

# HUMAN RIGHT TO DEVELOPMENT AND THE STATE'S LIABILITY: THE NATIONAL DAMAGE AND THE ROLE OF LABOR PUBLIC PROSECUTION<sup>1</sup>

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**RESUMO:** Este artigo busca explorar o direito humano ao desenvolvimento e a responsabilidade dos Estados no âmbito internacional como consequência da construção de barreiras ao desenvolvimento de outros Estados. Busca-se também consolidar a ideia de *dano nacional*, que é o resultado de ato que obsta ao exercício do direito humano por qualquer povo, além de referir a importância do Ministério Público do Trabalho para a efetividade do direito ao desenvolvimento.

**PALAVRAS-CHAVE:** Direitos humanos. Direito humano ao desenvolvimento. Responsabilidade do Estado perante Tribunais Internacionais. Dano nacional. Ministério Público do Trabalho.

**ABSTRACT:** This article seeks to explore the human right to development and the States' liability as a consequence of the construction of barriers to the development of other States. Moreover, it seeks to consolidate the idea of *national damage*, which is a result of an act that hinders the exercise of this human right by any people. There is also

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an attempt to refer the relevance of the Labor Public Office to make effective the human right to development.

KEY-WORDS: Human Rights. Human Right of development. State liability in International Courts. National damage. Labor Public Office

SUMMARY: 1. Introduction - 2. The right of development in the Brazilian Constitution - 3. The right of development in the international law - 4. The offense to the right of development. The *national damage* - 5. The Labor Public Prosecution and the right of development 6. Conclusions - 7. Reference

## 1. Introduction

Although it may appear properly consolidated the idea that the great problem of human rights today is not so much to justify them, but rather to undertake them, becoming thus a political problem more than philosophical (Bobbio, 1995), it is worth noting that there are indeed human rights still in a state of justification or dogmatic theorizing.

This is the case of the human right to development.

How rigorous and technically it is feasible to conclude that the human right to development is in a state of justification is no international standard that protects and renewed many publications and books and articles about?

I answer this by using the unique and singular idea: there is not enough legal study about the effectiveness of the human right to development.

I will try to point out that the opposition of barriers - whatever they are- the development of a people determines the appearance of damage.

Before that, however, examination of the right in question is necessary in the highlands of the constitutional system and of international standards.

## **2. The right to development in the Brazilian Constitution. The fundamental principles**

There are few constitutional provisions that protect the right to development.

The Preamble of the 1988 Constitution provides for the construction of a democratic state, to ensure the exercise of social and individual rights, freedom, security, well-being, development, equality and justice.

Turning off the controversy over the effectiveness of the preamble in modern constitutions, is nonetheless emblematic that the right to development is mentioned in the constitutional field as sensitive as is the standard preamble, whose capacity for shaping public policy seems incontestable to me.

Under the constitutional fundamental principles there is the density on the right to development.

The art. 1, II / CF puts as a foundation of the Brazilian state citizenship.

In particular, one must realize that the sign citizenship not only limited to the field of political action to allow the individual the right to dignity and achievement of minimum material conditions of existence, which only happens if effected the right to development.

It is not correct to recall the solemn and elevated command of Art. 1, IV / CF, in calling the foundation of the Brazilian state social work values and free enterprise.

The social values fit to work and free enterprise, which unconditionally impose business activity performed. In Brazil, its Constitution recognizes that the development is not an end in itself; profit, always admitted in a market economy like ours,

has a lot to do with the development of the economy, not just the growth of the economic system.

Indeed, the pursuit of economic development is present in the 1988 Constitution.

Similarly, it pursues national development of the art. 3, III, that is referred to the high constitutional injunction that is aim of the Brazilian state to eradicate poverty and marginalization and to reduce social and regional inequalities.

Last but not least, you must register the order relationship of the Brazilian state in the comity of nations is conditioned by the pursuit of development, as being, as is human right, Brazil needs to make it prevail, as the goal safe art. 4, II / CF.

