An X-Ray Of Some Impediments That Beset The Effective Protection Of Employees During Insolvency Proceedings In Cameroon

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***Abstract*—In more ways than one, the insolvency of a company greatly affects the rights of its employees as to what concerns their financial entitlements and their jobs. Taking this into account, the OHADA legislator, on the 10th of September 2015, revised the Uniform Act organizing Collective Proceedings for Clearing of Debts (UACPCD) which was initially adopted in 1998. This text which regulates insolvency proceedings in Cameroon, among other goals, craves for the protection of employees when reorganization or assets liquidation procedures are opened against an insolvent company. Despite this laudable legislative effort, it is apparent that the Cameroonian regulatory framework on insolvency is shrouded with several weaknesses and challenges that militate against the effective protection of employees. On this premise, this paper sets out to unveil the challenges that beset the effective protection of employees during insolvency proceedings in Cameroon. Research results disclose that the challenges emanate from the laws and institutions put in place as well as policy deficiency. On this note, there is a pressing need to update the existing regulatory framework so as to consequently enhance employee protection during insolvency proceedings in Cameroon.**

Keywords—Impediments, Protection, Employees, Insolvency Proceedings, Cameroon.

INTRODUCTION

Behind the mind of every investor is the desire to make profit and the expectation that the company[1] should never be interrupted by crisis. Notwithstanding this desire, a company irrespective of the sector it is operating or form,[2] may plunge into crisis which might be of financial[3] or economic[4] nature. A company is said to be in difficulties, if it is "balance sheet" and "cash flow" insolvent.

balance sheet (or asset) test, denotes a situation where the value of a company's assets is inferior to its liabilities,[5] taking into accounts both contingent and prospective liabilities.[6] Such difficulties can result from poor management or an unfavourable economic climate. Summarily, a company is balance sheet insolvent when its liabilities overshadow its assets.

Cash flow insolvency on its part is when a company cannot pay its debts on time.[7] This is in fact the line of reasoning applied by the OHADA legislator as evidenced in the wordings of article 25 paragraph 2 of the UACPCD which provides that:

"Insolvency means that the debtor is unable to pay its due claims out of its available assets

[1] The Uniform Act on Collective Proceedings for Clearing of Debts (UACPCD). This uniform act adopted on 10 April 1998 in Libreville, Gabon was revised on 10 September 20155 in Grand-Bassam, Côte d'Ivoire.

[2] The OHADA Uniform Act on Commercial Companies and Economic Interest Groups (UACCEG) provides for 2 forms of companies which are registered and unregistered forms of companies. The registered companies include; Public Limited Company (PLC), Private Limited Company (Ltd), Partnership, Limited Liability Partnership and Simplified Joint Stock Company. Unregistered companies on their part constitute Joint Venture and De Facto Partnership.

[3] Financial difficulties denote a situation where, a company in difficulties is unable to honour its financial obligations or cannot pay its creditors (including employees) with the available assets. In fact, financial difficulty is the most suitable expression for insolvency.

[4] Economic difficulties on its part, denotes a situation where an enterprise is characterized by very low or negative operating performance and a business model with fundamental problems. See to this effect, Michael M. *et al*, (2009), "Survival of the fittest? Financial and economic distress and restructuring outcomes in Chapter 11", Department of Finance, University of Utah, 9.

[5] The term "liabilities" has a much broader meaning than "debts" as it encompasses liquidated and unliquidated liabilities arising from contracts as well as torts. See to this effect, John M. W., (2014), "Defining Corporate Failure: Addressing the "Financial Distress" Concept: Part 1", *Insolvency Intelligence*, 39.

[6] Kubi O., (2019), "Establishing Corporate Insolvency: The Balance Sheet Insolvency Test", Oxford Business Law Blog,availableathttps://www.law.ox.ac.uk/businesslawblog/blog/2019/07/establishingcorporateinsolvencybalancesheetinsolvencytest#:~:text=Balance%20sheet%20or%20technical%20insolvency,both%20contingent%20and%20prospective20liabilities, accessed on the 12th of August 2022.

[7] Article 1-3 et seq. of the UACPCD.

except in situations where credit reserves or payment deadline extensions consented by creditors enable the debtor to deal with current debts."

Worth noting is the fact that a reading of the OHADA[8] Insolvency Law reveals its strong attachment to the French Insolvency system where, insolvency is defined within the context of a company being in cessation of payment. Though, cessation of payment has not been defined by the UACPCD, there are however three indicators to describe the phenomenon:

- Firstly, when the debtor is unable to pay due debts;
- Secondly, insufficiency of assets;[9] and
- Thirdly, when the debtor is unable to meet up with payment within a short time[10] or what is referred to as the mismatch between available assets and current liabilities[11].

The procedures that best align with the above criteria under OHADA Insolvency Law are reorganization[12] and assets liquidation.[13]

Against this background, it must be said that the insolvency of a company does not only affect its proprietor(s) but equally all other persons who have relations of whatever nature with it, including its employees. By virtue of section 1(2) of the Cameroonian Labour code[14], an employee[15] is any person irrespective of sex or nationality, who undertakes to place their services in return for remuneration, under the direction and control of another person, whether a public or private corporation or an individual, considered as the employer. Employees are often affected by solutions adopted to redress or reorganise a financially sick enterprise. Such is the case if the enterprise can no longer carry out its activities normally or can only do so by resorting to certain internal measures of reorganisation such as partial liquidation and

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[8] The OHADA ("*Organisation pour l'harmonisation en Afrique du droit des affaires*") is an international organisation which was established in 1993 by 14 states in West and Central Africa.1 The founding states, in the majority former French colonies already united by two monetary unions,2 include Benin, Burkina Faso, the Ivory Coast, Gabon, Guinea-Bissau, Cameroon, the Comoros, Mali, Niger, the Republic of Congo3, Senegal, Chad, Togo and the Central African Republic. Since then, Equatorial Guinea, Guinea and the Democratic Republic of Congo4 have joined the OHADA, bringing the number of member states up to 17. The main objective of the OHADA project was and is to improve the legal and economic framework for investments in the member states by adopting modern commercial law rules. Apart from the English-speaking part of Cameroon, all OHADA countries are civil law countries, where the French *Code civil* and *Code de commerce* applied prior to independence. Thereafter, French-inspired statutory rules lost in importance because they were no longer updated and not consistently applied. The OHADA seeks to remedy the situation by introducing modern, transnational rules for commercial transactions, in the form of so-called uniform acts ("*Actes uniformes*"). Although the acts are written in French, they are increasingly accompanied by English and in some cases also by Spanish and Portuguese translations.

