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Public policies for the promotion of decent work in Brazil: dialogues with Amartya Sen

Políticas públicas para a promoção do trabalho decente no Brasil: diálogos com Amartya Sen

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RESUMO:

O oitavo objetivo de desenvolvimento sustentável da Organização das Nações Unidas prevê a necessidade de “promover o crescimento econômico sustentado, inclusivo e sustentável, emprego pleno e produtivo e trabalho decente para todos”. Esta meta coincide com as orientações das políticas e programas da Organização Internacional do Trabalho no sentido de garantir o exercício laboral em condições que respeitem os direitos humanos, as liberdades individuais e a igualdade. Diante desse contexto, e reforçado por previsões explícitas na Constituição da República Federativa de 1988 que orientam no mesmo sentido, o Brasil tem desenvolvido políticas públicas e alterações legislativas importantes, relacionadas ao mundo do trabalho. Nos últimos vinte anos, mais de cinquenta e cinco mil trabalhadores brasileiros foram

ABSTRACT:

The United Nations' eighth sustainable development objective foresees the need to "promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all". This goal is consistent with the guidelines of the International Labor Organization's policies and programs to ensure the exercise of employment in conditions that respect human rights, individual freedoms and equality. Given this context, and reinforced by explicit provisions in the Constitution of the Federative Republic of 1988 that guide in the same direction, Brazil has developed public policies and important legislative changes related to the world of work. Over the last twenty years, more than fifty-five thousand Brazilian workers have been rescued from conditions analogous to slavery, according to data from the Secretariat of Labour Inspection. According to data from the

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resgatados de condições análogas à de escravidão, de acordo com dados da Secretaria de Inspeção do Trabalho. De acordo com dados do Ministério Público do Trabalho, apesar de expressamente proibido por lei, o trabalho infantil ainda atinge 2,7 milhões crianças brasileiras. O país é o quarto do mundo com maior ocorrência de acidentes de trabalho, segundo dados do Ministério do Trabalho. O objetivo do presente artigo é analisar em que medida a atuação estatal tem contribuído para a efetivação do trabalho decente, assim como, de que maneira os impactos trazidos pela reforma trabalhista aprovada no Congresso Nacional Brasileiro em 2017 podem interferir na promoção do exercício da atividade laboral de forma a que não viole direitos e garantias fundamentais à vida, à igualdade, à segurança e à liberdade. A superação de problemas relacionados ao trabalho decente é central à análise do desenvolvimento, que consiste, segundo Amartya Sen, na remoção de limitações às escolhas e às oportunidades para exercício de ação racional por parte dos cidadãos. Desta maneira, o presente artigo analisa os efeitos das políticas públicas de valorização do trabalho decente na expansão da liberdade dos indivíduos, considerada, simultaneamente, como fim do desenvolvimento e como seu principal meio. Algumas liberdades, entre as quais o trabalho decente, possuem papel instrumental na promoção de liberdades de outras espécies e estimulam iniciativas orientadas com fim de superar privações. Por isso, analisar em que medida o Estado Brasileiro tem alcançado sucesso em promover o trabalho decente torna-se tarefa de extrema importância.

Palavras-Chave: Amartya Sen; trabalho decente; políticas públicas; desenvolvimento; reforma trabalhista.

Ministry of Labor, although expressly prohibited by law, child labor still affects 2.7 million Brazilian children. The country is the fourth in the world with the highest incidence of occupational accidents, according to data from the Ministry of Labor. The purpose of this article is to analyze the extent to which state performance has contributed to the effectiveness of decent work, as well as how the impacts brought about by the labor reform approved in the Brazilian National Congress in 2017 may interfere in the promotion of the exercise of work activity so that does not violate fundamental rights and guarantees to life, equality, security and freedom. The overcoming of problems related to decent work is central to the analysis of development, which, according to Amartya Sen, consists in removing limitations to the choices and opportunities for rational citizen action. In this way, the present article analyzes the effects of the public policies of valorization of decent work in the expansion of the freedom of the individuals, considered, simultaneously, like end of the development and like its main means. Some freedoms, including decent work, play an instrumental role in promoting the freedoms of other species and stimulate targeted initiatives to overcome deprivation. Therefore, analyzing the extent to which the Brazilian State has achieved success in promoting decent work becomes an extremely important task.

Keywords: Amartya Sen; decent work; public policies; development; labor reform.

CONTENTS:

1. Introduction; **2.** Combating Contemporary Slave Labor in Brazil; **3.** Policies of confronting Child Labor; **4.** Policies of Work Accidents Prevention; **5.** Labor Reform; **5.1.** Law 13,429 and Unrestricted Outsourcing; **5.2.** Law 13.467/2017 and the impacts on the remuneration of workers; **5.3.** Law 13,467 and the impacts on the Working Hours; **6.** Conclusion; **7.** References.

1. INTRODUCTION

The Constitution of the Federative Republic of Brazil, in article 170, provides that the valuation of human labor is one of the foundations of the country's economic order. It also presents the search for full employment and the reduction of inequalities as some of its principles. The social value of work and the dignity of the human person, as mentioned in article 1 of the Major Charter, constitute the foundations of the Federative Republic of Brazil, such is the importance of these institutes.



This prediction coincides with the United Nations' eighth Sustainable Development goal, which provides for the need to "promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all." Article 23 of the Universal Declaration of Human Rights also addresses the importance of promoting decent work, which is expressed in several conventions of the International Labor Organization (ILO) of which Brazil is a signatory, ranging from the commitment to combat the contemporary slave labor and child labor to the elimination of gender discrimination for remuneration and the combating of work accidents.

In the last twenty years, there has been a significant change in the action of the Brazilian State within a context of democratization. Brazil has developed public policies to expand development by reducing the limitations of individuals' effective freedoms. An example of this policy was the establishment, within the scope of the Ministry of Labor, of the Special Mobile Inspection Group (GEFM), with the purpose of acting throughout the national territory in the repression of contemporary slave labor. The so-called "Dirty List of Employers" caught up in the commission of the said infraction has also been elaborated. Such measures, within the executive branch, can be seen as attempts to remove the limitations to the exercise of individual freedoms in order to promote development, understood here as the expansion of capabilities. It is focused, therefore, on people's lives. For Amartya Sen, "development consists of the removal of various types of unfreedoms that leave people with little choice and little opportunity of exercising their reasoned agency"¹. As the fight against slave labor, the Brazilian government, through the Ministry of Labor, has conducted inspections to suppress and prevent child labor and to reduce the high rate of occurrence of work accidents. In terms of legislative power, in 2017, two laws were approved, 13,429 and 13,467, which significantly impact the world of work in Brazil.