In the very same subject as the development as a human right, the sole paragraph of art. 4 / CF explains that Brazil shall seek the economic integration of the peoples of Latin America, fulfilling logically conclude that the purpose of the integration is the economic development of integrated regional bloc.

Many other constitutional provisions could be referred because of the material link with the human right to development, however, the reference to the Fundamental Principles enough to show the high importance given by the original constituents of the right in question.

### **3. The right to development in international standard**

There is no doubt about the real importance of the Declaration on the Right to Development, 1986.

In the Preamble to the Declaration, make sure that “(...) the development is a comprehensive economic, social, cultural and political process, which aims at the constant improvement of the well-being of the entire population and of all individuals on the basis of their active, free and meaningful participation in development and in the fair distribution of benefits resulting therefrom. “

Put this way, the international standard that reportedly recognizes the human right to development requires revolve not only economic but social, cultural and political aspects, making it clear that achieve the desired level of economic development leads back authentic revolution without guns, without guns without victims.

It is a revolution designed from and based on the ideal of brotherhood which is the substance of harmonious society.

Many international obligations are imposed on the states: primary responsibility for creating international conditions for realization of the right to development (Article 3, 1.); duty bound to the principles of international law (Article 3, 2.) development; duty of States to cooperate with each other in ensuring development and eliminating impediments to the full enjoyment of the right (art. 3.3) obstacles.

From these high international requirements, we note that the idea of duty, associated with responsibility to ensure the right to development, course weaves safety net around the states so that those who have developed and maintain those reached stage still in the chase can live conducive to the achievement of improved living conditions of his subjects internationally.

What is the solution for an offense to the human right to development?

It is what I will try to answer in the next item.

#### **4. Transgression to human right to development: the national damage**

The 1986 Declaration emphasizes the duty of ensuring the right to development and the responsibility of States for its widespread implementation.

Thus, the act or omission of the political person that prevents the right to development of distinct state is within the axis of ac-

countability pursued by the international standard and it is an international illicit.

Let us imagine, for example, certain state that adopts anti-business practices. Notwithstanding that the unlawful conduct can and should be subject to reprimand by the World Trade Organization - WTO, there is no doubt that the material damage resulting from the wrongful act must be assumed by the transgressor state, and the decision of WTO never compensate the state victimized less than the economic benefit achieved with the offensive practice.

Moreover, the wrongful act done by the state offender causes the appearance of significant harm to the victimized state: the national damage.

Therefore, not only material damage resulting from any obstacle to the exercise of the right to social development should be subject to liability, but also the national damage, which is difficult to quantify, as also happens to the liability claimed by individuals that intend to repair moral damage.

The national harm is inconsistent offense exclusively with the human right to development. Other conditions related to human rights violators of individuals may also trigger the onset of the national damage.

It is necessary to observe, for example, what happen to the image of Brazilians outside of the country. It is often mentioned that some Brazilians are forbidden to entry in European countries simply based on preconceived idea about the individuals who are born in our country, as occurred with the systematic refusal of entry of Brazilians in Spain in 2012. This fact even installed diplomatic crisis between Brazil and Spain.

Very similar is the behavior of traders who, upon learning they refer to Brazilians as re-fold care to guard against thefts of goods, when it simply does not prevent the entry of nationals in shops and restaurants.

Such attitudes have to be repressed vigorously in international courts because violate human rights and promote absolutely unworthy treatment to nationals from Brazil.

Thus, we need to find solution to determine not only the responsibility for the damage caused to the person individually considered, but mainly by damage to the national image, which clearly transcends the limits of the right orbit of subject.

It ought to mention that the quantification of the national damage has found many difficulties to its fixation.

However, difficulty is not infeasibility.

The national damage is the degradation of the objective conditions for the development.

In this circumstance, the State responsible for editing or practice offensive to other people's development action would bear the costs of its deleterious initiative, either through the imposition of compensation directed to reducing the effects of that attitude, it is still by fostering economic via shipment of goods or provision of services to the country victimized.

In addition, even knowing that it is internationally disapproved the practice of dumping, the harmful effects it causes on the world market are not discarded the legitimacy of the behavior on the part of state that has undergone considerable upheaval in the right to development.

