

# Freedom of Trade Union Membership: An Appraisal of the 1992 Labour Code of Cameroon

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**Abstract** — Trade unions defend workers' interest and act as agents of development. By virtue of the International Labour Organisation Convention No. 87 on Freedom of Association of Workers and Protection of the Right to Organise, workers are free to form and belong to trade unions of their choice. The Convention leaves the question whether the freedom to belong to a trade union also include the freedom not to belong to a trade union at the determination of national legislation. As a result, membership in a trade union is a call for concern in many countries. The main objective of this paper is to ascertain whether the 1992 Labour Code of Cameroon gives workers the freedom to join trade unions or not to join trade unions at all. We adopted a doctrinal methodology, which is a content analysis of primary and secondary data. Our findings reveal amongst others that the Labour Code gives workers the freedom to belong to trade unions or not to belong to trade unions. There is however a contradiction in the provisions of the Labour Code on sanctions for violation of freedom of trade union membership. This contradiction has led to the violation of freedom of trade union membership in Cameroon. As such, it is recommended that the Labour Code be amended and a clear-cut sanction be provided for the violation of freedom of trade union membership in Cameroon.

**Keywords** — Trade unions, Freedom, Workers, Labour Code

## INTRODUCTION

A trade union is an organisation of workers who have come together to achieve common goals such as: protecting the integrity of its trade, improving safety standards, attaining better wages and benefits (such as vacation, health care and retirement) and working conditions through increased bargaining power wielded by the creation of a monopoly power of the workers [1]. Freedom is a state of being free or liberated [2]. Section 1 and 23 of the Labour Code has specifically defined a worker for the purpose of the application of labour law principles in Cameroon. Section 1 of the Labour Code defines a worker as: "any person irrespective of sex or nationality who has undertaken to place his services in return for remuneration, under the direction and control of another person, whether an individual or a public or private corporation, considered as the employer" [3]. Section 23 of same

Code further stressed the element of control by relating employment to an agreement by which a worker undertakes to put his services under the authority and management of an employer against remuneration. Certain classes of persons are specifically excluded from the definition of workers covered by the Labour Code. These include workers of the: public service, judicial and legal service, servicemen, national security, prison administration civil servants and auxiliary staffs [4].

The freedom to belong or not to belong to a trade union has been a cause for concern over the years. The question whether the freedom to join trade unions also include the freedom not to join trade unions was one of the reasons why attempts failed in 1942 to get a Convention on freedom of association of workers [5]. While employers and government delegates insisted that the freedom to join and the freedom not to join a trade union should both be included, the workers delegates wholly rejected the proposition [6]. When the question came up again in 1947, the employer's proposal to include the word or not to join was rejected [7]. During the negotiation on the drafting of International Labour Organisation (ILO) Convention No. 98, it was agreed that the Convention could in no way be interpreted as authorizing or prohibiting union security arrangements. It was argued that such arrangements were a matter for regulation at national level in accordance with the national practices [8]. As such, Article 2 of ILO Convention No. 98 leaves the practice and regulation of each state to decide whether it is appropriate to guarantee the right of workers not to join an occupational organization or on the other hand, to authorize and where necessary to regulate the use of union security clauses [9].

The European Court of Human Rights decided on the freedom of trade union membership in the case of *Young, James and Webster v United Kingdom* [10]. *Young, James and Webster* had been employed for a long time by the British Rail without being union members. At a certain point, they all got a message to the effect that, if they did not join one of the limited number of trade unions, they would be dismissed. The Court held that there was a form of coercion that

affected the essence of the freedom of trade unionism [11].