[9] This, points to the non-availability of assets. Available assets are funds that are immediately usable. Examples include, all cash in hand, commercial paper, the credit balance of current accounts and bank accounts in general. Thus, a credit obtained under ruinous conditions which clearly exceeds the financial possibilities of the company cannot be considered as available assets. However, it is appropriate to open collective proceedings when the debtor, while continuing to meet its debts, uses artificial, ruinous or fraudulent means to obtain liquidity. This is the case, for example, when the debtor sells its goods at a loss, or takes out loans which he knows he will be unable to honour. A company must be subject to collective proceedings even if it has substantial real estate assets, but which are not realisable in the short term.

[10] Fatoma Thera, (2010), « L'application Et La Réforme De L'acte Uniforme De L'OHADA Organisant Les Procédures Collectives D'apurement Du Passif », Thèse de Doctorat, l'Université Jean Moulin Lyon 3, 46.

[11] The cessation of payments is characterized by impossibility for the available and realisable assets in the short term to meet the payment liabilities. Thus, it is not so much the volume of liabilities due or the quantity of available assets taken in isolation that characterises the cessation of payments. It is the confrontation between the available assets and the liabilities due that makes it possible to establish this. The expression "to cope" has given rise to two interpretations. According to the first interpretation, the use of this expression by the legislator means that the debtor in cessation of payments cannot pay, not because he does not want to, but because he cannot. According to the second interpretation, cessation of payments would be characterised as soon as the debtor does not pay, without any need to question his intentions.

[12] According to article 2 paragraph 3 of the UACPCD, Reorganization is an insolvency procedure for the rescue of the debtor company in insolvency, but which situation is not irremediably compromised, and whose debts settlement is performed through a composition.

[13] Per article 2 paragraph 4 of the UACPCD, assets liquidation is an insolvency procedure for the realization of the assets of the insolvent debtor company whose situation is irremediably compromised and impossible to wipe off its debts.

[14] Law No. 92/007 of 14th August 1992 instituting the Cameroonian Labour Code.

[15] Within the context of this work, they include permanent, intermittent, seasonal, occasional, temporal or interim workers; as well as domestic servants, who do not have the status of civil servants.

economic transformation, with consequential dismissal of some personnel.[16]

Worth commenting is the fact that the role played by employees in a company cannot be under looked and the protection of their rights therefore becomes a matter of great concern when their employer goes insolvent. This puts both their jobs and financially entitlements at stake in the sense that they may never be recovered or that payments will take a long time to be dispensed with. To therefore strengthen their protection, both the OHADA and Cameroonian [17] legislators provide that Claims resulting from a contract of employment shall be guaranteed by the super priority of wages and be paid within a period of ten (10) days following the decision to open the reorganization or assets liquidation proceedings and upon a mere decision of the receiver after deduction of advances already received.[18] There is also the guarantee of the continuation of employment contracts in the event of any change in the legal status of the employers[19] excluding cases where the enterprise is changing its activities[20] respectively. The reason for making reference to the Cameroonian Labour Code is because; the OHADA legislator allows some issues to be governed by national laws especially when it concerns employment contracts. It must be said that, since there is no uniform act yet enacted on labour law, any lacunae in national labour legislations referred to in articles 110[21] and 111[22] of the UACPCD.

Notwithstanding, the question that begs for answers is; does the Cameroonian Insolvency framework effectively protect the pecuniary and employment rights of employees during insolvency proceedings? The pertinence of this question relates to the fact that, harmonious economic and social policies, investment and development in the OHADA zone can only be achieved if the lawmaker strikes a balance between the interest of the enterprise and that of its employees which is usually a herculean task.

It should be remarked that the new UACPCD has improved upon the protection of employees during insolvency proceedings but much is still left to be desired. This comes as a result of the fact that, there is the prevalence of delay in the payment of employee entitlements, wrongful and unfair dismissal, non-participation in the decision-making process during insolvency proceedings, non-notification of the commencement of insolvency proceedings, as well as appointment rather than voting of controllers to represent employees. Coupled with the statutory freeze of individual actions, employees have to wait until the close of proceedings before they can institute their actions which are plagued by longer durations.[23] It must be reckoned that, while shareholders can diversify their investment interests, and secured creditors may diversify their customer base or seek guarantees or security, employees typically have only one employer to whom they are accordingly exposed for the entirety of unpaid wages, leave or redundancy entitlements with very little capacity to reduce such risk. All these shortcomings only point to the fact that, the existing regulatory framework on insolvency proceedings does not adequately protect the rights of employees in Cameroon.

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[16] Nguihe K. P., (2001), “Réflexion sur la notion d’entreprise en difficulté dans l’acte uniforme portant l’organisation des procédures collectives d’apurement du passif OHADA”, *Annales de la Faculté des Sciences Juridique et Politique*, Université de Dschang, tome 5, 102.

[17] Within the context of this paper, the expressions, “OHADA legislator” is used to refer to the Insolvency legislator while “Cameroonian legislator” is used to refer to the labour legislator.

[18] See articles 95 and 96 of the UACPCD.

[19] Section 42 (1) a of the Labour code

[20] section 42(1) b.

[21] When layoffs for economic reasons are urgent and indispensable, the receiver may authorize the trustee to carry them out pursuant to the procedure set forth in this Article and the following one, notwithstanding any repugnant provision but without prejudice to the right to notice and severance package related to the employment contract. Before informing the receiver, the trustee shall establish the order of dismissals in accordance with the provisions of the applicable Labour Law. First, he shall propose the dismissal of workers with lower skills for jobs that are maintained and, in the event of equivalent professional skills, workers with less seniority in the debtor company; seniority is being calculated according to the provisions of the applicable Labour Law. In order to collect their opinions and their suggestions, the trustee shall write to the staff delegates and the controller staff representative about the measures to be implemented by providing the list of workers he plans to lay off and by explaining criteria for such selection. The staff delegates and the controller staff representative shall respond in writing within eight (08) days from the receipt of the proposal. The trustee shall forward the letters he sent to staff delegates and controller staff representative, as well as their written response, or remarks on their failure to respond within eight (08) days as provided in the paragraph above, to the Labour Inspection.

[22] The layoffs order established by the trustee, the opinion of staff delegates and that of the controller staff representative, where they have been given and the information letter to the Labour Inspection shall be sent to the receiver. The receiver shall authorize the proposed layoffs or some of them depending on their materiality to the restructuring of the debtor company by a decision notified to workers whose dismissal is authorized and to the controller staff representative if appointed. The decision authorizing or rejecting the layoffs proposal shall be subject to opposition before the court that ruled on layoffs within fifteen (15) days at the same court, which must make its decision within fifteen (15) days also.

[23] In connection to this, see Kwati E. B., (2015), “The regulatory framework for the rescue of insolvent companies under OHADA Law: A case study of Cameroon”, PhD Thesis, University of Yaoundé II, 20.

Against this backdrop, this paper sets out to unravel the challenges that beset the effective protection of employees during insolvency proceedings in Cameroon. On this note, the factors militating against their effective protection (I) and the prospects for an enhanced protection (II) embody the centre stage of this paper.