It is clear, therefore, that while generally outlawed the practice of dumping, victimized by another State with regard to the human right to development will bear the legal feasibility and legitimacy to hold the offender against the state practice to the extent of the damage you have been caused.

Moreover, it is clear that the right to development requires the assumption of responsibility between states; however, certain communities can undoubtedly redress the offending State.

The facts and examples.

If the State promotes environmental degradation in the area of other state, preventing the full development of the community of fishermen who live exclusively at the expense of fish in

the region, not just the government of that country should, but also the community can file a lawsuit in international courts for the purpose of obtaining equitable relief, regardless of the government managers have already filed a specific demand. That's because the state pursues the national repair damage, while the affected community moves towards the moral collective or diffuse damage, as appropriate.

In both cases, however, the foundation for the claim repair will not be other than the insidious insult to the human right to development.

## **5. The Labor Public Prosecution and the Right to Development**

The Brazilian Constitution of 1988 promoted the growth of the functions of the Public Prosecution, and organized it in Chapter IV that disciplines the "Essential Functions to Justice."

Indeed, the art. 128 of the Constitution provides that the Public Prosecution in Brazil is composed of the Union Public Prosecution and the States' Public Prosecution. The Union Public Prosecution is composed of the Federal Public Prosecution, the Labor Public Prosecution, the Military Public Prosecution and the Public Prosecution of the Federal District and the Territories.

I see, therefore, that the Labor Public Prosecution integrates the Union Public Prosecution, which is responsible, in labor relations, for the defense of the legal order, the democratic regime and the social and unavailable individual interests (art. 127, *caput*, of the Constitution).

However, the stubbornness Parquet competes primarily by the concrete realization of human rights that deal with the social condition of workers.

By the way, there are multiple and varied forms in which the Labor Public Prosecution acts as an instrument to improve the material condition of workers, or, in other words, there are very



varied modes by which the *Parquet* makes the right to development effective.

Indeed, the Declaration on the Right to Development of 1986 explicitly states that the participation of individuals in the construction of the development shall be conformed to the fair distribution of benefits resulting therefrom (Preamble of the Declaration of 1986).

Hence, as long as workers are participants of the national development process, it should be fair that they received the benefits of this.

However, the capitalist mode of production is a barrier for this expectable benefit because the main idea of Capitalism is the exploitation of labor by the capital.

Thus, it arose the importance of the Labor Public Prosecution, which is responsible for diminishing economic inequality that pervades atavistically in all labor relations environment.

Many are the ways in which the Labor Public Prosecution achieve less unequal working relations.

One of the ways is to filing class actions law suits, or more specifically, collective civil actions law suits, that are filled to enforce social rights of the workers who are laid off and do not receive anything in return after long years of working. The economic participation of the working class in the process of the effectiveness of the right to development is not compatible with its importance.

The development of the state is also achieved by measures that are instituted by the Labor Public Prosecution.

I must refer, for example, the numerous initiatives of the Labor Prosecution in order for the suppression of child labor in Brazil. If it is true that child labor is a scourge that must be fought relentlessly, it is also true that policies created by the Federal Government, States' and Cities' Government in Brazil have not been able to demonstrate significant advances.

The Labor Prosecution has tried to make the enforcement of policies related to a severe fight against child labor, as a conse-

quence of what is foreseen in the Brazilian Constitution of 1988, art. 227: “the duty of the family, society and the State is to protect the children, teenagers and youth, with absolute priority, enforcing the right to life, health, food, education, leisure, professional training, culture, dignity, respect, freedom, and family and community life, besides keeping them safe from all forms of negligence, discrimination, exploitation, violence, cruelty and oppression”.

Therefore, the role of the Labor Prosecution is to combat child labor that becomes a very effective way to achieve the right to development, as long as children who do not have the opportunity to go to school will certainly reproduce this unfair situation when they reach the adulthood.

The relentless fight against slave labor is another form of realization of the right to development by the Labor Public Prosecution.

There are few initiatives of the Board for the purpose of definitively eliminate modern slavery in the domain of labor relations in Brazil.