As regards freedom of association of workers in general, Cameroon ratified ILO Convention No 87 [12] on 7th June 1960 and ILO Convention No. 98 [13] on 3rd September 1962. She became a member of the United Nations (UN) on 20th September 1966 and ratified the UN Covenant on Economic Social and Cultural Rights on 27th June 1984 [14]. Cameroon prepared her first Labour Code in 1967, with the political unification; the 1967 Labour Code was withdrawn in favour of the 1974 Labour Code and finally the 1992 Labour Code [15]. This piece of work seeks to highlight the importance of trade unions. It considers whether workers in Cameroon are free to join or not to join a trade union. If workers are free to join or not to join trade unions, then are they also free to leave a trade union at any point in time?

#### THE IMPORTANCE OF TRADE UNIONS

The days when workers trade unions were regarded as vanguard of factory gates are long gone. In legal and social dynamics of development, trade unions are active players, which must not be ignored if the society wants to grow [16]. Trade unions play an important role and are helpful in effective communication between the workers and the employers [17]. It is only a dictatorial regime that wants to breed anarchy that can refuse to collaborate with trade unions for the purpose of development of the workers and extension of the society [18]. In the view of ILO, the main route out of poverty is work. He who talks of work must talk collective bargaining through trade unionism [19]. It is as a result important to examine the importance of trade unions to the unionist and the community at large.

#### *Trade Unions Defend Worker's Rights and Interest*

The bases of ILO founded at the dawn of the first world war is that universal peace can be established only if it is based on social justice, by implication this means labour justice [20]. The vision of the ILO was based on the premise that lasting peace can be established only when workers receive decent treatment [21]. This is also the vision of trade unions. Trade unions are nonpartisan association of workers which are constituted according to the laid down principles with the specific aim of ensuring that workers' rights are respected in order to realize the requisite and desired development of both the employer and the employee [22].

War against want and misery of members is therefore the mission of trade unions [23]. This is especially so,

as it has been realized that poverty which is a consequence of unemployment and underdevelopment constitutes grave danger to the society. Trade unions strive to ensure that social citizenship, which finally leads to social justice, is promoted by the enterprises in which the workers are employed [24]. The trade unions do this in collaboration with the employers in order to establish a working environment conducive for social and economic progress of both workers and the employers' business [25]. The argument here is that where workers enjoy such rights, increase in their output must follow.

Moreover, through their leaders, trade unions bargain with the employers on behalf of union members and negotiate labour contracts with employers [26]. The most important effect of trade unions is that of maintaining or improving the conditions of employment of their members. This includes negotiations of wages, work rules, compliant procedures, rules governing hiring, firing and promotion of workers benefits, workplace safety and policies [27].

More still, the importance of trade unions is derived from the crucial role of labour in the productive process and the collective strength, which workers infuse into the trade union. In this light, trade unions are often regarded as the most important party in the industrial relations [28]. Trade unions regulate the conditions of employment within the broader context of industrial relations. An individual worker may find it difficult to challenge the might of an employer but employers usually wary of the collective strength of trade unions [29].

More so, the more cohesive a trade union is, the stronger it is in terms of promoting the interest of its members. In this case, trade unions located in more viable sectors are often more powerful in defending the interest of workers [30]. A trade union can be able to engage in long drawn face-off with the employer by providing the wherewithal to pursue its cause and providing economic succour for the less privileged members of the union [31]. This is an act, which individual workers might find it difficult to withstand.

#### *Trade Unions are Agents of Development.*

Poverty, employment, development and peace are intrinsically linked [32]. This is because where there is poverty, which more often than not results from unemployment, negative development abounds. Also, a development-pruned government must be one with a specific anti-poverty strategy for sustainable development with income generating programmes. In

the opinion of Rifkin, civilisation has been structured to an extent around the concept of work [33]. The right to work is crucial to the very existence of all humans and is unavoidably linked to sustainable development.

This right to work also involves the right to join trade unions and are inalienable socio-economic rights which per Hobbs, Locke, Hume and Voltaire are not conferred on a person by any ruler or earned or acquired by purchase but inheres in him/her by virtue of his/her humanity [34]. However, the right to work and to freely join a trade union can only be enforced to ensure development when the policies and action of the government allow trade unions to operate freely and legally as third sector [35].