FACTORS MILITATING AGAINST THE EFFECTIVE PROTECTION OF EMPLOYEES

It has been realised that the protection accorded to employees during insolvency proceedings is circumstantial. This assertion finds justification in the fact that employees are accorded protection under the UACPCD only when they are owed money by their insolvent employer. Absent any debt link, employees have no statutory guarantee. In this vein, it is important to look at the factors that militate against the effective protection of employees in insolvency proceedings in Cameroon. Such factors have been diagnosed to be statutorily (A), institutionally (B) and policy-oriented (C).

Statutory or law-related impediments

One of the principal challenges that plague the effective protection of employees during insolvency proceedings in Cameroon is the weaknesses in the laws that govern the subject. It should be remembered that, this discussion does not ignore the interplay between the UACPCD and the Cameroonian Labour Code and other labour-related texts. In this regard, our analysis will not be based only on the UACPCD which irons out issues related to insolvency given that our topic has much to do with employee protection which is a subject of employment law. Notwithstanding, the following identified law-related problems are worth examining:

The exclusion of the Labour Inspector from the procedure for dismissal on economic grounds

The termination of employment contracts for economic reasons including insolvency has a well-tailored procedure stressed out by the Cameroon Labour Code.[24] This procedure requires the Labour Inspectorate to play an active role to see that the dismissals are not unjust. This goes to the point where the Labour Inspector is given the mandate to arbitrate on the dismissal based on the replies of the staff representatives.[25] The procedure is one that mandatorily requires the visa of the Labour Inspector for the dismissal of a staff representative when his post has been abolished in the enterprise.[26]

Under the UACPCD, the absence of the Labour Inspector is noticed in the protection of employees during insolvency proceedings as he is not required to arbitrate on the replies of the staff representatives and controllers for staff. This can be demonstrated by the fact that, in the dismissal of employees for economic reasons, the procedure warrants the trustee to forward the letters he sent to staff delegates and controller staff representative, as well as their written response, or remarks on their failure to respond within eight (08) days to the Labour Inspection.[27] Here, it is clear that the Labour Inspector who is vested with the duty to protect employees under the Cameroon Labour Law has no power to do so, as the letter given to him only serves the purpose of information but does not require his reply or intervention. Whereas, the purpose for forwarding the above letters to the Labour Inspectorate is for his arbitration. This poses as a great challenge to the effective protection of employees during insolvency proceedings in Cameroon.

In addition, the UACPCD stipulates that, notwithstanding any provision to the contrary, individual disputes falling within the jurisdiction of the labour courts shall not be subject to the attempts at conciliation provided for by the national law of each contracting state.[28] This exclusion may be understood as an attempt by the legislator to limit private initiative as much as possible during collective proceedings, but the conspicuous absence of labour administrators or experts at almost all the stages of the proceedings is doubtful.[29] According to KELESE George, in such a situation, the law should have provided for their appointment as controller to assist in the proceedings.[30]

The exclusion of trade unions in the representation of employees during the proceedings

The International Labour Organization (ILO), through the Termination of Employment Convention, 1982 seeks strong and direct participation by worker representatives in employment termination, particularly in light of major restructuring, downsizing or terminations due to employer insolvency.[31] For the purpose of the Workers' Representatives Convention, 1971, the expression, "workers' representatives" means, persons who are recognised as such under national law or practice, whether they are: trade union

[24] See generally section 40 of the Labour Code.

[25] section 40 (6)(d). Ebongue shares the same view in the sense he believes the negotiation is made between the employer and the staff representative in the presence of the labour inspector who sits in an advisory capacity and makes a report of the measures arrived at. To this effect, see Ebongue J. M., (1997), *The Cameroon Labour Code of 14th August 1992: A Critical Analysis, Cameroon*, Friedrich Ebert Stiftung, 62.

[26] Section 40 (7).

[27] See article 110 of the UACPCD.

[28] Article 90 paragraph 4 of the UACPCD.

[29] Kelese G. Nshom, (2016), 1432.

[30] Ibid.

[31] Gordon W. Johnson, (2006), "Insolvency and Social Protection: Employee Entitlements in The Event of Employer Insolvency", a report of the Fifth Forum for Asian Insolvency Reform (FAIR) held in Beijing, China, 4.

representatives, namely, representatives designated or elected by trade unions or by members of such unions.[32]

Following from the above, when an enterprise is facing difficulties, it is advisable that the employer respects the provisions of article 13 of the Termination of Employment Convention, 1982 which stipulates that:

"When the employer contemplates terminations for reasons of an economic, technological, structural or similar nature, the employer shall:

(a) provide the workers' representatives concerned in good time with relevant information including the reasons for the terminations contemplated, the number and categories of workers likely to be affected and the period over which the terminations are intended to be carried out;

(b) give, in accordance with national law and practice, the workers' representatives concerned, as early as possible, an opportunity for consultation on measures to be taken to avert or to minimise the terminations and measures to mitigate the adverse effects of any terminations on the workers concerned such as finding alternative employment."[33]

It is regrettable that in Cameroon, there is no provision on the notification of trade unions to which the affected employees belong and in addition to this, they are not consulted even in the vicinity of insolvency proceedings on the measures of effecting termination. When carrying out dismissals on economic grounds the only set of workers' representatives consulted are the staff representatives who of course are powerless when it comes to defending the rights of employees in the sense that they are mostly the choices of their employers and are forced to defend the interest of the latter. The reason for their exclusion may be blamed on the idea that:

"(.) trade union means strike. This means closure of business and its negative influence on the entrepreneur and even the worker who will lose his job should the business fold up making the workers situation even more pathetic."[34]

Concretely put, the relationship that exists between the employer and the employee is that between bearer of power and he who is not a bearer of power.[35] This therefore calls for the mobilisation of efforts through trade unions to fight for the interest of the said employees. This should rather not be different when their employer is faced with financial difficulties. From the above argument, it is no gainsaying that the absence of trade unions during insolvency proceedings has greatly affected the full protection of employees. This is because, they are better placed to fight for the protection of employees.

The appointment of controllers to represent employees

If the OHADA legislator added controllers to represent the various categories of creditors, the reason is that trustees cannot accommodate all their worries all alone. In fact, it must be recalled that the trustee represents the interests of both the debtor and the creditors which is not logical given that one cannot reasonably defend the interest of two opposing parties at the same time in an effective manner. Apart from stipulating that the total number of controllers cannot exceed five (05), article 48 of the UACPCD goes further by providing that:

"When the number of salaried staff exceeds ten (10) during the six (06) months preceding the petition to the competent court, the trustee shall convene the company committee, or otherwise, staff delegates, in order to appoint one employee as controller within twenty (20) days from the day the decision to open the proceedings was taken."[36]

From the above provision, one would find that the controller for staff is appointed by the trustee rather than being elected by the employees themselves. Generally, someone deemed to represent the interest of a group of people should be elected by them and not appointed by someone else. In the same vein, if they later find him unfit for the task, they may revoke him. It is not lost on us that this is the direct opposite of the situation of controller for staff under the UACPCD. Even if the appointed controller is not the choice of the employees, the trustee's appointment decision stands. This acts as a disincentive to the safeguard of employees during insolvency proceedings.

