

Executive Summary

Labour Right in Benin

In accordance with many constitutional, legal and administrative laws, with the collective agreements and various conventions of the ILO, the right to work is guaranteed in Benin to all professional categories. It goes without saying that even the self-employed workers and the employees at informal sector are concerned.

It is necessary to see how these legal rights are respected in the modern and informal sector and how the inexistence of rights and their bad application do constitute a cause of aggravation of poverty. It is what the present study deals with. The principal objective of the study is to identify how the protection of labour laws with regard to self-employed workers and those working at an abstract position can contribute to the reduction of the deficit of legal empowerment of the poor in Benin.

To achieve this goal, in more than one documentary review, an investigation was carried out in sight, first to collect the opinions of the actors on the effectiveness of the guarantees that are granted both to the self-employed workers and paid workers of the abstract sector, and second, to identify a strategy in the direction of a real improvement of the low living conditions in Benin. In addition, interviews were conducted with certain resources persons (Labour Inspectors, Personnel Representative, persons in charge of trade-union structures, etc).

It is important to raise that in the present research, informal sector is regarded as a whole of heterogeneous activities, which share three characteristics in general:

- i. Initially, to escape - not necessarily voluntarily - from considerable legislations, in particular those relating to work.
- ii. Then, to provide employment to people without formal contract and under wages, and often precarious working conditions without systematic social protection
- iii. Finally to be divided into (very) small units such as above definite, whose organization is weak, where the relations employers between workers are often personalized, and who often mix the personal inheritance with that of the company.

Economic and social justifications as regards to the control of the enforcement of the labour laws in the informal economy in Benin are related to the following: on a potentially active population estimated at 5.345.860 people, 143.306 only evolve/move in the formal economy against 2.902.208 for the abstract one, with respectively 2,68% of the potentially active people for the formal economy against 54,28% for the informal economy. Over a population of 3.045.514 people, only 5% are occupied in the formal economy against 95% in the informal one with respectively 27% of women against 73% of men in the formal compared to 51% women against 49% men in the abstract one.

Obviously, by considering the economic weight, the contribution to the social peace of the abstract sector as well as the important role held by the women in the abstract economy, the State has to gain while ensuring the protection of the rights of the workers in this sector, and this with an attention to the women in general. This would induce a promotion of gender equality and a guarantee of the rights of the local people.

In spite of the fact that there practically do not have rules specific to the informal sector in the sources of labour rights, theoretically these basic rights are recognized in Benin and their full benefit should be guaranteed since Benin have ratified ILO Conventions relating to the basic rights of the workers as well in the informal sector economy as in the formal economy. These conventions are related to primarily the fundamental principles 1) trade-union freedom, 2) equality, 3) the prohibition of the forced labour and 4) the minimum age for children admission to employment. To all these, provisions relating to health and safety work place, social protection are added. However such is not the case in reality. Indeed, the various conventions ratified by Benin offer guarantees to the self-employed workers and to informal sector waged. But the effectiveness of these guarantees raises some problems.

Several abnormalities are actually observed in the protection of the Beninese workers labour rights due to unemployment, under employment etc. The latter are generated by the proliferation of the graduates from schools without employment related to the temporary freezing of recruitments by government since 1986 and the Programs of Structural Adjustment I and II. The private sector known as formal exploits the situation with its own way. Thus, being in the need, many young graduates or the unemployed ones agree to be employed below their qualifications for a ridiculous

wage. To get became an issue. One prefers to keep a work even without contract, even without social security, medicare, etc, because one is aware of what others get though irregular. One especially meets this situation in the companies of press where the personnel is dominated by young graduates, employees either as journalists, or as secretaries, or as trainees without regard of the regulations of the code of labour as well as press workers collective agreement. The "perdiems"(transportation allowances offered on the spot of report) generally constitute for these employees the only source of subsistence. The Constitutional Court was seized besides very recently by a similar business in which the plaintiff, having been used in quality of occasional agent by the University of Abomey-Calavi (National Ex-University of Benin) had seen himself thanked after twenty and one (21) years of service with two hundred and sixty six thousand hundred and fifty six (266.156) frank CFA whereas he was to benefit this retirement. The High Jurisdiction considered, justifiably, that this discontinuance of business could not be comparable with a regularly departure to the retirement, held against of the Statute of occasional of the interested (cf Decision DCC 07 - 132 of October 18, 2007).

