urged the government of Cameroon to put in place a legal framework for the prevention of discriminatory practices. The Cameroon legislator in conformity with its international law obligations<sup>xxv</sup> has dedicated a series of provisions in the 1996 Constitution and the Cameroon Labour Code, 1992 for the prohibition of discrimination in employment. In this light, the preamble of the 1996 Constitution of Cameroon provides *inter alia* that all persons shall have equal rights and obligations and the State shall provide all its citizens with the conditions necessary for their development.<sup>xxvi</sup> The importance of this constitutional provision cannot be over emphasised as it helps to prohibit discrimination in general, and employment and occupational non-discrimination in particular. It equally serves as an inspirational provision for employment and occupational non-discrimination to other national laws. In tandem with this constitutional provision, the Cameroon Labour Code, 1992 in section 4(2) (a) provides that workers shall be protected from any acts of anti-union discrimination in respect of their employment. In this connection, the right to non-discrimination in employment under Cameroonian legislation will be examined at the level of recruitment and during the performance of the contract of employment.

### *A. Non-discrimination at the level of recruitment*

At the level of recruitment, all competent persons must be subject to the same requirements in Cameroon. This has been guaranteed in the preamble of the Constitution of Cameroon which provides *inter alia* that all persons shall have equal rights and obligations and the State shall provide all its citizens with the conditions necessary for their development. It goes further to provide that: - “no person shall be harassed on grounds of his origin, religious, philosophical or political opinions or beliefs, subject to respect for public policy”. It therefore follows from this categorical constitutional provision that the conditions for recruitment must be general and impersonal. Hallowing from this constitutional provision, it can be gleaned that equally qualified applicants should be treated equally. However, it has been argued that for two applicants with unequal qualifications, the applicant with better credentials should, under normal circumstances, receive more favourable treatment.<sup>xxvii</sup> If this does not occur (that is, if

the more highly qualified applicant receives equal or less favourable treatment), then an act of discrimination has occurred.

In the light of the above constitutional provision and in line with the provisions of section 23 of the Cameroon Labour Code,<sup>xxviii</sup> this researcher further argues that, even though, the will of the parties is determinant in the formation and content of the contract of employment, it is inadmissible that certain applicants be put aside for reasons linked particularly to sex, ethnic origin, religion and political opinions or trade union affiliation. It is for this reason that in the English<sup>xxix</sup> case of *GRIEG V. COMMUNITY INDUSTRY*,<sup>xxx</sup> it was held that the motives of the employer are irrelevant to constitute an act of discrimination. If a man is accepted to a job because he is a man, whereas a woman is refused because she is a woman, there is discrimination unless the man has qualification which the woman does not. The facts of the case reveal that the applicant and another woman were appointed to two jobs, which involved working with men. The other woman failed to turn up for work, and so the applicant was not allowed to start work, as in the past there had been problems with one woman working with an all-male team.

### ***B. Non-discrimination during the performance of the contract of employment***

During the performance of the contract of employment, equality is also guaranteed. The Labour Code 1992 in section 80 guarantees equal duration of work for all workers. In effect, the statutory hours of work in all public and private non-agricultural establishments may not exceed forty hours per week. In all agricultural and allied undertakings, the hours of work shall be based on a total of two thousand four hundred hours per year, within the maximum limits of forty-eight hours per week.<sup>xxxi</sup> The above provisions shall apply to all workers, irrespective of age and sex and irrespective of the mode of payment. In fact, section 80(4) of same Code provides that “Decrees issued after consultation with the National Labour Advisory Board shall determine the circumstances under which exemptions from compliance with the statutory hours of work are authorised, as well as the conditions governing the performance and remuneration of overtime giving rise to extra pay”. It is against this backdrop that in *ENONGENE WILLIAMS V. UNIVERSITY OF BUEA*,<sup>xxxii</sup> the Kumba Magistrate Court awarded to the plaintiff special damages representing the extra hours he worked in excess of the statutory prescribed period.