In addition to the above, the controller is appointed among the company committee or staff delegate. It should be noted that the election of staff delegates in a company is done following strong recommendations from the employer knowing that the election of their favourite candidate will protect their interest more.[37]

[32] Article 3(a) of the Workers' Representatives Convention, 1971 (No. 135).

[33] Article 13 of the Termination of Employment Convention, 1982 (No. 158).

[34] Irene Fokum S., (2008), "Trade Unions; Ensurers of the Right to Work and Development in Cameroon", *Annales de la Faculte des Science Juridique et Politiques*, Tome 12, 201.

[35] Otto-Khan F., (1977), *Labour Law and the Law*, Stevens, 17.

[36] Article 48 paragraph 2 of the UACPCD.

[37] See, Tasiki D. N., (2021), "The Protection of Workers in the Private Sector and Emerging Challenges under Cameroonian Labour Law", PhD Thesis, University of Dschang, 311 and Irene Fokum S., (2008), 203. This was the same response gotten by the researcher from an employee of the Government Certificate of Education

More to that, staff representatives are on the payroll of their employers.[38] In fact, C.P.N Vewesse,[39] a veteran Trade Unionist and President of the Fako Agricultural Workers Union, asseverated that staff representatives are not unionists. He went further to explain that a unionist is he who, though elected by peers, is not paid by his employer but rather from a fund sustained by the union members in order to maintain his independence and objectiveness. Therefore, the appointment of staff representatives chosen by the employer to represent interests of employees as controller is not a promising move for the full protection of employees during insolvency proceedings.

More so, controllers have no real power in dealing with company difficulties. The only role they have is to draw the judge's attention to the need to react and do not have the opportunity to react and do not have a real power of control.[40] The receiver remains the linchpin of collective proceedings. Their wishes and observations or proposals, do not have any binding legal force. It only behoves on the receiver to give a listening ear to the proposals of the controller. This again further buttresses the ineffectiveness of employee protection in insolvency proceedings in Cameroon.

Unauthentic consultation of employees during reorganization

According to Gérard CORNU's legal vocabulary, consultation means to consult, request from a person a question of his competence or qualification, an opinion that one is never obliged to follow, even in cases where one is obliged to provoke this opinion.[41] The management of a company is supposed to discuss all matters relating to the financial position of the enterprise, its production and development with worker representatives. It is therefore reasonable to assume that companies will be in close dialogue with worker representatives when the company is struggling financially,[42] with the goal of preventing the company from going into liquidation. In the context of the reorganization, the debtor draws up a composition offer which it submits to the creditors for approval.[43] The OHADA legislator in this case opts for individual consultation[44] of creditors.[45] It must be said at this juncture that the consultation targets only creditors and not employees in their *status quo*.

Nevertheless, it is important to reiterate the fact that employees who are owed employment entitlements before the employer's insolvency are considered as creditors and are consequently consulted. But in order for employees to validly defend their interests, they must be pooled together for the purpose of consultation. This can be backed by the fact the opinion of an isolated employee cannot have the same influence as that of a group. Much importance is attached to consultation because it provides time for employees to adjust to the potential changes in the business, including time to seek alternative employments.

It is important to raise the point that there is no time frame set up for creditors to forward their opinions to the trustee and in this regard, the trustee in connivance with the debtor may hasten the reply of the creditors. This may affect the opinion of the creditors since it is given within a short time. Apart from the absence of deadline, the law does not provide for the need to reduce consultations into writing. It is of utmost importance because it leaves traces that can be used as evidence.[46]

The "window dressing" character of the consultation ensues where creditors including employees are not allowed to make counter-proposals to the composition offer. Even though the OHADA legislator goes further by requiring creditors to give reasons for their refusal to accept the plan, the fact remains that this reasoning has no influence on the offer proposed by the debtor.[47] This justifies the inauthenticity of the consultations. Also, employees do not participate in the final decision on the plan. This has the implication of employees' marginalization

Board (GCE) on a *tête à tête* discussion on the election of staff representatives.

[38] Irene Fokum S., (2008), 203.

[39] Ibid.

[40] Virginie Yanpelda, (2011), « les salariés dans les procédures collectives OHADA acteurs ou spectateurs ?», *Revue De Droit Comparé Du Travail Et De La Sécurité Social*, 42.

[41] Gérard C., (2016), *Vocabulaire juridique,* 11e édition mise à jour, coll. Quadrige, Paris, Presses Universitaires de France, 254.

[42] Duncan Coughtrie *et al.,* (2009), "Restructuring in bankruptcy: recent national case examples", under the auspices of *European Foundation for the Improvement of Living and Working Conditions,* 37.

[43] See generally, article 119 of the UACPCD.

[44] The consultation that takes place within the company makes it possible to obtain from the creditors a warmer adhesion to the composition offer. In addition, this consultation results in the reduction of unilateralism of the debtor's decision-making power, following his taking into account of the creditors' opinion. The taking into account of the creditors' opinion stimulates the spirit of cooperation and increases the chances of rescuing the company. In fact, the right to consult creditors, including employees, is a manifestation of their involvement in the treatment of the debtor's difficulties. As a result, their support is crucial to the recovery of the company.

[45] Mafeuguemdjo B., (2019), « Étude Comparée en Droit OHADA Et Français de la Protection du Créancier Chirographaire d'une Société en Difficulté », Thèse de Doctorat, l'université de Nantes, 188.

[46] Mafeuguemdjo B., (2019), 188.

[47] At this stage of the procedure, the creditors are not allowed to negotiate and creditor including employees who does not adhere to the offer, can transmit to the debtor through the trustee; but his proposals are not binding on the debtor, who is free to integrate them or not into his proposed recovery plan.

given that other creditors are called up to witness the event.[48] In this regard, the creditors who attend this meeting pursuant to article 122 of the UACPCD can block and prevent the adoption of the plan at the composition meeting to the detriment of employees. From the above premises, the truth remains that the consultation of employees during reorganization is not genuine and this has immensely affected the protection of employees during insolvency proceedings adversely.

Institutional-fashioned hurdles or infelicities

Institutional impediments equally contribute to the reasons why the protection of employees during insolvency proceedings stands short in Cameroon. In the vicinity of insolvency proceedings, there are some organs that owe duties to employees but have unfortunately fallen short to accomplish them which in effect, have undermined the protection of employees. In this regard the following are worthy of discussion.