In addition, the implementation of the standards in the informal sector requires preliminary that the actors evolving/moving in this sector have a good knowledge and perception of it. Such does not seem to be the case, according to results from the investigation carried with near the employees, their employer as self-employed workers. Indeed, only 15% of surveyed exerting as waged in informal sector could quote at least a provision which the law provides for the protection of workers. Women seem more ignorant about their related guarantees than men. 68% of surveyed could quote at least a provision that the law provides for the protection of workers. This proportion accounts for 20% of the paid men whereas only 9% of the women know at least a provision. The situation is similar in the self-employed workers. The laws relating to the protection of workers are ignored by the majority of the questioned self-employed workers. Thus, 88,63% of them affirmed not to know the aforementioned laws while 11,37% affirmed to know them. On the level of the employers, the results of the investigation revealed that 75% of the employers of the abstract sector are not informed of the provisions the law provides for the protection of workers. Also, there are more male employers who do not know the provisions envisaged by the law as regards to work than women. This could be explained by their dominating number.

In addition, when one or the other form of inspection is possible, it would seem that the first stage is the identification and the prevention of the worst working conditions, in particular the constraints for debts, discrimination, the exploitation based on the dependence and the child work. Things that require important material, logistic, financial and human means, the Beninese State does not seem yet to have.

In consequence and by exploitation of the ignorance of the actors, the labour laws are badly respected, even not applied for precarious survival employment. Labour laws are badly respected, even not applied for the women for whom maternity is synonymous with rupture of remuneration or job loss. The young people are more badly remunerated and their recourse to abstract employment by need "plunges them" in a situation of perpetual survival. For inquired, there is no difference in treatment between men and women and it should have been otherwise as everyone is equal in front of the law.

In comparison with this reality of the working conditions of women and children in this part of the economy, it thus seems that the effectiveness of the rights granted to the self-employed workers and paid abstract sector workers leaves appear unsatisfactory as testify by children early working, exploitation of the children in the careers, the agricultural fields, certain manufacturing units, in the housework, as well as the cases of the women and the men evolving/moving in the abstract sector who do not benefit from any Social Security cover. The informal sector is perceived like a new form of exploitation. Besides, the large enterprise do not hide that they want to reduce their costs while resorting to the informal economy "an important cause of the moonlighting is the too high cost of work on the formal market (...) the economy with the black in a strict sense on the other hand includes the activities which, in oneself, are perfectly legal, but can be dissimulated to escape from the tax and social obligations".

First of all, it is important to raise that at the national level there are some strategies being able to be perceived like approaches for the protection of the rights of the poor workers of the informal sector. These strategies relate in particular to bodies, projects and programs such as the National Counsel of labour; the National Young people employment Program, the presidential Body for mediation, the national Commission

of work safety and health, the programme of micro finance of the poorest and program Z for Z (Zem for Zem) of the Regional Bank of Solidarity-Benin.

In the sectoral plan, several mutual insurance companies of health, solidarity and social security exist and concern the initiatives specific to various trade-union organizations. It acts for example for the mutual insurance company of health of the General Confederation of the workers of Benin (CGTB), for the project of the promotion of the urban transport in the abstract sector, case of the zémidjans (motorcycle taxi).

In spite of all these strategic initiatives, nothing significant feels in terms of protection of the labour laws in their varied dimensions. However, the enforcement of the texts relating to the labour law to informal sector can cause some difficulties

Indeed, from an economic point of view, the regulation of a given market such as that the work poses problems of effectiveness. The introduction of a regulation on the informal market could be a means of reinforcing the productivity of the worker by creating good conditions of wages and efficiency. In same time, the regulation can generate costs which limit the capacity of the informal sector employers to offer even precarious employment. An abrupt and hastened regulation could encourage with the fraud (including the informal economy) and lead to a certain toughening which reinforces precariousness.

From a normative point of view, the regulation should make it possible to leave the exploitation of which a great number of salaried workers in this sector are victim and which the investigation raised. The strategy to be set up will have to make it possible to the worker to fully enjoy the fruits of its efforts he provides. But to enjoy these rights as a worker, it is already necessary to be a worker, which means maintain his activity for the employer and the self-employed worker and the maintenance of his employment for the employee. For as much, the definition and the setting up of a national strategy making it possible to the actors to exert under the decent and respectful normative framework previously presented can be produced only in a progressive way.

