

REFORMS AND RECEIPT OF FUNDAMENTAL RIGHTS OF WORK IN SENEGAL

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SUMMARY :

In this contribution, the author analyzes the factors and the area of reforms of labor legislation, companies in the 1980s and 1990s, Senegal and other African countries. These countries hard hit by economic crisis and unprecedented financial apply the structural adjustment programs developed by international financial institutions, including the World Bank and IMF In this unfavorable economic environment, the author shows that the problem of reception of fundamental rights at work is less tied to cultural specificity that the fragility of economic conditions that characterized the situation of African countries.

Sub-Saharan Africa countries were in the early 1980s, in an international environment marked by a deep economic and financial crisis. Receivers of credit at low rates (between 3 and 8% per year until 1978) resulting from the excess liquidity generated by the recycling of petrodollars, African states become indebted, in 1980, when falling prices of raw materials removes their first opportunities to address their external debt. Meanwhile, the non-oil producers, such as Senegal, were affected by the swelling of their oil bill, thereby contributing to a widening deficit in their trade balances.

Negotiating with groups of public and private creditors (Paris Club, London Club) the African States were linked to the programs of international financial institutions, including the World Bank and IMF, which imposed drastic measures of "stabilization" and "structural adjustment" with a string of conditionalities.

The new economic policy, imposed by international financial institutions, confirmed the absolute hegemony of economic rationale and the questioning of the protective policies of the socialist state. The fall of the Berlin Wall and the collapse of the socialist bloc were to prevail, while the hegemony of "neoliberalism" questioned the social protection policies.

Major reforms of labor law have been undertaken in well-defined programs (I). The areas of reform of labor law which, curiously, were conducted in all African countries should also be analyzed (II). Finally, the issue of receipt of basic labor rights will be addressed in this paper(III).

I-BACKGROUND OF REFORMS

Two trends illustrate the extremely unfavorable context in which the reforms were initiated,

the economic and social instability and the persistence of a hostile international environment.

A. The social and economic instability

The economic crisis has emerged in sub-Saharan Africa in the 1970s as the result of several shortcomings resulting from the wrong economic choices of policies:

- increasing public sector spending without corresponding increase in revenue from this sector ;
- trend to discriminate against agriculture, the main occupation of the workforce (70% of assets) and the pillar of the national economy ;
- decline in domestic savings in addition to the overvaluation of the currency, reducing incentives to produce and export.

To these economic factors, were added the omnipresence of the State [1] in all sectors of economic and social life. It is manifested particularly by wage policies imposed from above and the rule of law state in working with "freezing" of collective bargaining [2], resulting in the non-renewal of collective agreements developed during the period Colonial [3].

In Senegal, between 1961 (entry into force of the first Senegalese Labor Code) and 1979 (first year of the IMF program), the Labor Code was amended only a few times because it appeared primarily as an instrument of a social pact to save in an economic and social instability. The question of updating it arose then clearly [4].

It should be noted that the government's social policy of former Président Senghor was oriented towards domestication of unions grouped around a central association, governed by the doctrine of "responsible participation" [5] and affiliated with the ruling party. The springs of "social antagonism", creator of a new normative order, were, therefore, monitored and supervised by tripartite consultations and consultations prior to any adoption of new rules [6].

The African trade union movement has developed rapidly in the public and the business sector. But the bulk of the workforce was employed in agriculture and / or pastoral, ignoring reports of wages in the capitalist sense of the term, remaining non-integrated in modern industrial relations.

With the structural adjustment policies, these traditional sectors of the labor movement will be most affected by the crisis, bankruptcies of major industries, intense competition from the informal sector and privatization of public enterprises.

Moreover, most jobs created in the last decade, had been in the service sector formal and informal especially in small and medium enterprises where unions have more often real difficulties in recruiting new members.

Job insecurity with the widespread use of fixed-term contracts, more flexible working hours and dismissal procedures have led to some uncertainty, so that the employee is more concerned about the continued employment by the aspiration to better working conditions.

The results of a survey conducted by a Senegalese sociologist in 1990 and 1992 in three large industrial firms located in Dakar and Thies showed that unemployment was experienced daily by workers in their families, relatives and neighbors: 60.5% of workers surveyed recognized having unemployed adults on charge in their household [7].

In this context, although the rate of unionization remain high (up to 80% in some areas), workers have become accustomed to rely more on individual-short term solutions (debt to the employer or Banks, investment lucrative investment activities in the informal sector) a, rather than a confidence in the ability of unions to support their claims [8].

Workers became unable to meet their social obligations of feeding on daily basis the family and obtaining decent housing. A persistent problem is the economic survival of the state bound by international financial institutions to maintain a freeze of the wages. The minimum wage rose from 100 in 1976 to 187.81 in 1990, while the index of consumer prices of African type grew from 100 at 242.49 in the same period. After the devaluation of the CFA the wages were increased by only 10 to 15%. The loss of workers has also been exacerbated by a high taxes increase of 31.26% between 1980 and 1990 [9].