Thus, it is clear that individuals subjected to modern slavery, once they are free of the economic shackles that led them to a condition analogous to slavery, or even when they are freed, in fact, from the employer that hindered them from their personal freedom, it is clear that they will be inserted in the formal labor market and will receive salary and other employment guarantees.

What about the role of public prosecution in terms of protection of individuals with disabilities?

In this particular matter, the Labor Public Prosecution has made several advances in order to achieve the inclusion of employees with disabilities in the labor market, with all the beneficial results of the initiative order.

In addition, it should be noted that not only the right to development will be elevated to higher level of effectiveness, but also combating unlawfully discriminatory practices, thus performing substantially equal composure.

These are just some of the ways of realization of the right to development by the Labor Public Prosecution, and I must refer that the list of initiatives discussed here is merely illustrative.

## 6. Conclusion

It is possible to achieve these following concluding propositions:

There is no dogmatic construction on legal consequences of contempt for the human right to development that leads to the desired area of effectiveness;

There are few constitutional provisions that protect the right to development;

Social values fit to work and free enterprise, which unconditionally imposing business activity performed in Brazil recognizes that the development is not an end in itself; profit, always admitted in a market economy like ours, is attached to the development of the economy, not just the growth of the economic system;

The pursuit of economic development is present in the 1988 Constitution;

The sole paragraph of art. 4 / CF explains that Brazil shall seek the economic integration of the peoples of Latin America, fulfilling logically conclude that the purpose of the integration is the economic development of countries integrated in the regional bloc;

The Preamble of the Declaration on the Right to Development, 1986, certifies that "(...) the development is a comprehensive economic, social, cultural and political process, which aims at the constant improvement of the well-being of the entire population

and all individuals on the basis of their active, free and meaningful participation in development and in the fair distribution of benefits resulting therefrom;

Many international obligations are imposed on the states by the Declaration of 1986: primary responsibility for creating international conditions for realization of the right to development (Article 3, 1.); duty bound to the principles of international law (Article 3, 2.) development; duty of States to cooperate with each other in ensuring development and eliminating impediments to the full enjoyment of the right obstacles;

From these high international requirements, we note that the idea of duty, associated with responsibility to ensure the right to development, course weaves safety net around the states so that those who have developed and maintain those reached stage still in the chase can live conducive to the achievement of improved living conditions of his subjects the international scene;

The act or omission of the political person that prevents the right to development of distinct state is within the axis of accountability pursued by the international standard for converting international illicit;

The wrongful act done by the state offender causes the appearance of significant harm to the victimized state: the national damage;

The national harm is inconsistent offense exclusively with the human right to development. Other conditions related to human rights violators of individuals may also trigger the onset of the national damage, as the right to national image;

It must be the meeting of the solution not only determine reparability for the damage caused to the person individually considered, but mainly by damage to the national image, which clearly transcends the limits of the right orbit of subject;

The quantification of the national damage, whether in regard to human rights as offense to the picture, either with respect to the human right to development is marked by difficulties with respect to their attachment;

However, the national damage can be measured by the degradation of the objective conditions for the development;

The person responsible for editing or practice offensive to other people's development action state will have to bear the costs of its deleterious initiative, either through the imposition of compensation directed to reducing the effects of that attitude, it is still through the economic promotion via remittance goods or services to the victimized country;

Even knowing that the practice of dumping causes harmful effects in the whole world, it may not be discarded the legitimacy of the behavior by the State which has suffered considerable upheaval in the right to development;

In both situations mentioned here, the foundation for the claim repair will not be other than the insidious insult to the human right to development;

There are multiple and varied ways in which the Labor Public Prosecution works as a tool for improving the material condition of workers;

The workers, as participants of the national development process, should be fairly compensated;

The relentless fight against slave labor is another form of realization of the right to development by the Labor Public Prosecution;

It is clear that individuals subjected to modern slavery, once free, can be inserted in the formal labor market and receive salary and other employment guarantees, enabling them thereby the feasibility as to fully develop as individuals;

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