The court's interference in the debtor's estate

Insufficiency of funds acts as a barrier to the satisfaction of employees' claims during insolvency proceedings.[49] It should be made clear at this juncture that; this insufficiency is sometimes caused by the supervisory court. This can be explained by the fact that the trustee's fee is usually fixed by the competent court in the decision opening the insolvency proceedings. This can be seen in *Affaire ASSOCIATION OUNDONG WU PENEN c/ SOCIETE SURE FINANCE S.A*,[50] where the High Court of Wouri in its decision opening the liquidation of the defendant company, fixed the trustee's remuneration[51] at 20%. This was the same ruling in *Affaire SOCIETE SMT CAMEROON c/ SOCIETE FOMA ENTRPRISE SARL*.[52] Such fee which is usually colossal is borne by the insolvent debtor. The rate takes into consideration the turnover of the debtor during the fiscal year prior to the opening of insolvency proceedings; the number of workers employed by the debtor during this same period; recovery of claims ratio; time spent and possible difficulties as well as speed of services provided.[53] The last paragraph of article 4-19[54] of the UACPCD opens a floodgate for member states to add additional criteria to this list. However, the state of Cameroon has not added any other criterion or criteria for the time being. This therefore means the court must award remuneration in line with article 4-19.

It must be pointed out that the appointment of a trustee by the competent court and the determination of his remuneration by same may jeopardise employees' interest in insolvency proceedings. The test is as found in the Wouri High Court case of *Société BGFI Bank Cameroun c/ Société Forestière et Industrielle de la Doumé (SFID)* [55], where the defendant company subjected to reorganization witnessed the appointment of Mr Elouna Atangana Désiré as the trustee. The court fixed the appointed trustee's remuneration at 8 million FCFA to be borne by SFID (the insolvent company). Not only does such an overtopping sum affect the distressed company, it equally affects the interest of its employees. This can be explained by the fact that when the trustee's pay package is too high, the possibility for employees to recoup their entitlements in entirety will be slim. The fixation of this amount by the presiding judge without giving guidelines on how the total is gotten is questionable given that several courts have maintained a particular trustee in different procedures. It can be suspected that the court's choice of a particular person as trustee in several cases is triggered by the link between the judge and the said trustee.

In essence, the judge as a civil servant who only depends on his monthly salary for subsistence, uses the trustee as a middleman to indirectly get money from the insolvent company. This affects the interest of employees in insolvency proceedings in the sense that the money which could have been used to settle employees' claims is instead curtailed and used to pay the trustee who is even ranked ahead of employees.[56] The huge remuneration concocted by

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[48] See article 122 of the UACPCD.

[49] At the end of the assets liquidation operations, and at the expiry of the time limit set in article 33 (3) above, even if assets have not been fully realized, the trustee, in the presence of debtor or after he has been duly summoned by the court registrar by hand-delivered letter against a receipt or by registered mail with acknowledgement of receipt or by any means in writing, shall submit his accounts to the receiver who shall draw minutes to record the end of the liquidation operations. The minutes shall be forwarded to the competent court which shall decree the end of the assets liquidation and, at the same time, settle disputes related to the accounts of the trustee filed by the debtor or the creditors. And most importantly, the Union shall automatically be dissolved and the creditors shall recover their individual right only on assets that could not be realized during the liquidation. See to this effect, article 170 of the UACPCD.

[50] *Tribunal de Grand Instance du Wouri, Jugement No. 341/COM du 22 Juillet 2019.*

[51] The trustee appointed for the purpose of liquidation of this company was in the person of ELOUNA ATANGANA Désiré, financial expert at the Littoral Court of Appeal.

[52] *Tribunal de Grand Instance du Wouri, Jugement No. 339/COM du 22 Juillet 2019.*

[53] Article 4-19 of the UACPCD. See also, Kwati E. B., (2022), "An appraisal of environmental impact assessment as a strategy for regulating corporate environmental conduct: The Cameroonian experience", *Revue Internationale de Droit et Science Politique*, vol. 2, 368.

[54] It stipulates that, *"Each State Party may add additional criteria to this list."*

[55] *TGI du Wouri jugement No.353, 10 Octobre, 2022, unreported.*

[56] See articles 166 and 167 of the UACPCD.

the presiding judge coupled with the high ranking of the trustee in the settlement strata is a huge disincentive for the protection of employees during insolvency proceedings in Cameroon. In fact, Article 4-4's requirement of the appointed judicial administrators to provide all collateral securities of independence, neutrality and impartiality in any insolvency proceedings [57] does not seclude his attachment from the president of the competent court. This is in the sense that the provision only requires him to prove the aforementioned qualities in relation to the debtor and the creditors. Therefore, his relationship with the supervising judge is not questionable whereas it is a crucial aspect to be considered.

Following this, the judge presumably fixes the remuneration with the intention that he will later see the trustee to share the excess which as has been seen above, is prejudicial to employees.

The pursuit of the trustee's interest

The strife by the trustee to feed his own interest is another factor that has undermined the protection of employees during insolvency proceedings in Cameroon. When article 96 of the UACPCD demands the trustee to pay the super priority claims of employees 10 days after the opening of insolvency proceedings, the legislator does not picture a situation where the trustee will not pay all employees' dues especially when they are colossal and given that he has to deduct his remuneration. In fact, Sawadogo is sceptical about the payment of the super priority wage claims as he posits that:

"It is doubtful that, in practice, taking into account the deadlines of these two types of procedures to be put in place and operational, that the 10 days deadline be respected." [58]

It can further be developed by saying that, trustees rank higher than employees on the settlement table and it would be hard to reconcile the payment of employees within the 10 days period and the payment of the creditors who rank ahead of employees per articles 166 and 167 of the UACPCD. Following this ranking, it is apparent that the trustee has to deduct his 20% first before settling the employees even though he has not yet assembled all the debtor's assets. In fact, the provision of article 96 of the UACPCD is a cosmetic provision which is difficult to see the light of day. This is so because, the debtor's assets are most of the times minute hence, requiring the trustee a long time to assemble them so as to satisfy the various claims equitably.