In the mid-1980s, appear the new players that are the «autonomous trade unions». These unions, especially in the public sector, opposed radically to measures taken by the Government in the context of structural adjustment policies that led to a series of layoffs, business closures, a substantial decrease of power workers' purchasing flexibility and a flexible management of workers in enterprises. Meanwhile, was noticed the development of associations of solidarity of workers in businesses and neighborhoods and the strengthening of the informal sector [10].

B. A hostile international economic environment

Modern systems of industrial relations were organized on a national basis because national boundaries fitted to the size of the markets. The liberalization of international trade, the globalization of financial markets and the growing trend of multinational intervention in the markets disrupted the national systems. The constraints of cost comparison of inputs, including labor input leaded the states to privatization policies, and a race for greater flexibility to attract investors. The harmonization of social legislation, discussed in the context of legal integration may reinforce this trend towards greater flexibility, adoption of legal rules being subject to the economic goals of states [11].

In terms of technology, the highlight is the speed of technological change. With satellites and scanning, there was a second industrial revolution and from one year to another, these technological developments disrupted working activities. It is clear that with the rythm things are going, the industry of the twenty-first century will be highly automated and robotized and thousands of workers joining the ranks of the unemployed. One author described that movement as the "end of labor law" [12] or "the crisis of human obsolescence".

The number of manufacturing workers decreases from year to year, most of the work being

done on computers and robots. At the same time, we observed the development of teleporting and the widespread use of home work .

These technological developments may appear very far from the concerns of Africa. But it should be borne in mind that foreign direct investment that can enhance economic growth remains heavily influenced by technology costs and productivity. This leads them to seek environments that labor flexibility reforms undertaken in Africa try to apply.

II-FIELDS OF REFORMS

The failure of economic development strategies, initiated after independence, was followed by the adoption of several structural adjustment programs. Senegal has successively adopted under pressure from international financial institutions, a program of short-term stabilization (1979 - 1980), an economic recovery plan and finance (1980-1985), a structural adjustment program and medium Long term (1985-1992) and an emergency plan for fiscal consolidation (1993-1995) [13].

These restructuring programs have consistently advocated greater flexibility in managing workers' rights and liberalization of labor standards. Adjustment policies have, above all, focused on permanent employment under section 35 of the Labor Code. Until 1987, it resulted from this text that the employment contract term could not be concluded more than twice between the same parties, nor be renewed more than once. The penalty for this rule was substantial -with exceptions listed exhaustively- i.e. the automatic conversion of the so called temporary contract to a permanent contract. Attempts to repeal the text were rejected by trade unions. The authorities then resolved to add, in 1989, additional exceptions, diminishing the scope of the text, adding to the exceptions admitted the temporary workers hired for extra work.

Moreover, all firms admitted to benefit the provisions of the Investment Code were considered eligible to the permissible derogation of the section 35. The precariousness of employment was thus far achieved in the 1990s. It follows statistics released by the Ministry of Labor in 1990 that on 5126 employment contracts, 3153 were fixed-term or 62.09%. The policy of job insecurity has continued at a legislative level, by the consecration in the new Labor Code of 1997 of a new exception to the principle laid down in section 35 related to companies who "use" to hire temporary employment; the list of these companies is established annually by a ministerial decree [14].

Another important area of liberalization of the protective rules of labor law is, the matter of dismissal. The first measure was the frequent use of the buyout. Between 1988 and 1990, three major private sector companies suppressed more than 600 jobs, while in the public sector, the buyout plan implemented since 1987 led to a deflation equivalent to 51% of the workforce. In the same period, the prior system of administrative approval to buyout was eliminated for companies eligible for the investment code. The removal of administrative approval was widespread in 1994 and confirmed by the new Labor Code which came into force on early 1997. So that today, companies are free to make staff cutbacks, the only condition is to notify the labor inspector who can only exercise "good offices" to convince

the employer to take alternative measures, in the absence of any legal obligation to establish a social plan of conversion.

Finally, the results of the reform is the growing “informalization” of labor relations with the reduction of the powers of government on the industrial sector and the rush of small and medium industrial enterprises from the formal sector into the informal sector, encouraged by a tax burden increasingly strong [15].

It is, indeed, emphasized that in Senegal, as elsewhere in Africa, the informal sector is also a place of refuge for a large proportion of the urban working population [16] that the modern sector cannot hire[17].

It is obvious that in the coming years, the law of market and economic liberalization will continue to be central to the evolution of industrial relations in Senegal [18].

III-RECEPTION OF BASIC LABOR RIGHTS

The International Labor Conference adopted? at its 86th session held in Geneva in June 1998, the ILO Declaration on Fundamental Principles and Rights at work. It appears from paragraph 2 of this Declaration that all Member States, even if they have not ratified the Conventions in question, have an obligation, to respect, promote and realize the following basic rights:

- Freedom of association and effective recognition of the right to collective bargaining,
- Elimination of all forms of forced or compulsory the effective abolition of child labor,
- Elimination of discrimination in employment and occupation.