The mission of trade unions is to defend workers interest through collaboration with employers so as to improve on the socio-economic and moral well-being of the worker in order to bring about the necessary increase in their productivity [36].

The increase in productivity in turn leads to development of both workers and employers. With this, trade unions can rightfully be termed agents of development [37]. As agents of development, trade unions simply seek to ensure through collaboration and dialogue that all workers achieve social justice, which is indispensable for their dignity and free development [38].

Furthermore, as a third sector, a trade union has no intention of profit making and thus, can comfortably check the excesses of both the public and the private sector [39]. The United Nations Economic and Social Council General Comment 18 expressly recognises the worth of trade unions as agents of development in the following words:

Trade unions play a fundamental role in ensuring respect for the right to work at the local and national levels and in assisting states parties to comply with their obligations under Article 6. This role of trade unions is fundamental and will continue to be considered by the committee in its consideration of reports of state parties [40].

To further support this view, article 19 of the Draft Universal Human Rights Guidance for Companies-Addendum 1 requires companies to assess their activities to determine their human rights impacts in the light of these guidelines. The article further requires companies to make available the results of that study to the relevant stakeholders and consider the reactions of the stakeholders [41].

Article 18 on its part; include trade unions in its definition of stakeholders. From this perspective, the role of trade unions as watchdog is to ensure that governments and through them, private sector respect and implement local and international instruments regulating the worker's employment relations with the employers [42].

However, it is unfortunate that the mission of trade unions is not seen in the same light by employers. To employers, a trade union means strikes. This implies a closure of business and its negative impact on the entrepreneur and even the workers who will lose their jobs should the business fold up thereby making the situation of workers even more pathetic [43]. As a result, many employers frequently used hiring practices such as subcontracting to avoid hiring workers with bargaining rights [44].

Most major companies, including parastatal companies are engaged in this practice, for example the Electricity Company of Cameroon, the water company-Camerounaise des Eaux, cement manufacturer-Cimencam, Guinness, Aluminium Smelter (Alucam) and many others. Subcontracting involves all categories of personnel, from the lowest to senior levels [45]. Therefore, workers with equal expertise and experience do not always enjoy similar advantages when working for the same business; subcontracted personnel typically lacked a legal basis to file complaints. This greatly weakens the impact of trade unions in Cameroon [46]. Despite the impact of trade unions, membership in a trade union is optional.

#### MEMBERSHIP IN A TRADE UNION

Membership in a trade union is optional as per ILO standards [47]. On a critical note, freedom of membership in a trade union requires the availability of many trade unions where workers can choose to belong to one or not to belong to any. Also, freedom of membership in a trade union entails that workers should be free to leave a trade union if they want to leave at any point.

The central question in this paragraph is whether workers or employees' freedom to become trade union members also include the freedom not to be a member at all in any trade union. This aspect of freedom of association is often referred to as the "negative" freedom of association [48].

From a philosophical as well as a semantics point of view, this can be a dubious term. If a freedom to do something does not include the freedom not to do it, it is not a freedom any more. In other words, if the freedom of trade unionism does not include the

freedom not to join a trade union, it can no longer be called a freedom for it becomes an obligation [49].

#### *The Freedom to Join or not to Join a Trade Union*

In Cameroon, workers are free to choose to belong to a trade union or not to belong to any trade union [50]. The Cameroonian response and the basis for the protection against harassment for union membership or non-union membership are found in the Constitution [51] and the Labour Code. The preamble of the constitution provides an impregnable justifiable protection against abuses for union membership or non-membership [52]. This preamble provision confers on every worker the freedom of association and/or trade unionism.

Furthermore, section 4 of the Labour Code compliments the constitutional provision above on trade unionism. After stating that all workers have the right to join the trade union of their choice in their occupation, section 4(2) of the Labour Code goes further to expressly protect the workers from:

Any acts of anti-union discrimination in respect of their employment; any practice tending to make their employment subject to their membership or non-membership in a trade union; to cause their dismissal or other prejudices by reason of union membership or non-membership or participation in union activities [53].