Based on the theoretical concepts constructed by Amartya Sen, the present article analyzes in what measures these policies contribute to remove or reinforce the limitations to the exercise of individual freedoms. The forms used by the Brazilian State to promote decent work, specifically with regard to prevention and repression of contemporary slave labor, child labor and industrial accidents, will be addressed. Some issues with which this article seeks to dialogue are as follows: In what sense has the Brazilian State's action to promote decent work and, consequently, development been successful, and what are the obstacles that can be seen when attempting to implement public policies in this sense? To what extent does the country have institutions capable of democratically promoting development related to the world of work? To what extent has development been promoted by public policies aimed at promoting decent work in the country? To this end, the recent legislative changes carried out in Brazil with the

¹ SEN, A. K. **Development as Freedom**. New York: Anchor Books. 1999, p. xii.



so-called “labor reform” should also be analyzed and whether this change is in the direction of promoting decent work or the opposite. It is therefore intended to analyze how such public policies cooperate with development (understood in this case as the process of widening the real freedoms enjoyed by individuals) or whether they actually represent the implementation of greater limitations to the exercise of the freedoms of Brazilian citizens. These are some questions that this article intends to look into.

As well as economic prosperity, education and great health care, promoting decent work is also part of the “other factors that casually influence the effective freedoms that people actually enjoy.”², cited by Amartya Sen. Therefore, the approach to the issues proposed here is based on the assumption that the public policies promoted by the State, in this case policies to promote decent work, should be focused on the development of capabilities, since this model of understanding about development takes into account that individual rights and freedoms must consider the plurality of individuals and their existential possibilities. Thus, it establishes information bases that more accurately capture levels of development and quality of life in order to evaluate public policies and even suggest more precise measures to the implementation of those aimed at abolishing, more efficiently, the causes of social inequality that makes the individual free from active and conscious exercise of their freedoms.

According to Sen, “The removal of substantial unfreedoms, it is argued here, is constitutive of development”³. In this way, public policies, from their planning, implementation, and subsequent evaluation, are justified in the fight against the causes that represent obstacles to freedom (and therefore to development), which are responsible for limiting the capacity of choice and the exercise of the individual active agent condition. The promotion of decent work, therefore, is related to the set of social factors that constitute the set of people’s autonomy. “Resources are important for freedom, and the income is crucial for avoiding poverty. But if our concern is ultimately with freedom, we can not - given human diversity - treat resources as the same thing as freedom”⁴.

For Sen, “seeing development in terms of the substantive freedoms of people has far-reaching implications for our understanding of the process of development and also for the ways and means of promoting it”⁵. One of these implications rests on the perception that public policies should consider a series of factors, such as: economic growth of a country, investment potential, mechanisms of income distribution, and combating poverty and misery, balanced utilization of natural resources, reducing inequalities, political-institutional stability based on democracy, promotion of employment and decent work. It is from this model of analysis that considers “development”

² Idem, p. 295.

³ Idem, p. xii

⁴ SEN, A. K. **Inequality Reexamined**. New York: Oxford University Press, 1992. p. 112.

⁵ SEN, A. K. **Development as Freedom**. New York: Anchor Books, 1999. p.33.



the removal of obstacles to the effective freedom of individuals, that the present article is constructed.

2. COMBATING CONTEMPORARY SLAVE LABOR IN BRAZIL

Contemporary slave labor is defined by Brazilian law in article 149 of the Penal Code, which states the following hypotheses: “either by subjecting it to forced labor or to an exhaustive working day, or by subjecting it to degrading working conditions, or by restricting labor by any means, their locomotion in debt ratio contracted with the employer or agent”. Therefore, there are four hypotheses for the configuration of contemporary slave labor in Brazil: 1) forced labor; 2) Exhaustive day; 3) degrading working conditions and 4) restriction on freedom of movement. The first paragraph of the same article assumes the hypotheses equating to conditions analogous to slavery, namely: restricting the use of transport of the worker, maintenance of ostensive surveillance or retention of the worker’s documentation, all three hypotheses related to the purpose of maintaining the employee at the workplace.

In 1995, the Brazilian State recognized the presence of Contemporary Slave Labor in its territory, in the presence of international organizations, especially the Organization of American States (OAS) and the International Labor Organization⁶. This occurred in the course of the process that began in 1994, when the Brazilian State was denounced by the Pastoral Commission of Land (CPT) and the NGO CEJIL (Center for Justice and International Law) to the OAS for failing to comply with the obligation to protect all those subjected to conditions analogous to slavery, allowing their permanence by omission or complicity. This is the case of “Zé Pereira”, which has gained worldwide repercussions. Born in the city of São Miguel do Araguaia, in the interior of Goiás, the former slave went with his father to Pará at the age of eight to work with him at Espírito Santo Farm, in Sapucaia. Having been subjected to conditions analogous to slavery in December 1989, at the age of 17, he tried to flee in the company of another worker, called “Paraná”. They were chased by the “henchmen” of the farm, who shot them in the back. The shot hit one of Zé Pereira’s eyes and Paraná died in this ambush. Zé Pereira, bleeding, pretended to be dead and the two bodies were left in a nearby farm. After some time, even bleeding, the survivor walked to the farm’s headquarter to ask for help. In the state capital, Belém, underwent treatment in one eye, but could not recover his vision. In addition, he denounced the case to the Federal Police, but did not obtain any effective

⁶ SIQUEIRA, Túlio Manoel Leles de. O Trabalho Escravo perdura no Brasil do século XXI. **Rev. Trib. Reg. Trab. 3ª Reg.**, Belo Horizonte, v.52, n.82, p.127-147, jul./dez.2010. p. 141.



response from the state body. He was persuaded to take the case to the NGOs that submitted a complaint to the OAS in 1994⁷.