### ***a. Non-discrimination in remuneration***

Equal duration of work has as corollary equal remuneration. In effect, section 61(2) of the Labour Code 1992 provides that for the same type of work and level of proficiency, workers shall be entitled to the same remuneration, irrespective of their origin, sex, age, status and religion, subject to the provisions of this section. It is worth noting that ILO Convention 100 in its article 2 requires Member States to take measures to promote, ensure, encourage or facilitate application of the principle of equal remuneration for men and women workers involved in work of equal value. Equal remuneration for men and women workers for work of equal value refers to rates of remuneration established without discrimination based on sex. The position of the Cameroonian legislator as far as equal remuneration is concerned could be likened to that in England as seen in *CAPPER PASS LTD V. LAWTON*.<sup>xxxiii</sup> In this case, the industrial tribunal held that a woman who worked as a cook in a company's director dining room, providing launch for between 10 and 20 persons was entitled to equal pay as the other two assistant chefs who worked in the factory canteen, and who prepared 350 meals each day. In rendering this decision, the learned judge was of the opinion that, the work did not have to be the same; it was sufficient 'if it was broadly similar', and the differences were not of practical importance.

This researcher therefore relates this decision of the industrial tribunal, particularly the phrase 'if it was broadly similar, and the differences were not of practical importance' to the provision of section 61(2) of the Labour Code 1992; 'for the same type of work and level of proficiency, workers shall be entitled to the same remuneration, irrespective of their origin, sex, age, status and religion', to re-echo the position of the legislator on the protection of the right of a worker to non-discrimination in employment. In thus connection, Keith Abbot<sup>xxxiv</sup> in the feminist theory seeks to establish women as the equal of men, and to this end suggests the need for policy reforms, the dispensing of sex stereotypes, and the removal of barriers to advancement in all areas of social, economic and political life. It thus accepts the existing institutions of society but seeks ways of improving the position of women through reforming actions that open up their opportunities and reduce gender-based prejudices and stereotypes.

### ***b. Non-discrimination arising from trade union activities***

The worker in Cameroon is further protected from discriminatory practices arising from his membership or non-membership in a trade union or its activities. In fact, section 4(2) of the



Labour Code 1992 protects the worker from “any acts of anti-union discrimination in respect of his/her employment; any practice tending to make their employment subject to their membership or non-membership in a trade union; or to cause their dismissal or other prejudice by reason of union membership or non-membership or participation in trade union activities”. The strength of this provision is the preamble of the 1996 Constitution which must be read alongside its article 65.

The preamble of the Constitution confers on every worker the freedom of association and of trade unionism as well as the right to strike under the conditions fixed by law. Moreover, the inalienable role of the State has been re-echoed in the same preamble in the following words: “the State shall guarantee all citizens of either sex the rights and freedoms set forth in the Preamble of the Constitution”. It will be an affront to common sense and an outright abuse of the law for the employer to terminate the contract of employment of a worker because of his involvement in trade union activities; an act which is in total violation of his fundamental right to be free from discrimination.

Section 4(2) of the Labour Code 1992 leaves no room for equivocation as section 4(3) categorically describes “any act contrary to the provision of this section” as “null and void”. Therefore, any dismissal, punitive transfer, demotion, deduction of salary as a consequence of a worker’s membership of a trade union is absolutely ineffective as this will be considered as discriminatory. A labour court can for this reason easily order the reinstatement of any worker punitively dismissed for his union membership.<sup>xxxv</sup> As interesting as these legal provisions are, their effective implementation leaves much to be desired. In practice, workers in Cameroon suffer discrimination as a result of their membership and participation in trade union activities. A case in point is *SYNES V. DR. NJEUMA*.<sup>xxxvi</sup> The facts of the case reveal that Dr. Mbufong,<sup>xxxvii</sup> Dr. Nana-Fabu<sup>xxxviii</sup> and Dr. Egbwewatt, three (out of nine) assistant lecturers of the University of Buea were summarily dismissed by the then Vice-Chancellor of the University of Buea Dr. Njeuma, for ostensibly failing to change grade to the tenured position of lecturer. This measure was justified officially in terms of their failure to publish but as this is rarely a criterion for promotion in Cameroonian universities, it was widely believed that their participation in the activities of SYNES (their trade union) was the real reason for their dismissal. Despite threats of legal and strike actions by SYNES, Dr. Njeuma refused to revise her decision. In an attempt to calm the potentially explosive situation, the then Minister of Higher Education, Jean-Marie Atangana Mebara, decided to intervene in the conflict. After a

