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DROIT MONDIALISÉ ET MONDIALISATION DU DROIT :

Exploration de certaines conséquences de cette nouvelle relation sur les droits interne et international relatif aux droits de la personne, notamment dans les Amériques.

ACTES DU SÉMINAIRE

Séminaire III

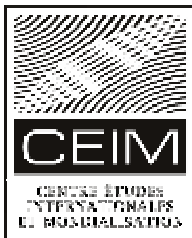
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**THE PROTECTION OF WORKERS' RIGHTS IN LATIN AMERICA AND
LABOR REFORM: CHALLENGES AND PERSPECTIVES**

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The analysis of the protection of labor rights in Latin America and of labor reforms will initially include a study on the scope of the protection of workers' rights in Latin America, considering Latin American constitutions and the international human rights protection treaties that have been ratified.

Latin America's democratization process, initiated in the 1980s, was what facilitated the strengthening of human rights protection, whether through the domestic normative system or the international system. Latin American constitutions enshrine labor rights within the universe of fundamental rights, establishing special protection for labor. Furthermore, Latin American countries are signatories to the main human rights treaties adopted by the UN and the OAS, among which the International Covenant of Economic, Social and Cultural Rights, the San Salvador Protocol, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Convention on the Elimination of All Forms of Racial Discrimination. They have also ratified the main ILO treaties, of which Convention 111 regarding the elimination of discrimination in employment stands out.

However, despite the fact that social protection for labor in Latin America is ensured by constitutional and international parameters, it faces the challenges of economic globalization. Indeed, if over the last few decades the great challenges confronting Latin America have been the opening up of political systems, economic stabilization and social reform, the agenda of Latin American countries today has come to include insertion into the globalized economy as a central concern.

The process of economic globalization, inspired by the agenda of the so-called "Washington Consensus", came to be synonymous with neoliberal economic measures aimed at reforming and stabilizing the "emerging economies". Its platform is neoliberalism, the reduction of public spending, privatization, "flexibilization" of social rights, fiscal discipline to eliminate the public sector deficit, tax reform and the opening up of the market to foreign trade.

Economic globalization has, however, further worsened social inequalities and unemployment, deepening the legacy of extreme poverty and social exclusion. In Latin America, 18.8% of the population are indigent, making it the most unequal region of the planet. In this context, in the labor sphere, reforms propose the "flexibilization" of rights, so that what is negotiated may prevail over what is legislated, ensuring greater autonomy for direct negotiations between employers and workers.

Considering that the relationship between worker and employer is unequal and highly asymmetrical, enshrining minimum protective parameters to compensate this asymmetry is fundamental in the Latin American setting. With "flexibilization", labor rights would be conditioned by the contract, convention, agreement or collective negotiation, which might compromise the most basic of rights. From the legal perspective, the "flexibilization" of labor rights symbolizes a violation of the constitutional order and of the international order. Reducing social protection of labor is also an affront to the clauses on the prohibition of social regression. Social rights must be progressively implemented and are conditioned to

the actions of the State, which must adopt all measures, to the limit of available resources,¹ to achieve their full actualization².

Furthermore, if the broader aim of the “flexibilization” of labor rights is to attract international capital — under the flag of low production costs — and increase the level of employment, such objectives have not been reached in the Latin American context. The “flexibilization” of labor relations has not been able to create new jobs. Rather, it has meant a weakening of labor relations and precarious working conditions, worsened by a scenario of recession and serious unemployment. High unemployment levels persist, reaching an estimated 10.7% in urban areas; jobs are created with lower quality and a higher level of informality than in the past; the buying power of the minimum wage is reduced. The pay of over 4 in 10 Latin Americans is insufficient to meet their basic needs. In the eyes of the ILO, facing this true “social emergency” is an urgent task, to be carried out by creating decent jobs and enhancing social protection, which will lead to a reduction in poverty and inequality in the region.

The increase in unemployment is more harmful to women than men in every country in Latin America. More than 40% of employed women are in the urban informal sector, without any form of labor protection or social security. Women are also the majority among domestic workers.

Hence, the violation of labor rights affects primarily the socially vulnerable groups. Poverty and socio-economic inequality have affected disproportionately Latin American women, the afro-descendent and indigenous populations. Poverty implies discrimination and discrimination, in turn, implies poverty. As a result, neutral policies regarding gender, race and ethnicity will only perpetuate the pattern of inequality.

It is necessary, therefore, to incorporate gender, race and ethnicity perspectives, cutting right across public policies of poverty reduction and social coverage enhancement. Allied to this, there must be repressive measures to combat discrimination and measures geared to promoting equality.

¹ It is worth pointing out that social rights, as much as civil and political rights, demand from the State both positive and negative measures. The view that social rights only demand positive measures, while civil and political rights demand either negative measures or mere abstention on the part of the State, is simplistic and mistaken. As an example, one might ask what is the cost of the security apparatus by means of which classic civil rights, such as the right to freedom or to property, are ensured; or, what is the cost of the electoral apparatus, by means of which political rights are exercised; or even, what is the cost of the judiciary, by means of which people have the right to access justice. Hence, ensuring civil and political rights cannot be restricted to demanding mere omission on the part of the State, since their implementation requires focused public policies which also entail costs.

² The expression ‘progressive application’ has often been misinterpreted. In its ‘General Comment n. 3’ (1990) on the nature of State obligations concerning article 2, paragraph 1 of the Covenant on Economic, Social and Cultural Rights, the Committee on Economic, Social and Cultural Rights stated that if the expression ‘progressive realization’ constitutes a recognition of the fact that the full realization of social, economic and cultural rights cannot be achieved in a short period of time, this expression must be interpreted in the light of its central objective, which is to lay down clear obligations for States-parties, in the sense of adopting measures as swiftly as possible towards the realization of these rights. (General Comment n. 3, UN doc. E/1991/23.)

The strong pattern of socio-economic exclusion constitutes a serious hindrance to the notions of universality and indivisibility of human rights. Given the indivisibility of human rights, the violation of economic, social and cultural rights facilitates the violation of civil and political rights. Put differently, socio-economic vulnerability leads to the vulnerability of civil and political rights. In the words of Amartya Sen: “(...) the economic unfreedom, in the form of extreme poverty, can make a person a helpless prey in the violation of other kinds of freedom. (...) Economic unfreedom can breed social unfreedom, just as social and political unfreedom can also foster economic unfreedom.”³

The violation of human rights — like human rights themselves — is a construct, rather than a given. In other words, violations, exclusions, discrimination, intolerance, racism, sexism and injustice are historical constructs to be urgently deconstructed. The adoption of effective measures to break with the heritage of exclusion that has mutilated the protagonism, citizenship and dignity of the majority of the Latin American population is a matter of urgency.

Faced with these challenges, it remains for one to conclude with the belief in the implementation of human rights as the only emancipatory platform of our time. A new order must be invented, a more democratic and egalitarian order that is capable of celebrating the inter-dependence of democracy, development and human rights, and that, above all, has its centrality in the value of the absolute prevalence of human dignity.

³ Amartya Sen, *Development as Freedom*, Alfred A. Knopf, New York, 1999, p. 8.