As a result of this complaint, a year later the Brazilian State recognized the existence of slave labor in its territory. As a result, the Brazilian National Congress approved Law 10,803, initiated by the head of the Executive Branch in 2003, which amended the Penal Code and brought the hypothesis of characterization of contemporary slave labor. Before this law, describing the incriminating conduct criminal type, referred only to reduce someone to “conditions analogous to slavery.” According to Damásio E. de Jesus, the device gave scope for the interpretation that the active subject, in order to establish the crime, should transform the victim into a person totally submissive to his will, “as if he were a slave”⁸. Thus, it was difficult to establish, in practice, the offense. In describing specifically the hypotheses of configuration of the act, the law made it clear exactly what it was and actually allowed its applicability, enabling the rescue of thousands of workers in that situation, as we will see below.

In 1995, the same year that Brazil has recognized the existence of slave labor in its territory, and as a result, created the Special Mobile Inspection Group (GEFM) under the Ministry of Labor in order to implement repressive policies and supervision of this practice in the country. The GEFM, also known as the Mobile Slave Labor Group, was essential for the ILO to recognize Brazil as a world reference in combating the exploitation of slave labor⁹. According to the United Nations, the GEFM rescued between 1995 and 2017, more than 50,000 workers in conditions analogous to slavery in Brazil¹⁰.

Also in the course of the proceedings against Brazil in the OAS Inter-American Commission on Human Rights, the country undertook to judge and punish those responsible and to take measures to prevent other cases, as well as financially repair the damages caused to Zé Pereira. Fourteen years after his escape, Zé Pereira received from the Brazilian State the first indemnity paid to a citizen for having worked in a regime of contemporary slavery, in the amount of R \$ 52 thousand¹¹.

Another important instrument aimed at confronting slave labor in Brazil is the so-called “dirty list”. Created in 2003 and maintained by the Ministry of Labor and Employment and the Department of Human Rights, acts as a public database containing the names of the companies that used slave labor, caught by the Labor Inspectors. At the end of the administrative process that establishes this irregularity, the companies

⁷ RAMOS, Igor Luis Furtado. Trabalho Escravo: o caso José Pereira e sua relevância para a atual situação brasileira. *Cosmopolitan Law Journal*, v. 2, n. 2 – v. 4, n. 2, dez. 2014 – dez. 2016. p. 93. Available at <<http://www.egov.ufsc.br/portal/sites/default/files/19842-90111-1-pb.pdf>>.

⁸ JESUS, Damásio E. de. *Código Penal Anotado*. 12. ed. São Paulo: Saraiva, 2002. p. 514.

⁹ *Jornal do Senado*. Em Discussão. Available at <<https://bit.ly/2X4aldq>>

¹⁰ Available at <<https://bit.ly/2LY0ll4>>.

¹¹ The compensation was approved by the Congress (on Senado, PLC 23/03).



have their names published in the list (updated semiannually) where they remain for two years. This is an important mechanism, so that suppliers and buyers can control the risks of slave labor in their productive chains, as well as contribute to the degree of awareness of companies and the control, on the part of society, of their commitment and socio-environmental responsibility.

At the request of the Secretariat of Human Rights, in 2004, the ILO financed a study carried out by researchers of the NGO Repórter Brasil, identifying the sectors affected by slave labor and the possible productive chains in each sector. Based on the dirty list, mapping 100 employers revealed a network of 200 national and international companies that benefited from slave labor products in Brazil. With the result of this study in hand, ILO Brazil and the Ethos Institute of Business and Social Responsibility launched in May 2005 the National Pact for the Eradication of Slave Labor, committing the business sector to combat this practice through measures of control of the productive chain with suppliers and buyers caught in the practice of slave labor. According to the National Pact Institute for the eradication of slave labor: "Economic punishment has been an effective ally in the struggle against slave labor and decisive for Brazil to achieve positive results in coping with this problem"¹². The adhesion of the National Bank for Economic and Social Development (BNDES) and other public and private banks has been considered quite positive in order to restrict the financing of companies on the Dirty List, as well as the adhesion of large companies that impose restrictions to the suppliers caught in the practice of this crime. According to the managing committee of the Pact, formed by Reporter Brazil, ILO, Social Observatory Institute and Ethos Institute, in 2014 more than 400 companies had already adhered to the pact, which represented 35% of the Brazilian GDP, besides functioning as an important control mechanism of the practice in the productive chain of the companies¹³.

Thus, in the field of combating contemporary slave labor, Brazil has succeeded in implementing public policies in order to remove the limitations to the exercise of individual freedoms. First, by recognizing, before international organizations, the existence of slave labor in its territory as a starting point for the elaboration of a series of measures aimed at its prevention and repression. Then, for ensuring important legislative changes, such as the approval of Law 10,803 in the National Congress, which amends the Penal Code and makes it possible, more concretely, to be held responsible for such criminal conduct. In addition, other measures were taken by the country under the executive branch to address the problem. This is the creation of the Special Group of Mobile Inspection, in response to denunciations of slave labor throughout the country, which resulted in the rescue of more than fifty-five thousand workers from conditions

¹² Available at <<http://www.inpacto.org.br/pb/inpacto-2/historia/>>.

¹³ Idem.



of contemporary slavery. The publication of the register of employers caught in the commission of this crime by the Ministry of Labor as well as the National Pact for the eradication of slave labor are also coping instruments to the problem and cooperating with the enlargement process of the real freedoms enjoyed by individuals, and thus go towards the development.

This is because the measures adopted by the Brazilian State extend the capabilities of individuals. A citizen deprived of his freedom, obviously, is not able to live according to his own notion of good and determined by his rational choices. Greater development is achieved when individuals have expanded their capabilities, that is, when they are given the basic exercise of functionings, represented “from such elementary things as being adequately nourished, being in good health, avoiding escapable morbidity and premature mortality”¹⁴, reaching the “more complex achievements such as being happy, having self-respect, taking part in the life of the community, and so on”¹⁵. Therefore, the measures taken by the Brazilian State to combat contemporary slave labor are part of the broader set of policies aimed at the promotion of decent work in Brazil and have achieved significant success in promoting development in the last twenty years.