meeting with the three assistant lecturers, he re-instated them but transferred them to the University of Douala.<sup>xxxix</sup> The union followed this up when it instituted this suit against Dr. Njeuma in the High Court of Fako. Although the reinstatement of the dismissed lecturers did not arise from the decision of a labour court,<sup>xl</sup> the subsequent reinstatement of the dismissed lecturers by a decision of the Minister of Higher Education simply goes to demonstrate the extent to which the executive in Cameroon is capable of disregarding the law, manipulating legislative provisions and as such deliberately hampering the effective recognition of the right to freedom of association as well as discrimination against workers who are members of these unions. It would seem here that the administration retains the monopoly of interpreting the laws, which it often does in its favour as seen in the decision of the then Minister of Higher Education in the case of *SYNES V. NJEUMA*.<sup>xli</sup>

Another instance of the violation of workers' right non-discrimination can be seen in the Lom Pangar Hydro Electric Dam Project where discriminatory practices based on race were visible<sup>xlii</sup> in the domains of accommodation, promotion and management, health, mission allowances and retrenchments. As far as accommodation is concerned, Cameroonian workers and some senior staff lived in poorly assembled wooden structures while their counterparts (white labourers) lived in buildings constructed with durable materials. Basic service requirements such as the supply of water, adequate sewage and garbage disposal system, appropriate protection against heat, cold, damp, noise, fire and disease-carrying animals, adequate sanitary and washing facilities, ventilation, cooking and storage facilities and natural and artificial lighting, and in some cases basic medical services were available to white labourers but absent for Cameroonian workers. Despite this discrimination in housing facilities, the improved conditions of the living quarters did not comply with the basic minima required by law.

As far as mission allowances are concerned, it is no secret that once the company commissions an employee to perform his duties out of his normal place of work and residence, it is bound to cater for the feeding and accommodation of the worker. Unfortunately, at Lom Pangar, only white workers benefited from that legal obligation. When a white worker is on mission, he is accommodated in a luxurious and well secured hotel in town. Cameroonians are forced to lodge under very poor conditions because either the mission allowance is so meagre that the employee cannot afford decent accommodation or such accommodation is not at all provided. Since the very beginning of the project, this had been the fate of the drivers. On one occasion,

the Director's driver requested for his mission allowance, he was dismissed on the grounds that there was no job for him.<sup>xliii</sup>

It should be noted that Article 66 of the Labour Code provides that the lodging conditions of displaced workers must be suitable, sufficient and decent and must correspond to family situation of the worker. Article 3 of Ministerial Order N°. 018/MTPS/SG/CJ of 26 May 1993 fixing the lodging conditions of workers obliges employers to submit their proposed plans for approval to the Inspector of Labour with jurisdiction over the area for approval. If the inspector is of the view that the lodging facilities do not comply with the requirements of the law or that it is unsuitable, inadequate, indecent and does not respect the family conditions of workers, he shall file a report thereon. The Ministerial Order goes further in Article 10 to introduce a compensatory allowance at a rate of 25% of the net monthly salary when housing facilities are not provided. The situation of the Cameroonian workers above clearly underscores the fact that the lodging facilities provided for the workers in Lom Pangar were not only inadequate and offensively indecent, they also did not respect the family situation of workers.