Corruption

Corruption as the word implies, is the violation of the obligations of probity, fidelity and impartiality in the exercise of a public service, to the detriment of the user.[59] Though punishable by the Cameroonian Penal Code, [60] it is not easy to proof. A good case of corruption in insolvency proceedings which affected the rights of employees is that of *Société Cellulose du Cameroun* (CELLUCAM) which was placed under liquidation. The transaction was entrusted to a chartered account, Benoît Atangana, a barrister, Mr Nkoto Toco and a «Government commissioner», Mr Franscis -Xavier Mbayoum. On 25 April 1992, CELLUCAM was effectively liquidated and renamed Cameroon Pulp and Paper Company. The story line of the CELLUCAM liquidation was smooth until the creation of Cameroon Trading Company (CAMTRACO) in 1991 headed by Mr Raynold Hult.[61]

Even though the setting up of CAMTRACO had nothing to do with the liquidation of CELLUCAM, some events, which occurred subsequently, revealed disturbing facts following difficulties it encountered. Corruption syndromes started paving its way into the liquidation scene when the then Cameroon's Minister of Industrial and Commercial Development,[62] who was the supervisory authority in charge of the liquidation of CELLUCAM and the Hydrocarbons Price Stabilization Fund (CSPH) was personally involved in convincing the CSPH to lend the sum of 600 million FCFA to CAMTRACO.[63]

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[57] See Article 4-4 of the UACPCD states that "Appointed judicial administrators shall provide all collateral securities of independence, neutrality and impartiality in any bankruptcy proceedings. They shall not have or gain a personal, moral or financial interest from the mandate entrusted to them, except as expressly provided for in this Uniform act…"

[58] This is the translated version of the excerpt in french which reads that ; *« il est douteux que, dans la pratique, compte tenu des délais pour ces deux organes des procédures collectives soient mis en place et opérationnels, que le délai de 10 jours puisse être respecté. »* See also, Douram V., (2020), « La protection des créances salariales dans les entreprises OHADA en période de crise », *Revue de L'OHADA,* 18.

[59] Titi Nwel P. & GERDDES-Cameroon, (1999), *Corruption in Cameroon*, Friedrich-Ebert-Stiftung, 14.

[60] Corruption (in commission or omission) punishable under sections 134 and 134 (a) of the Pena1 code of Cameroon which state that: « Any public servant or government employee who for himself or for a third party solicits, accepts or receives any offer, promise, gift or present in order to perform, refrain from performing or postpone any act of his office» or who receives any reward «as remuneration for having already performed or refrained from any such act» shall be punished. The corrupter who is also punishable under section 134 (a) is any person who makes promises, offers, gifts and presents in order to obtain either the performance, postponement or abstention from an act.

[61] Titi Nwel P. & GERDDES-Cameroon, (1999), 113.

[62] Mr Réné Owona was the then Minister of Industrial and Commercial Development which he occupied from 1990-1992. See www.jeuneafrique.com, accessed on the 17th of March 2023.

[63] Titi Nwel P. & GERDDES-Cameroon, (1999), 113.

Apart from writing a letter on 24 March 1992 to the Chamber of Commerce, Douala, asking it to put public warehouses at the disposal of this company, he connived with the liquidators to enable the Indonesian group to take over CELLUCAM under conditions considered very favourable to the buyers.[64] The link was therefore established between the liquidation of CELLUCAM, the setting up of CAMTRACO and the import transactions.

Based on the irregularities surrounding the liquidation of the company, the jobs of employees were at stake and their employment entitlements did not see the light of day. The proof is as found in the *Radio-communiqué* signed by the Senior Divisional Officer for Sanaga Maritime Division, Mr Cyrille Yvan ABONDO on the 13th of March 2023, requesting the presence of the presence of ex-employees of CELLUCAM from Wednesday 15, 2023, to claim their monies owed. This is a time interval of approximately 31 years after the liquidation of the company. This comes as a result of the fact that employee's rights and livelihood were sacrificed for personal interest and above all, political lineage. Had employees' rights been considered during the liquidation, they would not have suffered such a fate. Hence, corruption is a disincentive to employee protection during insolvency proceedings in Cameroon.

Policy lapses

At the international level, a plethora of approaches have been devised to protect employee entitlements and jobs during insolvency proceedings. It is regrettable that Cameroon is still lagging behind in relation to the global trends which of course, have affected employees in insolvency proceedings. These deficiencies are:

Absence of a "Protection of Wages Insolvency Fund"

The termination of employment by insolvency results in a claim by an employee's claim for termination pay (including vacation pay) and severance pay which are treated as ordinary unsecured claims.[65] There is the likelihood that these unsecured claims would not be paid due to insufficiency of fund, leaving employees vulnerable in the short term in their ability to meet their living expenses despite suffering prejudice. Not only unsecured claims fall prey of non-payment due to insufficiency of funds, the super priority claims do also face this problem. This can be explained by the absence of a "wage earners protection insolvency fund" which serves as a lifejacket for employees drowning in hardship due to unpaid claims based on the fact that the priority scheme has a limited role to play.

Generally, employees' unpaid wage claims are either protected by enjoying a preferred ranking in the distribution or by a guarantee scheme, often by both systems. The level of protection under a preference rule is, however, questionable in practice as in many cases, especially small and medium size enterprises (SME) cases, the administrator cannot generate sufficient money to even pay preferential creditors. In practice, a preferential payment is often uncertain and late.[66] Therefore, it seems preferable to develop the common guarantee scheme towards a level of protection that fully addresses the needs of employees.[67]

Article 12 of the Protection of Workers' Claims (Employer's Insolvency) Convention, 1992 stipulates that:

"The workers' claims protected pursuant to this Part of the Convention shall include at least: (a) the workers' claims for wages relating to a prescribed period, which shall not be less than eight weeks, prior to the insolvency or prior to the termination of the employment; (b) the workers' claims for holiday pay due as a result of work performed during a prescribed period, which shall not be less than six months, prior to the insolvency or prior to the termination of the employment; (c) the workers' claims for amounts due in respect of other types of paid absence relating to a prescribed period, which shall not be less than eight weeks, prior to the insolvency or prior to the termination of employment; (d) severance pay due to workers upon termination of their employment."

It is further stipulated that 'claims protected pursuant to this Part of the Convention may be limited to a prescribed amount, which shall not be below a socially acceptable level.'[68] However, following the discretionary "may" used in this provision and the desire to ensure the full protection of employees, it is suggested that, the scheme, if adopted in Cameroon, should not limit the amount of money to be claimed. This can be linked to the precariousness of employees' situation after losing their jobs; hence limiting the amount to be recouped by them would be unfair.

It is not lost on us that article 96 paragraph 3 of the UACPCD foresees the possibility of unavailability of funds and proposes that, either the trustee or any other individual or organization that supports all or

[64] Seemingly, both parties agreed that the Indonesians would offer goods and foodstuffs instead of money and it was necessary therefore to set up a company which could receive these gifts presented as goods.

[65] Janis Sarra, (2006), "A Brief Overview of the Treatment of Employee Claims and Collective Agreements in Canadian Insolvency Law", Presentation to the International Insolvency Institute, New York, 2.

[66] Instrument of the European Law Institute, (2017), Rescue of Business in Insolvency Law, 269, downloaded at www.europeanlawinstitute.eu, accessed on the 2nd of March 2023.

[67] Instrument of the European Law Institute, (2017).