However the ILO Declaration is a declaration and not a convention, it was not binding and its follow-up has a promotional value. It is then noted that while stating that Members have the obligation to respect core labor standards recognized internationally. By the way, the ILO Declaration rejects the use of labor standards for commercial and protectionist ends [19]. In other words, the terms of the Declaration does not necessarily preclude the use of labor standards for protectionist reasons. This observation raises the question whether a Member State is entitled to refuse to import, for example, a product whose production does not meet the standards of internationally recognized labor strike or tariffs higher.

There are no responses in this Declaration or in the legal framework of the WTO. It seems that such sanctions could be envisaged only in the case of social dumping or injury to public morality of the importing country.

In negotiations within the WTO about the inclusion of a social clause, most developing countries, African countries included, were hostile to the establishment of a link between trade and core labor standards. The argument used is that such a clause would serve the interests of developed country protectionism. In reality, African countries have aligned themselves with the position of those in Southeast Asia countries , where the violation of core labor standards appears as a means of attracting foreign direct investment and thus maintain competitive advantage. Although rules in Africa, recognize freedom of association and the right to collective bargaining, states are developing an enforcement policy hostile to

organized labor and adopting rules restricting the exercise of the right to strike, contrary to standard conventions No. 87 and 89 of the ILO adopted and ratified in those states.

We find the same constraints with regard to child labor. The argument advanced by African policy makers is that application of international standards relating to the abolition of child labor, could further deteriorate the situation of children, depriving them of their labor possibilities without offering them education or training, while reducing the income of their families. These arguments cannot hide the exploitation of children used as apprentices in the mechanical work places and carpentry small enterprises. These "apprentices" unpaid spend long days working for the sole benefit of a patron undeclared in bad situations, most often humiliating them [20].

However, it is certain that with unplanned urbanization in Africa and the crisis of the education system, the problem of the abolition of child labor goes beyond a simple proactive policy. Only development assistance can make the African position to prohibit and enforce the abolition of child labor without families falling in situations even more difficult and that children can go to school to improve their future prospects and those of society.

The same could be said about women's work that appear almost everywhere in Africa, as the main victims, but also the most active resistance to the crisis and economic disintegration. Several studies have shown the disastrous situation of women: besides their domestic work, they are forced to engage in many other productive activities to feed their families or supplement the paltry income of their spouses [21]. At the same time, many NGOs appear in the field of the fight against sex discrimination in employment and promotion of women employees. In the formal sector, only 7.6% of women have access to employment, most are found in the informal sector in activities used to meet the needs of the household. With medieval working conditions in some areas [22], women still claim a more equitable sharing of responsibilities within the family.

A visible form of discrimination, positive law in Senegal, is probably not the widow's pension or widower or children in case of death of the woman worker and lack of care for children and husband in medical and transportation [23].

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[1] B. FALL (Deputy Dir.) Structural adjustment and employment in Senegal, Codestria, Dakar,

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[2] In 1948, 152 collective agreements existed in French West Africa, most of them had been signed in Senegal. The policy of the Senegalese independent was unfavorable to the promotion of conventions and collective agreements, collective agreements force in the business sector were not renegotiated.

[3] M. Samba, the national collective agreements in black francophone Africa, PhD thesis, Faculty of Law and Economics, University of Dakar, 1989

[4] J. Issa Sayegh, "Should we update the code work? "Communication Seminar labor inspectors, Dakar, 1991

[5] The "responsible participation" is the official doctrine that advocates the affiliation of unions in the ruling party and collaboration with the Government

[6] P. BLOCH, Labor Relations in Senegal: history, institutions and perspectives, University of Wisconsin-Madison, 1996

[7] The employee Senegal maintains an average family of ten unemployed people. See E. BERG, Adjustment adjourned: reform of the economic policy of Senegal in the 1980s, USAUD, Dakar, 1990.

[8] A. I. Ndiaye and B. TIDJANI, labor movements and economic crisis: the Senegalese unions facing structural adjustment, Monograph Series, Codestria, Dakar, 1995.

[9] E. Berg, op. cit.

[10] A. Niang, "The informal sector in urban areas", in B. Fall 1997, op. cit., p. 29

[11] J. Issa Sayegh, "The legal integration in countries of the Franc Zone," Journal Penant, 1997, No. 823 and 824

[12] One writer suggests the purpose of labor law as the result of employment flexibility. See B. BOUBLI, "about flexible employment: towards the end of the Labor Law, Labor Law, 1985 p. 239.

[13] E. Berg, op. cit.

[14] I. Y. Ndiaye and Mr. Samb, "Neutralization and flexibility of labor law Senegalese economic adjustment adjustment law", in B. FALL, 1997, op. cit., p.103.

[15] C. Zarour Study of the informal sector of Dakar, Senegal USAID, Dakar, 1988

[16] From 1986 to 1991 for example, the informal sector employed three times more active than the modern sector in urban areas between 1990 and 1991, he would, according to official statistics, created 30 times more jobs than the modern sector (Ministry of Planning and Cooperation), 1986

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[22] O. K. Niang, "Employment of women in the business of fish products", in B. FALL 1997, op. cit., p. 2

[23] The African Network for the Promotion of Working Women (RAFET) led by our colleague Professor Amsatou Sow Sidibe developed since its inception in 1996, a program of awareness against sex discrimination in employment.