It should be noted, as a matter of interest that despite such obviously horrendous living conditions in Lom Pangar, the Labour Inspector is expected, in keeping with Article 3 of Ministerial Order N°. 18 to approve the plan presented employer for adequate lodging facilities. If dissatisfied, the Labour Inspector is expected to use the powers vested in him by Article 109 of the Labour Code to submit a report on oath on the violation of the conditions provided in Ministerial Order N°. 18 and thus trigger legal action against the employer. During the industrial action of June 2012, when Cameroonian employees petitioned for better living conditions, the General Manager said inter alia that " some problems such as housing facilities for employees (lodged 4 per room) are up for discussion simply because the company is still to construct the employee's quarters."<sup>xliv</sup> The above statement when fully scrutinised, gives the impression that the General Manager was conversant with the legal provisions governing housing conditions, yet three years later, nothing was done concerning the situation of the disadvantaged workers, in outright violation of their right to non-discrimination. Practices of this nature do not augur well for the protection of workers' rights to non-discrimination in Cameroon. It is interesting to note that not all acts of discrimination will be considered illegal. Some acts of discrimination are justifiable on the basis of what is termed 'affirmative action' in labour parlance.

## THE PLACE OF AFFIRMATIVE ACTION IN THE FACE OF DISCRIMINATION UNDER CAMEROONIAN LABOUR LEGISLATION

It is interesting to recall that not all acts of differential treatment in employment will be considered as discriminatory. It is for this reason that article 1(2) of Convention 111 excludes three categories of measures, which shall not be deemed to be discrimination. These are: (i) those based on the inherent requirements of a particular job, (ii) those warranted by the protection of the security of the State, and (iii) measures of protection or assistance. These measures of protection or assistance entail special preferences which should not be considered discriminatory because they are aimed at addressing structural disadvantages and to protect particularly vulnerable groups, encouraging equal enjoyment of human rights.<sup>xlv</sup>

In this connection, even though a worker is protected from non-discrimination under Cameroonian labour legislation, there exists circumstances where different treatment of employees on one of the prohibited grounds of discrimination is lawful. This therefore, implies that there exists a place for affirmative action in the face of discrimination, if the criteria for such differentiation are reasonable and the objective of which is to promote a safe and efficient workforce as well as reduce inequalities and thus raise the status of minorities.<sup>xlvi</sup> It is, therefore, from this line of reasoning permissible to make arrangements which will lead to a person being offered a job, or to refuse another person that post, if the sex of the person is a genuine occupational qualification for the job. Following this line of reasoning, an employer does not unlawfully discriminate if he does not employ.<sup>xlvii</sup> The special status of female workers and foreigners merit our attention here.

### *A. The special status of female workers in Cameroon*

The Cameroonian legislator has accorded special attention to the legal status of female workers. For example, any pregnant woman whose pregnancy has been medically certified may terminate her contract of employment without notice and without being obliged on that account to pay the compensation provided for in Section 36.<sup>xlviii</sup> During such period, the employer shall not terminate the employment contract of the woman concerned because of the pregnancy.<sup>xlix</sup> In addition, a female worker in Cameroon is entitled to at least 14 weeks of maternity leave with pay during a medically certified pregnancy.<sup>1</sup> During such leave, the employer shall not terminate the employment contract of the woman in question. Another special protection

accorded to female workers is prohibition from night work in industries in Cameroon for women. However, this researcher contends that the prohibition of night work for women does not apply *stricto sensu* today as the situation of the female worker has greatly evolved from outright prohibition to free access to night employment. Women today, especially those in hospital establishments (Nurses and Medical Doctors) can be seen performing night duties. Therefore, there is the need for a review of these special protective legislations<sup>li</sup> with a view to excising all discriminatory constraints against women which may end up defeating the whole purpose of the prohibition of discrimination in employment. Another aspect of affirmative action in Cameroon is contracts of employment involving migrant workers.