3. POLICIES OF CONFRONTING CHILD LABOR

Child Labor is defined by Brazilian legislation as any work activity carried out by people under the age of 16. It authorizes, however, the exercise of professional activities to teenagers who have completed 14 years, but only in minor apprentices, with specific rules. Convention Number 182 of the ILO (International Labor Organization), which prohibits work for children, as well as domestic child labor, has been ratified by Brazil and regulated by Decree 6.481 of 2008.

In spite of the prohibition of child labor provided for in the Federal Constitution, specifically in articles 7, XXXIII and 227, paragraph 3, I, and reinforced by the Consolidation of Labor Laws, article 403, there is exploitation of labor of children and adolescents in Brazil. The removals of minors from irregular and forbidden jobs show that the practice still occurs indiscriminately in fairs, restaurants, garages, traffic lights, industries or child domestic work. According to the Brazilian Institute of Geography and Statistics (IBGE) 2015, child labor reaches 2.7 million children and adolescents, a rate which is 5% of the population between 5 and 17 years old¹⁶.

In 2006, during the XVI American Regional Meeting of the International Labor Organization (ILO) in Brasilia, Brazil signed a commitment, in the context of sustainable

¹⁴ SEN, A. K. **Inequality Reexamined**. New York: Oxford University Press, 1992. p. 39.

¹⁵ Idem.

¹⁶ Information available at: <<https://ibge.gov.br/pnad-continua-trabalho-infantil-2016.html>>.



development, to eradicate the “worst forms of child labor” by the end of 2016¹⁷. It also committed, by 2020, to eliminate all forms of child labor. However, the first goal was not reached, which led to the postponement of both, the first by 2020 and the second by 2025, according to the Ministry of Labor and Employment. However, it managed to reduce the rate of utilization of the labor force of children and adolescents, according to IBGE data¹⁸. In 2010, 3.4 million people aged 10 to 17 years were working in Brazil. Five years later, by 2015, that number had dropped from 3.4 million to 2.7 million children and adolescents. According to data from the Ministry of Labor, between 2006 and 2015, almost 47 thousand inspection actions were carried out by Labor Inspectors, which resulted in the removal of 63,846 children and adolescents from work. These repressive actions by the state can be identified, therefore, as one of the factors responsible for the reduction of child labor indicated by the IBGE in 2015.

According to the ILO office in Brazil, one of the mechanisms of action in the fight against child labor is the stimulation of learning programs¹⁹. Law 10.097 / 2000 foresees that large and medium-sized companies should hire young people between the ages of 14 and 24 as young apprentices, with a contract of up to two years. During this period, there must be combination of practical and theoretical training, and the young worker must be trained in both the company and the training institution. In this way, when they are removed from irregular child labor, young people have the opportunity of social inclusion in the first job and begin to develop their skills and abilities for the world of work. The insertion of apprentices in the labor market is inspected by the Ministry of Labor. The law on the insertion of apprentices can also be identified as an important tool to deal with child labor. In 2018, only in the first quarter of 2018, young apprentices occupied 124 thousand jobs and, “in total, Brazil has registered more than 3.3 million apprentices hired since 2005, when the norm was regulated”²⁰.

On the other hand, there are some obstacles to the elimination of child labor. The first that can be pointed out is the fact that the exploitation of child labor does not follow the example of the exploitation of slave labor as to the criminal classification of conduct. Thus, using child and adolescent labor in Brazil is not a crime. There are some specific forms of child labor in the form of a criminal type, such as prostitution, which is considered a heinous and non-bailable crime, with a prison sentence of 4 to 10 years in a closed regime. However, in general, the prohibition of the exploitation of child labor lacks regulation. There is a bill in this sense, which considers the exploitation of child

¹⁷ ORGANIZAÇÃO INTERNACIONAL DO TRABALHO [OIT]. **O Brasil sem trabalho infantil! Quando? Projeção de estimativas de erradicação do trabalho infantil, com base em dados de 1992-2003**. Brasília, 2004. Available at: <<https://bit.ly/3glBLbT>>.

¹⁸ Information available at <<https://ibge.gov.br/pnad-continua-trabalho-infantil-2016.html>>.

¹⁹ Information available at <<https://glo.bo/3ely6Jw>>.

²⁰ Information available at <https://bit.ly/2ZP45hh>>.



labor as a crime, except for those with judicial or artistic consent. It was approved by the Senate in late 2016 and is awaiting approval by the Chamber of Deputies²¹.

However, when it comes to child labor, several issues need to be taken into account. First, it should be noted that there is a cultural tradition that tends to associate the work of vulnerable children with ways of breaking with poverty. The data, on the other hand, prove otherwise. Child labor works to perpetuate poverty, poverty and social exclusion, as well as to prevent the reduction of social differences and to impose a lack of perspectives on poor children and adolescents²². It also limits children's development and represents a risk to health and safety in this population. According to the Department of Surveillance in Environmental Health and Worker Health of the Ministry of Health, almost forty thousand children were victims of an occupational accident from 2007 to 2017, and more than 50% of them suffered serious accidents, which means loss of limbs or deaths²³.

In addition to cultural issues, which tend to justify and even encourage the use of child labor by a significant part of the Brazilian population, this problem touches on other issues such as the reduction of poverty as a whole and of public income distribution policies, since it is the children and adolescents from poorer families who are exposed to this illegality²⁴. Report of the Ministry of Social Development and Combating Hunger notes the relationship between poverty reduction and child labor. This fact is confirmed by the results of income transfer programs directed to the lowest income families and the income related profile as of PNAD 2006 (National Sample Survey of Households). In this way, the integration between the Program for the Eradication of Child Labor (PETI) of the Ministry of Labor and the Bolsa Família (Family Allowance) Programme of the Ministry of Social Development and Fight against Hunger, carried out in 2006, aimed at strengthening the actions of both programs to the confrontation of child labor was successful, reaching 827,195 children and adolescents away from work in 3,480 municipalities²⁵.

Another obstacle to public policies for the prevention and suppression of child labor refers to the number of current Labor Inspectors. Out of the 3,644 vacancies for the position, only 2,782 were filled in 2014, which led the Public Labor Ministry to file suit to compel a public tender to fill 862 vacancies²⁶. The Federal Public Prosecution Service

²¹ Idem.