[68] Article 13 (1) of the Protection of Workers' Claims (Employer's Insolvency) Convention, 1992.

part of the wages in case of reorganization or liquidation of assets, if such a body exists in the State party concerned, which has made an advance to pay claims arising out of contracts of employment, shall be subrogated to the rights of the employees and should be refunded as soon as funds are collected without any obstacles from any other claim. It is worthy to point out that no organization or the trustee himself would be ready to provide funds for the payment of employee super priority claims especially if the amount is colossal. Such payment can only be readily made available where there is a wage guarantee fund already made for the purpose.

Acknowledging that the guarantee mechanism is absent in Cameroon, Yanpelda suggests that a state stakeholder like the National Social Insurance Fund should be allocated this responsibility and the financing be made by contribution from employers, employees and even the state.[69] We however agree that a state entity takes charge of employees' entitlements during insolvency proceedings but uphold a varying view regarding the financing. We think that placing the burden on employees and the employer to guarantee the prompt payment of employees' claims when their employer runs insolvent is prejudicial to both of them. This can be explained by the fact that on the employee, it will reduce his earnings and for the employer, it will reduce his turnover since expenses will increase alongside others like taxes. On this note, we therefore uphold the view that the fund be provided by the state and be subrogated by the super priority rights of employees during the settlement of creditor's claims.

In a bit to buttress the importance of such a scheme, it should be noted that in Australia, $66.7 million was paid to 8,126 employees in respect of 572 failed businesses in 2004-05. [70] Had such a mechanism not exist, the fate of employees in Australia would be very precarious.

This in effect, is the reality in Cameroon where such an initiative is absent. The CELLUCAM liquidation case captures the preceding conclusion. As already discussed above, CELLUCAM was placed under liquidation in 1986 but was effectively liquidated and renamed Cameron Pulp and Paper Company in 1992. It is heartbreaking to hear that, it was only after 31 years that the employees of CELLUCAM were called up to recover their monies owed by their former employer.[71] This is problematic because a handful of employees if not all may not possess the documents stated in the Senior Divisional Officer's notice. It is no gainsaying that such a situation would have out rightly been avoided if there was a wage guarantee scheme for the purpose set up by government. Lacking such, the ex-employees of CELLUCAM were left to wallow in financial stress for over 30 years.[72]

In addition to this, the SDO's announcement does not mention the amount of money which would be disbursed to the beneficiaries. This comes in as another problem in the sense that the beneficiaries are not certain on going home with their entire entitlements. This comes as no surprise due to the fact that in 2012, the affected employees had the same complain where it was revealed by a strike action in 2022 that, they were expecting a total sum of 819,973 million FCFA but were never paid as they only received 10% of the said amount. All these greatly affects the full enjoyment of employees' rights during insolvency proceedings.

Absence of a Job Search Assistance initiative and retraining of Redundant Workers initiative (capacity building)

Reorganizations accompanied with large scale redundancies bring about the frustration of several employees. This is equally the case where the company goes into liquidation. In the wake of an economy grappling with high rate of unemployment, there is need to put in place a mechanism which will enable redundant employees to easily reinsert themselves into the job market. In fact, some organs including trade unions play a great role in ensuring that redundant employees find new jobs. Duncan Coughtrie *et al.*, attest that in a number of countries, trade unions provide support and information to their members – sometimes in cooperation with public bodies – to help the workers cope with unemployment.[73] These initiatives are clearly absent in Cameroon which of course has greatly affected employees during insolvency proceedings.

It should be recalled that the Labour Code of Cameroon empowers trade unions to receive contributions from their members who are generally employees. Section 21 is the statutory authority for this as it states that:

"An employer shall be permitted to deduct from the wages earned by a worker under his control the ordinary trade union contribution due from the worker, provided that the employer immediately pays the contribution so deducted to the trade union specified by the worker."

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[69] Virginie Yanpelda, (2011), 47.

[70] Ibid.

[71] This can be seen in a Radio announcement signed by the Senior Divisional Officer for Sanaga Maritime Division, Mr. Cyrille Yvan ABONDO on the 13th of March 2023. This letter which requires the presence of the various claimants from Wednesday 15, 2023, calls for the production of the following documents before payment can be effected: i- the national identity card or valid identification receipt for ex-employees, ii- certificates of individuality pour in case of any errors on names and iii- certificates of non-appeal of the decision designating an administrator in case of death of the beneficiary.

[72] It should be noted that this company employed over 2000 employees. See to this effect, [72]Ecomatin.net, Ex-Cellucam: 38ans après la liquidation, les ex-employés passent à la caisse, by René OMBALA, le 20 Mars 2023.

[73] Duncan Coughtrie *et al.,* (2009), 9.

The question that comes to mind is; what is the utility of the contributions made by employees to the trade union? As C.P.N Vewesse puts it, ".a unionist is he who though elected by peers is not paid by his employer but rather from a fund sustained by the union members in order to maintain his independence and objectiveness." This implies that the contributions made by employees are used to pay the representatives of the union. This should therefore be considered as only one of the uses of the fund. This implies that the contribution should also be used to take care of job-searching in favour of employees made redundant due to their employer's insolvency and contribute in the retraining of such employees so as to enable them to easily fit in themselves in the evolving job market.

PROSPECTS FOR AN ENHANCED EMPLOYEE PROTECTION DURING INSOLVENCY PROCEEDINGS

The undermining of employees' rights and the challenges they face have led to the continuous search for regulatory frameworks that better address these issues. As we conclude this paper at a time when so many companies are going into liquidation including those that initially filed for reorganization, any reform on the insolvency regulatory frameworks in Cameroon should be geared towards the effective protection of employees. For this to come to fruition, the following recommendations will be helpful:

Reconsideration of the role of the labour inspectorate in insolvency proceedings

It is no news that the law governing insolvency proceedings in Cameroon is the UACPCD and it has side-lined the Labour Inspectorate from the process of dismissal on economic grounds. This can clearly be seen in articles 110 and 111 of the UACPCD cited above. This therefore implies that the protection of employees during insolvency proceedings is bound to be weak given that the Labour Inspector who is vested with the power to ensure the application of the Cameroon Labour Law has been stripped off the power to do so. This is because, the letter mentioned in article 110 only serves the purpose of information but does not require his reply or intervention. Against this backdrop, there is need to reinsert the Labour Inspectorate in the determination of employees to be dismissed during insolvency proceedings. In essence, we advocate for the application of section 40(6)(d) of the Labour Code of Cameroon during insolvency proceedings which is to the effect that:

"The employer's notification and the reply from the staff representatives shall immediately be sent to the Labour Inspector of the area for arbitration."

This provision should however be read without prejudice to the fact that the replies of both the staff representatives and the controllers for staff shall be received and forwarded to the Labour Inspectorate for their arbitration. If this is done, the situation of employees during insolvency proceedings would be made better given that, the negotiations to be chaired by the Labour inspectorate may ameliorate the list established by the trustee in favour of some employees who were to be dismissed unfairly.