### ***B. The situation of migrant workers in Cameroon***

Another aspect of positive discrimination permitted by law is contracts of employment involving foreigners. The Labour Code in section 23(2) provides for the freedom of negotiation of a contract of employment; that is, the right to go into contracts with whom we want. This right will not be breached, if priority is given to nationals, and the use of workers of foreign nationality can only arise in instances where special skills which cannot be obtained locally are required. In this connection, the 1992 Labour Code in section 113 provides that “in order to ensure full employment of national labour force, decrees issued after consultation with the National Labour Advisory Board shall limit the employment of workers of foreign nationality in certain occupations or at certain levels of professional qualifications”. Article 2 (1) of the 1993 decree<sup>lii</sup> further lays emphasis on the recruitment of foreigners to certain jobs is subject to the absence of Cameroonians in the specialty concerned. All these practices are justified and cannot be held to constitute acts of discrimination.

## **CONCLUSION AND THE WAY-FORWARD**

It has been observed that employment and occupational discrimination falls within the scope of workplace injustices. Being a fundamental right of the worker, it has been recognised by its inclusion in relevant ILO Conventions (Conventions 100 on Equal remuneration and 111 on Discrimination in Employment Convention), as well as the UN’s ICESCR. The Cameroon legislator in conformity with its international law obligations<sup>liii</sup> also consecrated the right to

non-discrimination in employment contract in the preamble of the 1996 Constitution (as revised in 2008) and the 1992 Labour Code respectively. Despite the efforts made to protect a worker's right to non-discrimination under Cameroonian Labour legislation, workers continue to suffer from discrimination as demonstrated in the cases of *SYNES V. DR. DOROTHY NJEUMA*<sup>liv</sup> and the Lom Pangar Hydro-Electric Dam Project. The futility in trying to protect this core right of a worker has therefore, necessitated the proposition of some policy recommendations for the way forward. To this end, it is proposed that:

The government of Cameroon should adopt a comprehensive law to cover all aspects/types of discrimination to give a worker the much-needed protection s/he deserves. This suggestion is in line with the UN Committee on Economic, Social and Cultural Rights' position which suggested that the prevalence of employment discrimination arises from the failure of the government of Cameroon to adopt a comprehensive law to cover all aspects of discrimination. This can be done taking into consideration the realities in other countries such as the United Kingdom's Equality Act, 2010, which covers all aspects of discrimination, including employment and occupational discrimination. In this light, the 2010 Law on the protection and promotion of the rights of persons with disabilities, the relevant provisions of the Labour Code of 1992,<sup>lv</sup> as well as the relevant provisions of the Cameroon Penal Code of 2016<sup>lvi</sup> should be harmonised, to constitute a comprehensive law on discrimination for the country.

Secondly, the government should ease the process or eliminate legal restrictions on female employment at night with the aim of improving the opportunities for women in employment and strengthening non-discrimination. There is the need for a review of the special protective legislations in Cameroon with a view to excising all discriminatory constraints against women which may end up defeating the whole purpose of the prohibition of discrimination in employment. If discrimination is to be completely wiped out, measures to allow both men and women to harmonise their work and family commitments should be adopted, rather than expressly prohibiting night work for women. On the contrary, such outright prohibition can be considered as discriminatory given that the position of women in employment has greatly evolved over the years.

Thirdly, there should be some form of social dialogue between government, employers, employees and trade unions in case of any disputes and this should be based on equal representation of all. This will secure the equal participation of workers in decent works and in arriving at decisions which directly touch on their socio-economic interests. Thus, the ability

of workers to organise freely and bargain collectively in order to defend their interest will greatly help to uphold and protect their right to non-discrimination in the employment contract.

## ENDNOTES

<sup>i</sup> Beauchamp, T.L., and Bowie, N.E., (2014), *Ethical Theory and Business*, Englewood, N.J: Prentice-Hall Inc. 1993, in Fernandes and Hadi, N., “African Americans and Workplace Discrimination”, *European Journal of English Language and Literature Studies*, Vol. 2, No. 2, PP. 56-76.