It could begin with the organization of a national forum on the abstract sector in general, and the protection of the rights of the workers who animate it in particular. These national bases will decide the appropriate reforms. To this end, the choice will be between the following:

- Extend the labour legislation in a right such as it exists in the positive labour law of Benin to the informal sector, and by doing this, to make disappear the terminology “informal sector” or
- On the other hand, adopt a specific legislation for the informal sector. In this case, we will attend a dual mode as regards to working matter in Benin. But this would not be desirable being in inadequacy with conventions of ILO and the objectives of Commission OHADA on the harmonization of the labour law.

The principal agents and partners of such reforms will be the Beninese State, its partners who are the trade-union organizations, and the ILO, its local and international financial institutions. They could have respectively as a role

- **Gouvernement of Benin:** to initiate the national forum and to put the means for its success, to commit near its social and financial partners within the framework of the execution and the follow-up of the decisions of this forum, in particular by setting up a consequent normative and institutional framework, etc.
- **The trade unions:** to inform, educate and communicate at the base on the reforms to undertake for the adhesion of the largest numbers of the abstract workers and those known as of the formal ones; to in general sensitize the workers on their rights and duties, etc.
- **ILO:** to bring their expertise and all lighting necessary to adapt the reforms to the provisions and principles of ILO conventions
- **Financial Institutions:** to bring their financial support to the implementation and the perpetuation of the reforms.

As for the Road map (feuille de route) for the effectiveness of the right granted to the workers, self-employed and paid workers of the abstract sector in the direction of a real improvement of the living conditions of the poor populations, it will consist in:

- To set up a follow up tripartite commission (Government, trade unions, employers) for the aforesaid guarantees
- To count all the self-employed workers as well as paid informal sector workers who are paid.
- To make an inventory of the difficulties related to this sector compared to the tax departments and the other constraints which related to
- To enumerate the rights that are constantly violated in this sector;

- The reinforcement of the human resource by improving training and education. It would be advisable to reduce the admission fees in training schools, and to work out special programs for the illiterate or semi-illiterate in reading and writing.
- To increase and facilitate the access to loans for the workers, self-employed and paid informal sector workers in financial institutions
- To examine and revise the rules that govern the establishment and the exploitation of SME.
- To promote the adoption of equitable, nation wide social protection in order to reduce inequalities of income in particular and to protect all the members from the Benin nation.
- To increase the affected public expenditure in awareness campaigns on the economic cost of the industrial accidents and occupational diseases in the abstract sector, the means of improving health and safety in the informal sector.

Practically, the reinforcement of the capacities of the actors, the respect of the normative framework are the two more important means to reduce the deficit of legal empowerment of the poor in Benin as regards to protection of the labour laws for the self-employed workers and paid abstract sector positions.

It will thus be necessary to improve the working conditions of paid workers without harming the employer or then making it possible for the employer to profit from the effectiveness of the rights granted to the workers to compensate the possible costs (costs of recruiting, dismissal, strikes, etc) that this would have created to him.

This situation can be carried out through the improvement of the productivity of the worker, which implies a reinforcement of the capacities of paid at lower cost for the employer.

The self-employed worker will have to take also profit from this reinforcement which enables him to be better organized and to grant his rights as a worker. The reinforcement of the capacities will have to include the sensitizing of the actors on the contents of the labour laws in Benin. It will have , if possible for paid workers to be free from a situation of trap related to poverty since they will become self-employed worker or employer.

In the other side, the incentives will have to be privileged with the sanctions. It often appeared that these measures are much more effective. It will thus be necessary to

find means of incentive for the actors to improve of their working condition. Formulas of flexibility in employment contracts can be found to reduce the costs of work. When it is admitted that the abstract sector is that of low productivity and of precariousness positive discrimination policies must be considered in its favour. It will be necessary to gradually adapt the standards related o the capacities of the sector.

Thus, failing to organize a national forum on the set of themes, it will be necessary to:

- ⇒ Launch a pilot project in at least two provinces of Benin with aim at reinforcing the capacity of the actors. This project will initially target the employers and the self-employed workers by founding a framework of facilitation to the abstract employers who grant more rights to their employees, mainly remuneration at least with the SMIG, establishment of employment contract to the employees, safety on working place etc.
- ⇒ In the second time, the project will target the employees through the following actions: organize meetings of sensitizing of paid workers of the abstract sector through trade associations of the various socio-professional bodies from the abstract sector, conduct awareness campaigns near paid workers through the media (television, broadcasting, newspapers written) and associated local authorities in the insulated localities, reinforce the financial and human resources of the Mutual insurance company of Social security of the Public office and Ministry of Labour to promote this structure near the actors of the abstract sector.

Presented by

MIMAP BENIN

Tel 21 32 47 66 Cotonou Benin.