Active involvement of trade unions in insolvency proceedings

When carrying out dismissals on economic grounds the only set of workers' representatives consulted are the staff representatives who of course are powerless when it comes to defending the rights of employees in the sense that they are mostly the choice of their employer and are forced to defend the interest of the latter. The inclusion of trade unions in the defence of employees' rights therefore becomes more useful and apparent in insolvency proceedings. Due to their prominence in the protection of employees' rights, we advocate that the controllers for employees should be representatives from their trade unions reason being that, employee protection is the main reason for their existence. This way, those who are custodians and advocates for the protection of employees will fight a better fight for the benefit of employees than any other person.

Moving towards election of controllers for staff

The appointment of controllers by the trustee to represent employees is damaging to the protection of employees during insolvency proceedings. Generally, employees are supposed to be given the latitude to elect the person to defend their interest during insolvency proceedings where the legislator denies trade unions from representing their interest. In the same vein, if they later find him unfit for the task, they may revoke him. Under the Cameroonian Insolvency regime, not only are they appointed, but they are equally appointed among the company committee or staff delegates whose elections are done following strong recommendations from the employer knowing that the election of their favourite candidate will protect their interest more.[74] The OHADA legislator even makes it worse when he pens down in article 216 (1) that "*The following shall not be subject to opposition or appeal: 1) decisions related.to the appointment or dismissal of controllers."* This implies that even if employees are not happy with the choice of the controller appointed, they have no power to contest the decision. To enhance the protection of employees, it is imperative that their controllers are elected by themselves and they should be empowered to revoke the controller if they find him incompetent.

The need to inform and consult employee representatives during transfer of business

When the trustee envisages the transfer of undertakings whether during reorganization or assets liquidation, it is required that employees'

[74] See, Tasiki D. N., (2021), PhD Thesis, 311 and Irene Fokum S., (2008), 203.

representatives are informed and consulted to that effect.[75] This information and consultation requirement is to enable the representatives evaluate the benefits of the transfer to the employees. Since employees only participate by proxy during insolvency proceedings, it imperative that their representatives are informed and consulted before any such transfer can take place. Much is thus desired of the legislator to see into this so as to enable employees enjoy maximum protection in this perspective.

The need to put in place a wage protection guarantee fund

The payment of employees' financial entitlement during their employer's insolvency is guaranteed by super-priority of wage claims but which does not always prove fruitful within the Cameroonian context. Against this backdrop, there is need to put in place a wage protection guarantee scheme[76] which shall pay off employees in case of insolvency. The advantage of such a fund is that it guarantees payment to employees when they are most vulnerable and can be far more expeditious than recovery after an insolvent estate has been liquidated and payments made to creditors who rank higher than employees. This scheme as a matter of public policy, should encompass wages due 12 months before the opening of the proceedings, expressly include paid leave and damages, severance or termination pay; and employees who were a director of the employer or who had a controlling interest in the employer's business or who occupied a managerial position should not be covered by the scheme.

As for its source and management, we recommend that the fund be provided by the government notably the Ministry of Finance and be subrogated by the super priority rights of employees during the settlement of creditor's claims. We think that placing the burden on employees and the employer to guarantee the prompt payment of employees' claims when their employer runs insolvent is prejudicial to both of them. This can be explained by the fact that on the employee, it will reduce his earnings and for the employer, it will reduce his turnover since expenses will increase alongside others like taxes. Therefore, the financing of the fund by the government to be later subrogated is an ideal option.

Capacity building and job-search assistance

In the wake of an economy grappling with high rate of unemployment, there is need to put in place a mechanism which will enable redundant employees to easily reinsert themselves into the job market. In fact, organs like trade unions should play a befitting role in ensuring that redundant employees find new jobs within a short notice.

[75] Generally, employees can be represented by the staff representatives, employee-controllers as well as trade unions during assets liquidation proceedings.

[76] The public policy goal of this is to provide a timelier method of payment of wages to employees on insolvency.

In order to reduce the already heavy burden on the state, it is suggested that the contributions made by the employees to their respective trade unions be used to take care of job-searching in favour of employees made redundant due to their employer's insolvency and contribute in the retraining of such employees so as to enable them to easily fit in themselves in the evolving job market. Trade unions should not only come to the aid of its members when the company (their employer) is *in bonnis*.

Another very important thing to worry about as to what concerns redundant employees is the employment of aging employees.[77] The state of Cameroon has not yet adopted a law preventing the discrimination of employment based on age. This therefore gives employers the latitude to discriminate against aging employees based on the belief that they are unproductive. This has as implication that aging employees who have been rendered redundant by their employer's insolvency will find it difficult to get another job. The discrimination of employees based on age regarding employment has immensely affected the protection of employees during insolvency proceedings in Cameroon. On this note, it is imperative that a law is adopted prohibiting age discrimination especially against employees who have been made redundant by their employer's insolvency. Paragraph 22 of the preamble of the Cameroon constitution only states that every person shall have the right and obligation to work but does not punish any employer who discriminates based on age of the employee.

In case of assets liquidation proceedings without any transfer of undertakings, the insolvent employer should be compelled to effect referrals of its ex-employees to other companies that carry out the same activities and ensure that they are recruited. This is not to say the former employer has to force the potential employer to accept the employees, but he should at least be vested with the duty to help the redundant employees find another job to ensure the continuation of his old age pension contribution which will be of help to him when he can no longer work.

CONCLUSION

The protection of employees during insolvency proceedings is significant for myriad reasons. Firstly, it contributes in the protection of their fundamental rights such as the right to work, in achieving the social policy of the state and guarantees economic stability and progress[78] such as the fostering of development, fighting against unemployment, and reducing crime wave. Despite all these, the regulatory framework on the protection of employees in insolvency proceedings in Cameroon has not done any better due to statutory, institutional and policy frailties. Given the pertinence

[77] The expression, "aging employees" embroiders those employees of from 45-60 years of age at the time of their employer's insolvency.

[78] Kelese G. Nshom, (2016), 1433.

of employees' role in the life of every company and society at large, much is still left to be desired by the OHADA and Cameroonian Labour draftsmen, to see to the enhancement of employee protection during insolvency proceedings.

Given that law is not static but dynamic; our fervent wish is that, the OHADA legislator when revising the UACPCD, should adopt moves that enhance the protection of employees. Better still; the adoption of a Uniform Act on Labour Law that reflects a legal framework with the above proposed measures will be a dream come true for Cameroonian employees in particular and those of the OHADA member states in general.

Given that law is not static but dynamic; our fervent wish is that, the OHADA legislator when revising the UACPCD, should adopt moves that enhance the protection of employees. Better still; the adoption of a Uniform Act on Labour Law that reflects a legal framework that integrates the above proposed measures will be a dream come true for Cameroonian employees in particular and those of the OHADA member states in general.

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