<sup>ii</sup> Laci, A., Armela M., and Rusi, L., (2017), “Equity at Work and Discrimination in Employment and Occupation”, *Journal of Educational and Social Research*, Vol. 7, No. 2, PP. 67-82.

<sup>iii</sup> Regmi, K., Naidoo, J., and Sharada, R., (2009), “Understanding the effect of discrimination in the Workplace: A Case Study Amongst Nepalese Immigrants in the U.K.”, *Equal Opportunities International*, Vol. 28, No. 5, PP. 398-314.

<sup>iv</sup> Ben-Israel, R., (1988), *International Labour Standards: The Case of the Freedom to Strike*, Deventer Kluwer.

<sup>v</sup> Former Director General of the ILO from March 1999 to September 2012. See generally <https://www.ilo.org/global/publications/world-of-work-magazine/articles>, accessed on 19/08/2020.

<sup>vi</sup> Cameroon became a member of the ILO on the 7th of June 1960.

<sup>vii</sup> Cameroon ratified this Convention on 25th May, 1970.

<sup>viii</sup> Ratified on the 13th of May 1988.

<sup>ix</sup> Ratified on the 27th of June 1984.

<sup>x</sup> See paragraph 5 of the Preamble of the 1996 Constitution of Cameroon as revised in 2008. Article 65 of the same constitution makes the preamble part and parcel of the Constitution.

<sup>xi</sup> Enacted as Law No. 92/007 of 14 August 1992, the Cameroon Labour Code is the master piece legislation governing labour relations in Cameroon.

<sup>xii</sup> See generally the Committee on Economic, Social and Cultural Rights Fourth periodic report submitted by Cameroon under articles 16 and 17 of the Covenant, 2016.

<sup>xiii</sup> Section 38(3) of Law No. 2010/002 of 13 April 2010 on the protection and promotion of persons with disabilities in Cameroon. This section provides that: in no circumstances may disability constitute grounds for discriminating against or rejecting job applicants with disabilities.

<sup>xiv</sup> Section 242 of the Cameroon Penal Code provides that: whoever excludes another... from any employment, by reason of his race, religion, sex or health status, where such status does not endanger anyone shall be punished with imprisonment for from one month to two years and with a fine of from five thousand francs to five hundred thousand francs.

<sup>xv</sup> See generally the Committee on Economic, Social and Cultural Rights Fourth periodic report submitted by Cameroon under articles 16 and 17 of the Covenant, 2016 and also, Patrick, A.A., (2019), “The Protection of Core Workers’ Rights in International Law: An Assessment of the Cameroonian Situation”, Ph.D. Thesis, Department of English Law, Faculty of Laws and Political Science, University of Buea. (Unpublished).

<sup>xvi</sup> Blau, F. et al., (2010), *Differences in Occupations and Earnings, the Role of Labour Market Discrimination: The Economics of Women, Men and Work*, 6th International Edition, Harlow Pearson Education.

<sup>xvii</sup> Under Article 2 of the Convention, “any distinction, exclusion or preference in respect of a particular job based on the inherent requirements thereof shall not be deemed to be discrimination”. There are few instances where the grounds listed in the Convention may actually constitute inherent requirements of the job. As regards men and women, distinctions on the basis of sex may be required for certain jobs, such as those in the performing arts, or those involving particular physical intimacy. With respect to religion, restrictions for some jobs associated with a particular religious’ institution may be acceptable. See ILO Publication, (2003), *Fundamental Rights at Work and International Labour Standards*, Geneva, ILO.

<sup>xviii</sup> In order to avoid undue limitations on the protection which the Convention seeks to guarantee Article 4 covers measures taken in respect of activities of which an individual is justifiably suspected or convicted with the exclusion not based on mere membership of a particular group or community. This exception covers activities that may be qualified as prejudicial to the security of the State, whether such activities are proven or whether consistent and precise elements justify suspicion of such activities. Despite the fact that these measures are intended to safeguard the security of the State, they must be sufficiently well defined and delimited to ensure that they do not become discrimination based on political opinion or religion. *Ibid*, P. 67.