²² VILANI, Jane Araújo dos Santos. A questão do trabalho infantil: mitos e verdades. In **Revista Brasileira de Inclusão Social**, Brasília, v. 2, n. 1, p. 83-92, out. 2006/mar. 2007. p. 88.

²³ Information available at < <https://bit.ly/2TE4Ky4>>.

²⁴ Dados do Ministério de Desenvolvimento Social e Combate à fome. Available at <http://www.mpdft.mp.br/portal/pdf/unidades/promotorias/pdij/Enfrentamento_do_TI.pdf>.

²⁵ Idem.

²⁶ Information available at < <https://bit.ly/36wqqtG>>.



has also filed a lawsuit to reconstitute the Labor Inspectors²⁷. So much so that in 2015, even the Executive Secretary of the Ministry of Labor, Francisco Ibiapina said that one of the difficulties related to the fight against child labor was reduced frame Labor Inspectors. For him, “we have about 2,600 labor inspectors. The ideal would be 5 thousand. The Ministry of Planning undertook to replace a thousand vacancies within three years”²⁸. From 2015 until the end of 2018, no contest had taken place.

Therefore, on the one hand, the work of the Labor Inspectors of the Ministry of Labor has allowed to advance in the fight against child labor, potentialized by the legislation that regulates the learning of young people and adolescents. On the other hand, obstacles to the implementation of this policy must be recognized. The insufficient number of Labor Inspectors to act in the prevention and repression of this irregularity, the lack of legislation that criminalizes this practice, and the fact that child labor suffers directly from the increase of poverty and cultural issues also make necessary policies implemented in articulated way with several other organs of the State.

Child labor represents a serious deprivation of liberty. First, because the child and adolescent undergoing this situation have compromised the quality of their education²⁹. Early work creates conditions both physical vulnerability, compromising years of development and individual growth, as intellectual vulnerability. It also serves to maintain poverty intergenerationally and makes policies to combat social inequality and income distribution difficult. In this way, child labor represents a restriction of freedom, being, at the same time, the cause of social inequalities and their effects. An unequal society, which therefore submits a portion of its citizens (the children of the poorest) to child labor, deepens the social inequalities that characterize it.

Development policies with a focus on capabilities presuppose the option of overcoming the situations responsible for exclusion and marginalization. Public policies aimed at social equity aim to combat the causes of inequalities that can be evaluated from the non-agent status of citizens, among which we can note the fight against child labor, aiming to break with the cycle of misery. According to Amartya Sen, “policies to deal with disability can have a large domain, including the amelioration of the effects of handicap, on the one hand, and programmes to prevent the development of disabilities, on the other”³⁰.

Public policies that seek to combat child labor have been relatively successful. The ratification of ILO Convention 182, the integration of various programs to combat the work of children and adolescents, as noted above (the Program for the Eradication of

²⁷ Available at < <https://glo.bo/2zzL6w6>>.

²⁸ Information available at < <https://glo.bo/3ely6Jw>>.

²⁹ VILANI, Jane Araújo dos Santos. A questão do trabalho infantil: mitos e verdades. In **Revista Brasileira de Inclusão Social**, Brasília, v. 2, n. 1, p. 83-92, out. 2006/mar. 2007. p. 89.

³⁰ SEN, A. K. **The idea of justice**. Cambridge: The Belknap Press of Harvard University Press, 2009. p. 259.



Child Labor, the Ministry of Labor and the Bolsa Família (Family Allowance) Programme of the Ministry of Social Development), the number of enforcement actions to prevent and combat child labor, the stimulation of specific law-regulated apprenticeship programs are factors that together were responsible for the decrease in the incidence of child labor of 3.4 million in 2010 to 2.7 in 2015.

On the other hand, some obstacles to the freedom of individuals with regard to child labor have not yet been removed. These obstacles meant that Brazil was unable to meet its 2006 commitment to the ILO to eradicate the worst forms of child labor in 2016 and all forms of child labor by 2020. Among these obstacles, we can mention the insufficient number of Labor Inspectors, cultural issues that seek to justify child labor in a discourse that works away from vulnerable children and adolescents from marginality while at the same time valuing “child labor” even if informal, as an element contributing to the construction of the dignity of the child. The reduction of the minimum age for work, from 16 to 14 years old, as proposed by the constitutional amendment in the Chamber of Deputies, may also act as an obstacle to combating child labor.

The importance of combating child labor is based on the need to reduce inequalities and social exclusion. It contributes to the empowerment of citizens and their active social action through the expansion of their capabilities. Capacities in this context have a peculiar meaning, that is, to create the conditions necessary for people to exercise their freedom to choose the kind of life that gives them reason to live. In the same sense, Amartya Sen (2000, p.29) observes that: “Expanding the freedoms that we have reason to value not only makes our lives richer and more unfettered, but also allows us to be fuller social persons, exercising our own volitions and interacting with-and influencing-the world in which we live”³¹.

4. POLICIES OF WORK ACCIDENTS PREVENTION

Another aspect related to the promotion of decent work in Brazil is public policies aimed at reducing the rates of work accidents. According to the International Labor Organization, the country is the fourth in the world ranking of labor accidents, behind only China, India and Indonesia³². From 2012 to 2016, 3.5 million cases of work accidents occurred in Brazil with the record 13,300 deaths. According to the Labor Prosecution of Brazil³³, a work accident happens every 48 seconds, every 3h38 a worker lost his life during his labor activity in 2018. And these rates insist on not reducing when analyzed in a historical series. Sebastião Geraldo Oliveira, still in 1985, based on an ILO survey released that year, reported that “every three minutes a worker lost his life as a result of

³¹ SEN, A. K. **Development as Freedom**. New York: Anchor Books, 1999. p. 15.

³² Available at: < <https://bit.ly/2yD0YxE>>.

³³ Idem.



an labor accident or illness³⁴. From 1985 to 2018, therefore, the accident rate per hour slightly decreased. Thus, Brazil has not been successful in combating labor accidents, despite the direct relationship between this fact and the guarantee of the promotion of decent work and the safeguarding of the dignity of the human person, expressed in the Constitution of the Republic.