It is clear from the above quotation that employers are forbidden from taking any measures arising from the fact that a worker is a member or refuses to be a member of a trade union. Also, employers are prohibited to use any kind of pressure to discourage union membership or activity [54].

In fact, the 1992 Labour Code of Cameroon leaves no room for equivocation as it considers null and void any act contrary to the provisions of section 4(2) of the Labour Code [55]. It goes without saying that any dismissal, punitive transfer, demotion, deduction of salary etc. as a consequence of a worker's membership or non-membership of a trade union is absolutely ineffective.

To further strengthen the freedom of workers to join or not to join a trade union, the Labour Code makes provision for criminal sanctions against anyone who violates the freedom of trade unionism [56]. Any person who commits against a worker belonging to a trade union an act of discrimination that may violate union freedom with respect to employment is liable to a fine ranging from 200.000 to 1.500.000 CFA francs

[57]. These sanctions prove that the protection of union freedom against the employers is real in Cameroon.

Section 39 of the Labour Code also guarantees the freedom of membership in a trade union. This section puts it in the following words "every wrongful termination of a contract of employment may entail damages. In particular dismissals effected because of the opinions of the worker or his membership or non-membership of a particular trade union shall be considered wrongful" [58]. A competent court can for this reason order the reinstatement of any worker punitively dismissed for his/her membership or non-membership in a trade union. This is in fact one of the rare occasions that an order for the reinstatement of a worker whose contract has been terminated wrongfully can be made in Cameroon [59]. Thus this remedy is only on paper because the practice is rear in Cameroon.

There is however, a contradiction between the civil sanction provided for the violation of freedom of trade unionism by section 4 of the Labour Code and section 39 of the Labour Code. On the one hand, the civil sanction provided for the effectiveness of freedom of trade unionism by section 4(3) read together with section 3 of the Labour Code is that any act contrary to the freedom of trade union membership is null and void [60]. Meanwhile on the other hand, section 39 of same code provides damages as sanction for dismissal of a worker on grounds of union membership or non-membership of a trade union. This has led to confusion in the application of sanctions for violation of freedom of trade union membership in Cameroon [61]. Logically, the sanction of nullity should be chosen over the sanction of damages. Despite the shortcoming, the truth remains that in Cameroon, workers are both free to become trade union members or not to be trade union members. In situations where workers decide to join trade unions, they should be able to choose amongst a number of trade unions the one to join.

#### *Trade Union Plurality*

The right to pluralism of trade unions offers a safeguard or at least an instrument for the defense of the independence of trade union organizations and visions [62]. The need for such an instrument still exists today and will continue to exist in the future. The right to trade union pluralism is inherent in the terms and provisions of ILO Convention No. 87 and as such is codified in the Constitutions and in the labour legislation of many African Countries [63].

While there is no separate section in the Convention that deals with the specific issue of trade union pluralism, several of its articles have formed the basis

of a set of decisions taken by the ILO Committee of Experts on the Application of Conventions and Recommendations, which are regarded as international case law on the subject [64].

Trade union pluralism is thus part of the principle of freedom of trade union membership, which is a universal basic right [65]. The aim of the International Labour Conference (ILC) when drawing up Convention No. 87 was to protect the independence of trade unions and safeguard the right of workers to create and belong to trade unions of their own choice [66]. Unfortunately, in Cameroon, trade union pluralism has led to the creation of so many opposing trade unions in same sector of activity leading to disunity and fragmentation which is often referred to as trade unions proliferation [67]. Meanwhile the purpose of trade union pluralism was never to promote trade union proliferation and fragmentation. Therefore, this right has to be used with extreme caution as well as an unwavering sense of loyalty and devotion to the cause of defending the rights and the interest of workers and trade union members in the best possible manner. Trade unions are exposed to many risks and traps in this regard on the part of politicians, governments, employers and unscrupulous persons within their own ranks [68].