<sup>xix</sup> This is the case, for example, of special measures taken on behalf of indigenous peoples, persons with disabilities or older persons, as well as measures to protect maternity or the health of women.

<sup>xx</sup> See Lindsey, A. et al., (2016), "Understanding and Reducing Workplace Discrimination", *Journal of Research in Personnel and Human Resources Management*, Vol. 34, No. 1, PP. 51-63.

<sup>xxi</sup> Jones, J.R., and Wilson, D.C., (2009), "Comparative Effects of Race/Ethnicity and Employee Engagement on Withdrawal Behaviour", *Journal of Managerial Issues*, Vol. 21, No. 2, PP. 195-215.

<sup>xxii</sup> See paragraph 2 of the ILO Declaration on Fundamental Principles and Rights at Work, which declares that all Members, even if they have not ratified the Conventions in question, have an obligation arising from the very fact of membership in the Organisation, to respect, to promote and to realise, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights which are the subject of those Conventions, namely: (a) freedom of association and the effective recognition of the right to collective bargaining; (b) the elimination of all forms of forced or compulsory labour; (c) the effective abolition of child labour; and (d) the elimination of discrimination in respect of employment and occupation.

<sup>xxiii</sup> See Article 3 of ILO Convention 111 on Discrimination (Employment and Occupation), 1958.

<sup>xxiv</sup> Section 1 of the 1952 Labour Code provided for equality between indigenous and European workers and section 91 of the same code provided for the equality of remuneration.

<sup>xxv</sup> The State of Cameroon like any other state party to the ILO and the United Nations and by virtue of her ratification of ILO Conventions 100, 1951 on equal remuneration (Ratified by Cameroon on 25th May, 1970): Convention No. 111 on Discrimination (Employment and Occupation), ratified on 13th May, 1988 and the ICESCR ratified on 27/06/1984, has a duty to respect, protect and fulfil the fundamental right of a worker to be free from discrimination in employment.

<sup>xxvi</sup> See paragraph 5 of the preamble of the Constitution.

<sup>xxvii</sup> Newman, J. M., (1978), "Discrimination in Recruitment: An Empirical Analysis", *Industrial and Labour Relations Review*, Vol. 32, No. 1, PP. 15-23.

<sup>xxviii</sup> Section 23 (2) of the Cameroon Labour Code 1992 Provides that contracts of employment shall be negotiated freely.

<sup>xxix</sup> In England as far as employment law is concerned, there are 5 types of unlawful discriminatory acts which may be committed against a person in relation to employment. Viz: The arrangements a person makes for the purpose of determining who shall be employed, the terms on which a person offers employment to another, refusing or deliberately omitting to offer employment because of a person's sex as was held in *BATISHA V. SAY* (1977) IRLIB 4 10., in the way a person offers access to opportunities for promotion, transfer or training, or to any other benefits, facilities or services, or by refusing or deliberately omitting to afford her/him access to them and by dismissing a person, or subjecting her/him to any other detriment as was held in *MUNRO V. ALLIED SUPPLIERS* (1977) IRLIB.

<sup>xxx</sup> (1979) IRLR 158. The facts of the case reveal that Miss Greig applied to join Community Industry's painting and decorating team. Her application was successful and arrangements were agreed for her to start work with the team on 19 September 1979. Another woman had also successfully applied for a job with the team and was due to start on the same day, but in the event failed to turn up. When Miss Greig reported for work, Mr Ahern, who was in charge of the team, decided he could not accept her as the other woman had not come, and there would only have been one woman on the team. He was concerned that her presence would have created an unacceptable imbalance. On a previous occasion, when another woman had been alone with several men, some emotional and personal problems had arisen. He offered Miss Greig alternative employment, but she did not accept. Instead, she brought a complaint to an industrial tribunal that she had been unlawfully discriminated against on grounds of sex.