Some factors can be pointed out as reasons for this fact. First, corporate policy in the country, stimulated by national legislation, is still much more related to the payment of excess risky and unhealthy additions than to investment in promoting the elimination and management of risks in the work environment. According to Süsskind, many companies, when accounting for costs, prefer to pay for these additional costs instead of investing in accident prevention policies³⁵.

Some countries have adopted stance contrary to the Brazil on the occurrence of accidents. In the 1970s, in Italy, the trade union movement launched a campaign entitled “Health is not for sale”, whose main motto was prevention of accidents, instead of the focus on indemnifications due to dangerousness and insalubrity. As a result, the Ministry of Health of that country developed a National Prevention Plan that ran from 2010 to 2012, with a commitment by the State to reduce work-related accidents by 15%³⁶. Likewise, Spain has also launched a plan focused on preventing accidents, rather than privilege, as provided for the Brazilian labor law, financial compensation for health risk³⁷. The measures taken by the aforementioned countries are derived from ILO Convention 187, of which these countries are signatories. It addresses the promotional framework for occupational safety and health. Brazil, however, is not a signatory to this convention. In 2008, the Ministries of Labor, Health and Welfare published inter-ministerial ordinance no. 152/2008 establishing the Tripartite Commission on Health and Safety at Work, whose purpose is to carry out evaluations regarding the adoption of ILO Convention 187 by Brazil. However, to date, that convention has not been accepted.

Therefore, with regard to policies to promote decent work on reduction of accidents, Brazil has not been successful. Data show that the number of occupational accidents reaches epidemic rates. The failure of the Brazilian State to sign Convention 187 of the International Labor Organization, bringing to the national legal order the focus on prevention rather than favoring the indemnity character of the injury contributes to the occurrence of high rates of accidents and deaths of workers. Associated with this,

³⁴ OLIVEIRA, Sebastião Geraldo de. **Indenizações por acidente do trabalho ou doença ocupacional**. 5. ed. rev., ampl. e atual. São Paulo: LTr, 2009. p. 29.

³⁵ SUSSEKIND, Arnaldo. **Instituições de Direito do Trabalho**. Vol. II. 22. ed. atual. por Arnaldo Sussekind e João de Lima Teixeira Filho. São Paulo: LTr, 2005.

³⁶ Information about Piano Nazionale della Prevenzione Available at: <http://www.salute.gov.it/imgs/C_17_publicazioni_1383_allegato.pdf>.

³⁷ Information available at < <https://bit.ly/3gJC2LX>>.



once again, we must remember the insufficiency of the number of Labor Inspectors to act in the inspection and, in this way, to collaborate with the decrease of occurrences, as already observed in previous topic. All this has acted as real barriers to the promotion of decent work policies with regard to the prevention of occupational accidents. The true path of development is the elimination of all deprivations of freedom that limit the choices and opportunities of individuals to lead a decent life and seek their particular conceptions of good. The need for the elimination of occupational accidents is inserted there.

Labor accidents rates may reflect the development of a particular country. This is because the need to be subjected to dangerous or degrading work represents deprivation and limitation to the freedom of individuals. Labor accidents cause victims mainly among those workers of lower income. That is, they are already deprived of innumerable rights, such as public health, quality education, among others, and are still subject to conditions that threaten their physical integrity in the exercise of their work activity. In this sense, there is an intrinsic link between poverty and the occurrence of work accidents, to the same extent the occurrence of this fact represents deprivation of basic capacities. Fighting the level of work-related accidents means moving towards development, since “there are good reasons for seeing poverty as a deprivation of basic capabilities, rather than merely as low income”³⁸. The creation of jobs and workstations can increase the average income of workers, as well as the payment of additional insalubrity and dangerousness. However, if Brazil does not face the high rates of work-related accidents, there will still be deprivations of the basic skills of the subjects and the progress towards development will remain committed.

5. LABOR REFORM

Labor Reform is understood, in this article, the set of laws approved by the Brazilian National Congress in 2017, when in the head of the executive power was the President of the Republic Michel Temer. This is specifically the law 13,429/2017, which regulates unrestricted outsourcing and law 13,467/2017, which substantially changes several institutes of the CLT (Consolidation of Labor Laws), promulgated in May 1943, as already seen. We will seek to understand to what extent this set of changes contributes to the promotion of decent work by eliminating or, rather, by reinforcing, the limitations to individual freedoms.

5.1. LAW 13,429 AND UNRESTRICTED OUTSOURCING

This norm sought to expand the possibilities of outsourcing workforce, since its application was prohibited, based on jurisprudential understanding, in the final activity

³⁸ SEN, A. K. **Development as Freedom**. New York: Anchor Books, 1999. p. 20.



of the companies. This understanding of the scope of application of outsourcing was based on the interpretation of article 455 of the Consolidation of Labor Laws, article 94, II, law 9,472/97 (telecommunications), article 25 of law 8,987/95 (granting and permitting regime), Law 6,019/74 (temporary work) and Law 7,102/83 (banking supervision). This understanding culminated in the Summula that explicitly authorized the outsourcing of the workforce in the activity-middle of the company (the one that is not inherent to its main objective) but closed them in the end-activities (the one that characterizes the main objective of the enterprise). The labor law doctrinal construction analyzed the outsourcing in the same way, considering the possibility of transferring to third parties “activities that are admittedly generic, secondary, ancillary or support the enterprise, in order to allow the company to make efforts and concentrate attention on those central activities or main objectives in its corporate purpose”.³⁹

Outsourcing has been considered an element of precariousness of labor relations. Studies by DIEESE (Intersyndicate Department of Statistics and Socio-Economic Studies) show that outsourced activities have worse working and pay conditions than those governed by direct links between the service provider - employee - and the borrower. Higher incidence of absenteeism due to work diseases, higher turnover and more long and intense days (all of these factors are, by the way, interrelated). In addition, lower wages are also observed.⁴⁰ This is due to several reasons, among them, the fact that large companies outsource the services of much smaller companies, without sufficient economic capacity to guarantee training and qualifications in occupational health and safety, elaboration and implementation of adequate safety programs to the risks of the activity and capacity to bear all costs of production, including the work force. Unrestricted outsourcing also opens the way to “pejotization”, a fraud already used by many employers before the promulgation of said law, which consists of hiring employees not through an employment relationship, but from a civil contract governed by rules of business law. In this way, the employee would not enjoy the guarantees provided for in the CLT.