In Cameroon there exist more than 100 trade unions and 12 registered national trade union confederations including one public sector trade union confederation [69]. Examples of trade union confederations include: the Cameroon Workers' Trade Union Confederation (CSTC), the Union of Free Trade Unions of Cameroon (USLC), the Confederation of Independent Trade Unions of Cameroon (CSIC), the General Workers' Union of Cameroon (UGTC), the General Confederation of Labour – Liberté (CGT–Liberté) and the Confederation of Autonomous Trade Unions of Cameroon (CSAC). These trade unions are experiencing internal conflict or turbulence and there is a constant risk of aggravated division in some of them [70]. Nor matter the problems caused by trade union pluralism; a worker must fulfil some conditions before he/she can be a member of a particular trade union.

#### *Conditions for Membership and Holding Trade Union Offices*

Conditions for membership laid down by national legislation are mostly contrary to Convention No. 87. This is clear in the case of discrimination on such basis as race, nationality, colour, and sex. Many countries have some form of legislation that prohibits discrimination [71]. In the 1992 ILO Supervisory Cycle, for instance, five countries were requested to

withdraw their discriminatory legislative or other rules with regard to the limitation of union membership or access to trade union functions to national workers and non-national workers [72]. The argument given for this exclusivity rules were that if trade union membership and in particular trade union leadership were open to foreigners, this could threaten national security. The ILO Convention dealing with the position of migrant workers clearly indicates that the principle of equal treatment of migrant workers must be applied in respect of membership of trade unions, exercise of trade union rights and eligibility for office in trade unions in labour management bodies including bodies representing workers in undertakings [73].

In Cameroon, the law recognises the right of workers without distinction whatsoever, to set up freely without prior authorization trade unions for the study and defense of their interest [74]. Every worker has the right to join a trade union of his/her choice in his/her occupation or kind of business [75].

Meanwhile, to be a member of a trade union, a person must be gainfully employed at the time of joining the union [76]. However, persons who have ceased to be gainfully employed may continue to be members of their trade unions provided they have carried on their occupation for at least six months and they are engaged in union activity or are appointed by virtue of their occupation to posts for which provision is made by laws and regulations [77].

Moreover, in order to hold trade union offices, workers concerned must satisfy two conditions [78]. The first is that they must be in possession of their civic rights. This implies that no minor or insane person can hold a trade union office in Cameroon. The next condition is that for workers to hold trade union offices in Cameroon, they must not have been convicted of any offence involving any of the penalties laid down in section 30 of the Penal Code [79].

As such any person who has been found guilty and sanctioned by a court of law with any of the penalties of: removal and exclusion from any public service, employment or office; incapacity to be a juror; assessor; expert referee or sworn expert and incapacity to be a guardian, curator, deputy guardian or committee, save of the offender's own children or member of a family council cannot hold trade union offices in Cameroon [80].

Furthermore, for aliens to hold trade union offices in Cameroon, they must satisfy the above two conditions and an additional condition. The additional condition is

that such aliens must have resided for not less than five years in the territory of the Republic of Cameroon [81].

This is discrimination on the bases of nationality by the Cameroonian labour legislator. It is as such a violation of Convention No. 87, which gives workers without distinction whatsoever the right to establish and join trade unions of their own choosing. It is equally a violation of the ILO Convention dealing with the position of migrant workers [82].

The position of migrant workers clearly indicates that the principle of equal treatment of migrant workers must be applied in respect of membership of trade unions, exercise of trade union rights and eligibility for holding office in trade unions and in labour management bodies including bodies representing workers in undertakings [83].