<sup>xxxi</sup> See section 80 (1-3) of the Cameroon Labour Code 1992.

<sup>xxxii</sup> Unreported decision of the Kumba Magistrate Court, 1999.

<sup>xxxiii</sup> (1977) QB 852.

<sup>xxxiv</sup> Abbot, K., (2016), "A Review of Employment Relations Theories and their Application", *Journal of Problems and Perspectives in Management*, Vol.1, No. 4., PP. 187-199.

<sup>xxxv</sup> See Yanou, M. A., (2009), *Labour Law, principles and Practice in Cameroon*, Buea, REDEF.

<sup>xxxvi</sup> Suit No. CASWP/13/2006 (unreported).

<sup>xxxvii</sup> See Letter No. 05347/UB/REG of August 1, 2000.

<sup>xxxviii</sup> See Letter No. 05342/UB/REG of August 1, 2000.

<sup>xxxix</sup> In acknowledgement of the minister's kind gesture, the SYNES leadership postponed a strike action planned for November 2000 but it made the minister understand, in no uncertain terms, that it would embark upon another series of strikes in 2001 if the government did not sign a special statute for university teachers before the end of the year.

<sup>xl</sup> The case was thrown out for want of locus standi to sue by the Fako High Court.



<sup>xli</sup> Supra.

<sup>xlii</sup> Discrimination in Lom Pangar is based on race and national extraction. Generally speaking, there are two main races (on the Lom Pangar Project) working with the These are the black Africans made up mainly of Cameroonians and the white workers. See World Bank, (2018), Report and Recommendations on a Request for Inspection, Report No. 124231-CM, P. 20.

<sup>xliii</sup> Ibid., P. 25.

<sup>xliv</sup> See Strike action hampers Lom Pangar dam Construction, available at [www.nobile.camerounweb.com](http://www.nobile.camerounweb.com), accessed on 06/07/2020.

<sup>xlv</sup> Sepulveda, M., (2003), *The Nature of Obligations Under the International Covenant on Economic, Social and Cultural Rights*, Oxford, INTERSENTIA.

<sup>xlvi</sup> Rubinstein, M. H., (1986), “The Affirmative Action Controversy”, *Hofsira Labour Law Journal*, Vol. 3, No. 1, PP. 111-136.

<sup>xlvii</sup> Ibid.

<sup>xlviii</sup> See section 84 of the 1992 Cameroonian Labour Code. See also, Selwyn, N., (1982), *Law of Employment*, 4th edition, London, Butterworths.

<sup>xlix</sup> See Section 84(1) of the Cameroon Labour Code 1992. Section 36 of same Code provides that “Whenever a contract of employment of unspecified duration is terminated without notice or without the full period of notice being observed, the responsible party shall pay to the other party compensation corresponding to the remuneration including any bonuses and allowances which the worker would have received for the period of notice not observed”.

<sup>l</sup> See Section 84(2) of the labour Code 1992.

<sup>li</sup> See Section 82(2) of the Cameroon Labour Code 1992. However, section 82(3) is to the effect that “this prohibition shall not apply to: (a) women with executive duties; (b) women working in services not involving manual labour.

<sup>lii</sup> See Decree No. 93/571 of 15 July 1993 laying down the conditions of employment of workers of foreign nationality at certain occupations or certain skills.

<sup>liii</sup> The Sate of Cameroon like any other state party to the ILO and the United Nations and by virtue of her ratification of ILO Conventions 100, 1951 on equal remuneration (Ratified by Cameroon on 25th May, 1970): Convention No. 111 on Discrimination (Employment and Occupation), ratified on 13th May, 1988 and the ICESCR ratified on 27/06/1984, has a duty to respect, protect and fulfil the fundamental right of a worker to be free from discrimination in employment.

<sup>liv</sup> Supra.

<sup>lv</sup> See section 4(2) (a).

<sup>lvi</sup> See section 242 of the Cameroon Penal Code.