It is necessary to observe the intimate relationship between outsourcing and slave labor. Data analysis of the Division for the Eradication of Slave Labor (DETRAE) of the Ministry of Labor reveals that 90% of the ten largest rescues of slave-like workers rescued by the Labor Inspectors between 2010 and 2014 involved workers outsourced irregularly⁴¹. Therefore, the regulation of outsourcing in the final activity represents a real

³⁹ BARROS, Alice Monteiro de. **Curso de Direito do Trabalho**. 6. ed. São Paulo: LTr, 2010. p. 452.

⁴⁰ DIEESE – DEPARTAMENTO INTERSINDICAL DE ESTATÍSTICA E ESTUDOS SOCIOECONÔMICOS. **Terceirização e precarização das condições de trabalho: condições de trabalho e remuneração em atividades tipicamente terceirizadas e contratantes**. São Paulo: Dieese, 2017. (Nota Técnica, n. 172).

⁴¹ FILGUEIRAS, V. **Terceirização e trabalho análogo ao escravo: coincidência?** São Paulo: Unicamp, 2014. Obtained at: < <https://bit.ly/3ghq1am>>.



obstacle to combat contemporary slave labor, since the law can act as an endorsement of the Brazilian legislature for the proliferation of all forms of outsourcing. Moreover, reparation for the damages, both individual and collective, caused by the submission of workers to slave-like conditions are also seriously compromised, considering that the bond tends to be established no longer with the big service-taker, but with small companies that supply labor, without the same economic capacity as the former.

For all that, the legislative amendment which provides outsourcing in any activity without any criteria, tends to act as a barrier to the promotion of decent work in that she, outsourcing, collaborates with the increased incidence of workplace accidents, represents a reduction in remuneration and keeps a close relationship with slave labor.

5.2. LAW 13.467/2017 AND THE IMPACTS ON THE REMUNERATION OF WORKERS

The impacts of the Labor Reform on the remuneration of workers are directly linked to the new forms of employment introduced by this law. One of them is the hiring by intermittent regime of day. The first problem with this new form of hiring is that it jeopardizes the minimum wage as the base salary of the employee's compensation. In addition, it does not guarantee predictability of the employee's monthly salary, making it difficult to plan their economic-financial life, and leaves the employee at the full discretion of the employer, who can choose when, if and how often to call him or her to work. "The worker becomes responsible for managing his survival in the instability"⁴². There are also risks that this contractual modality may be used as a form of moral harassment of the employer over the employee, since it is the call of the employer.

The new form of payment of "hours *in itinere*" also represents a strong impact of Law 13467/2017 on the remuneration of workers. This is the end of the payment of the hours of travel paid to employees. Before the entry into force of the aforementioned legislation, article 58, paragraph 2 of the CLT stipulated that they should be paid to workers provided that certain requirements were met: the place of rendering of services should be difficult to access, not served by public transport, and transportation should be provided by the employer. Provided these requirements are met, they should be paid as if they were available to the employer. The new wording of Article 58 paragraph 2 of the CLT changes this forecast and excludes the need for payment of hours *in itinere*. This change will have a direct and even more pronounced impact on the remuneration of rural workers, who represent a group of workers in situations of more evident vulnerability.

⁴² Contribuição crítica à reforma trabalhista. CESIT/IE/UNICAMP. Available at <https://www.ael.ifch.unicamp.br/pf-ael/public-files/noticias/arquivos/dossie_cesit_-_contribuicao_critica_a_reforma_trabalhista.2017.pdf>.



According to Júnior Stefanin, president of the Union of Workers of Jaú (SP), about 5000 sugarcane workers in that region will lose a wage between R \$ 150.00 and R \$ 200.00 per month due to the suppression of the payment of the hours *in itinere*, which represents between 10 and 20% reduction of the remuneration of such employees⁴³. The rural worker will be the biggest one affected by this suppression.

5.3. LAW 13,467 AND THE IMPACTS ON THE WORKING HOURS

Still on the suppression of hours *in itinere* as analyzed above, their impact not only give regarding the reduction of compensation of employees. In addition, there will be impacts also on the working day, which will not take more into account the travel time of employees. This represents a longer working day, especially in activities that are already quite strenuous in themselves because they are exercised under sun, rain and various inclemencies. According to the President of the Union of Rural Workers and Employees of Paulistânia, Abilio Penteado da Silva, eight thousand workers in the region spend, on average, two hours a day with displacement in buses of the company⁴⁴. Even the time of travel within the company, a very common need in the rural working environment, was excluded from the wording of article 58 § 2 of the CLT which disregards the compost of the journey the time spent by the employee from his residence to the actual occupation of the job. Thus, the impacts of suppression of hours *in itinere* also reach the calculation of the intervals between breaks and between rests.

Another amendment established by the Law on the journey was the expansion of the part-time work regime, which had its possibility of extended duration to thirty hours per week. This possibility represents impacts on both the journey and the salary. According to art. 58-A and §§ 1 and 2, art. 59, § 4 and art. 130-A of the CLT, before the promulgation of the aforementioned law, the day for those who worked part-time was up to twenty-five hours a week, and it was forbidden to perform overtime. The salary should be proportional to that of full-time employees in the same job and there should be, in the part-time work regime, as well as during vacations, a minimum of eight and a maximum of 18 days without the possibility of a third of the holiday into a cash payment.

Law 13,467/2017 amended art. 58-A of CLT and part-time work is now open to two forms of employment: (1) one whose duration does not exceed thirty hours a week, without the possibility of additional weekly hours, or (2) one whose duration does not exceed twenty-six hours a week, with the possibility of adding up to six overtime hours a week. In the second hypothesis, overtime can be compensated the following week.

⁴³ Available at < <https://bit.ly/2ZEvy58>>.

⁴⁴ Idem.



The holidays start to be staggered in the same way as those employed in four or four hours a week, that is, holidays ranging from 12 to 30 days, according to a number of absences during the vacation period. With the change, the employees can convert a third of the vacation period into a cash payment.