#### *The Freedom to Leave a Trade Union*

The freedom to join a trade union also implies the freedom to leave a particular trade union if the employee wishes to. The Labour Code has no specific provision on freedom to leave a trade union in Cameroon. Despite this lacuna, it is humbly submitted that if workers are free to join a trade union, then they are equally free to leave a trade union at any point in time. However, in Cameroon, some trade unions refused to acknowledge resignation of their members, in apparent collusion with their employers [84]. For example, some employees of CRAFON-a Douala-based plastic manufacturing company, decided to leave the Confederation Syndicale Autonome du Cameroun (Autonomous Trade Union Confederation of Cameroon or CSA) to join the USLC. CRAFON management required them to have their letters of resignation endorsed by the president of the CSA, who refused to do so. CRAFON continued to pay the amount deducted from the salaries of these employees into the CSA accounts [85].

In another case, a trade union leader resigned from USLC and carried with him all of the USLC's documentation to join the Cameroon Confederation of Workers (CCT) [87]. The employer allegedly required all members of the USLC to follow their former president to the CCT. Despite their refusal, the employer reportedly transferred the amount deducted from their salaries to the CCT, thus forcibly transferring workers from one trade union to another [86]. This violation on the right of workers to leave a trade union can be blamed on the lacuna of the Labour Code for failing to make explicit provision on the freedom to leave a trade union in Cameroon.

#### CONCLUSION AND RECOMMENDATION

The 1992 Labour Code of Cameroon gives workers the freedom to belong to a trade union or not to belong to any trade union at all. It is the choice of a worker to join any trade union in his occupation since there exist more than one trade union in each occupation. Also, the Labour Code provides considerable sanctions for the violation of freedom of trade union membership. Such sanctions range from damages, reinstatement in case of dismissal and payment of fine to the state coffers.

However, freedom of trade union membership is not void of difficulties in Cameroon. First of all, employers have a negative impression about union workers. This has led to discrimination among union members and non-union members. Employers have turn to subcontracts of employment in which they hire non-unionised workers. This is even aggravated by the fact that the provision of the Labour Code on sanctions for violation of freedom of trade union membership is contradictory. While one section talks of damages, another section provides that any act of discrimination based on trade union membership or non-membership is null and void. Also, the Labour Code discriminates between nationals and foreign workers as regards holding trade union offices in Cameroon. There is no specific provision in the Labour Code on the freedom to leave a trade union in Cameroon. Finally, trade union pluralism has led to proliferation of trade unions thereby leading to fragmentation and division in trade unions.

From the above shortcomings on freedom of trade union membership in Cameroon, the following recommendations are made. It is recommended that the 1992 Labour Code of Cameroon should be amended so that, uniform sanctions for the violation of freedom of trade union membership can be provided. Also there is need for specific provision in the Labour Code for the freedom to leave a trade union. Added to this, the discrimination on foreign workers needs to be deleted so that Cameroon can respect her obligations under ILO standards. Finally, though workers are free to form and belong to trade unions of their choice, it is recommended that the number of trade unions on particular occupation be checked by the ministry of labour so as to avoid trade union proliferation in Cameroon.

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- [73] The 1949 Migration for Employment Convention No. 97: Article 6 paragraph 1(a) (ii) and article 10 of the 1975 Convention concerning migration in abusive conditions and the promotion of equality of opportunity and treatment of migrant workers.
- [74] The Cameroonian Labour Code: section 3.
- [75] Ibid., section 4(1).
- [76] Ibid., section 7(1).
- [77] Ibid., section 7(2) (a) and (b).
- [78] Ibid., section 10.
- [79] Section 10 (1) of the Labour Code read together with Section 30 (1), (2) and (3) of the 2016 Penal Code of Cameroon.
- [80] Ibid.
- [81] Section 10 (2) of the Labour Code.
- [82] Yanou A. M., (2009), Labour Law: Principles and Practice in Cameroon", op.cit. p. 105.
- [83] Ibid.
- [84] US Embassy of Cameroon, (2018), Human Rights Report Cameroon, op. cit. p. 41.
- [85] Ibid.
- [86] Ibid.