Take, for example, a worker with a weekly workload of thirty hours. Assuming the fictitious value of one thousand reais as minimum wage. Before the labor reform, this worker would be entitled to the minimum remuneration in this amount. After the labor reform, the same employee, if hired on a part-time basis, could receive only six hundred and eighty-one reais as monthly salary for the same thirty hours of work, suffering a reduction of thirty-two percent in his remuneration monthly, reduction is proportional to the worked hours.

Considering, therefore, the legislative amendment provoked by the Labor Reform, especially when analyzed in the broader set of Law 13467/2017, which also introduced, for the working day, other profound changes, such as the “hour bank” (which may be established by individual agreement, provided for compensation in the same month, if the agreement is written or tacit or within a period of six months, by written agreement), and the twelve working days for thirty six hours of rest (which may even be carried out in unhealthy places without the need for a responsible authority license), it is concluded that it tends to act as an obstacle to the promotion of decent work in Brazil. As such, it tends more to reinforce the limitations of individual citizens’ freedoms than to eliminate them. And for those workers who are considered to be more costly, ie those who work in longer hours, under more adverse working conditions and with lower wages, like rural workers, these effects are compounded by the poverty and unemployment that compel them to submit to this situation. Some effects that can be glimpsed with the labor reform go beyond the simple reduction of income (remuneration). These are issues related to dignity in the exercise of work activity: more strenuous work day, increased occurrence of work accidents and work similar to that of slave, informality, among other effects.

Therefore, labor reform tends to contribute to the increase of poverty, conceived, in this case, not just in terms of income. Poverty, often seen as low levels of income, is also a concept rebuilt by Amartya Sen by the capacity-building approach. Obviously, income levels are very important for any evaluative and comparative approach to issues related to development, poverty and inequality. However, they do not provide all the tools needed to evaluate them. For this author, “there is an excellent argument for beginning with whatever information we have on the distribution of incomes, particularly low real incomes. There is, however, an equally good case for not ending with income analysis only”⁴⁵. This is because, as has already been said, income is not enough

⁴⁵ SEN, A. K. **Development as Freedom**. New York: Anchor Books, 1999. p. 72.



to analyze development. It is not the only, nor the best indicator of the real condition of life that people can take.

Therefore, labor reform tends to act as a barrier to the promotion of decent work in Brazil by making it difficult for workers to reach decent levels of living. In this way, it should act as a factor to reinforce poverty, not only by reducing workers' compensation, as seen above, but also by collaborating with the increase in accidents at work, strenuous journeys, and informality, among others, functioning, thus as an obstacle to the development..

6. CONCLUSION

Based on the analyzes elaborated in this article, it is concluded that, on the one hand, Brazil has achieved relatively successful implementation of public policies for the promotion of decent work in Brazil in the last two decades, on the other hand, recent legislative changes in the field of labor relations can serve as real obstacles to the promotion of development.

With regard to the fight against contemporary slave labor, the recognition, before international organizations, of the existence of this phenomenon in Brazil led the country to adopt a series of successful measures to prevent and repress it. The establishment of the Special Mobile Inspection Group, the drafting of the dirty list of employers, and legislative changes in the Brazilian Penal Code led to the rescue of more than fifty thousand workers enslaved in the last twenty years. The National Pact for the Eradication of Slave Labor has also contributed to the country being considered by the International Labor Organization as a model to be followed.

With regard to child labor, coping policies have also been relatively successful. The ratification of ILO Convention 182 was the beginning of a stronger stance in this regard. The approval of the legislation that regulates the learning of young people and adolescents has enabled the departure of thousands of them from informality, as analyzed. Associated with this, the repressive action of the Labor Inspectors has collaborated with the progress in the fight against child labor. However, for this policy to achieve greater success, some obstacles must be addressed. Among them are the insufficient quantity of Labor Inspectors, the omission of the legislation regarding the criminalization of this practice. Moreover, the fight against poverty as a whole should also impact the submission of youth and adolescents to work, since it is the poorest population that is more vulnerable to child labor. Cultural issues, as observed in the course of this article, also contribute to the incidence of this fact, which demands confrontation in a multidisciplinary way. All of these barriers to promoting decent work have contributed to Brazil's failure to meet the deadline set by the ILO to eliminate the worst forms of child labor by 2016 and all forms by 2020.



A quite different situation is the confrontation with the high rates of industrial accidents in Brazil. The country's failure to ratify Convention 187 of the International Labor Organization demonstrates the difficulty of addressing the issue internally. A stance established by legislation that favors the payment of additional hazardous and unhealthy to the detriment of the focus on preventing the damaging event contributes to the fact that the accident rate insists on not retreating. The country occupies the fourth position among the countries that most accidents workers. Therefore, with regard to public policies for the promotion of decent work in Brazil, regarding the prevention of work accidents, the country has not been successful.

The same can be said for the Labor Reform adopted by the National Congress in 2017. As noted on a specific topic, it tends to work much more to strengthen the limitations of individual freedoms than to eliminate them. This is because outsourcing, as foreseen by the new legislation, reduces the average income of workers and exposes them to longer and stricter working hours and more precarious working conditions, as well as being closely related to the occurrence of workplace accidents and slave labor. The institution of intermittent work, the part-time contract, the elimination of the hours *in itinere* payment, the hours bank by individual agreement, all of this will have a direct impact both on the reduction of workers' remuneration and on the need to more elongated working hours. The weakening of trade unions is also an expected effect of the reform.

The analysis of the promotion of decent work is extremely important for understanding the development. This is because, as has already been said, income is not the only, nor the best indicator of the real condition of life that people can take. Someone may be above the "poverty line," established from monetary considerations, but because of multiple conditions beyond their control, they do not achieve decent levels of living, because they can not turn that income into valuable assets (what Sen calls conversion problem). That is where the importance of the analysis of decent work is inserted as an indicator of the real condition of life that people can take. "This entails that "real poverty" (in terms of capability deprivation) may be, in a significant sense, more intense than what appears in the income space"⁴⁶. And work carried out in conditions that threaten human dignity represents deprivation of capacity, whether it be in the slave, child, unhealthy, dangerous or non-remunerated mode of work, and that does not guarantee remuneration and work adequate to the need of individuals for a life other than work.

⁴⁶Idem, p. 88.



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