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LOCAL GOVERNMENT, EFFECTIVENESS AND HUMAN RIGHTS IN SENEGAL: HOW DO THEY INTERCONNECT?

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PROBLEMS

1. Increasingly, the developing world wonders about the real impact and meaning of countless policies and initiatives implemented since about three decades to reduce poverty, vulnerability and social injustice. The persisting, even increasing poverty, along with the inanity of modes of governorship underlines the failure of a non-prospective, urgentist, superficial development approach, dictated above all from outside the country. The consistency and legitimacy of the state are nowadays questioned in numerous countries throughout post-colonial Africa. Principal factors arising are the multiform crisis of African states, the search for different solutions for nations suffering from a lack of homogeneity, the re-composition of public space in which new actors emerge, the fast evolution of identities, the increasing vulnerability, and the transnationalisation of processes of creation of wealth. In reality, African practices of modernity often stumble against the weberian conception of the state, colonial and post-colonial, and do not fall into the same perspective.

2. In this context, Senegal is a good example of this paradox often solved by compromises, by a social contract between categories that do not function according to the same logic, but have the same interest. Situated on the extreme Western end of the continent and open to the Atlantic Ocean, Senegal has been penetrated by all kinds of influences. An entry point of European colonisation, it has also been exposed to other cultural values, namely oriental, Manding, etc. The birth of the modern Senegalese state, however, is the consequence of French colonisation that organised the country for the needs of exploitation imposing a rigid, centralising and constraining structure, based on the Jacobinic model. In this context, a local politic life functioned essentially in the four districts of Dakar, Saint-Louis, Gorée and Rufisque. From the end of colonial conquest to independence, a culture of democratic elections, opposing 'coloured' and later Senegalese candidates prevailed foreshadowing a real local citizenship.

3. The choice of independence in 1960 triggered decentralisation in order to release building energies and participation, in particular in rural areas, in spite of the centralisation necessary to launch the first orientations of development. In 1964, the first great land reform (Law on National Field) lays out the principle of a decentralising process granting local rural communities autonomy in managing their land. These local communities were extended to the whole country eight years later.

4. Decentralisation also became the panacea for other reasons. First, the failure of the centralising state that only focused on big cities, namely the capital city, to the point of generating a massive rural migration transforming Dakar into a hypertrophied metropolis, with inadequate urban structures. Decentralisation should, in this context, be a tool for regional development reducing disparities between different areas. But decentralisation also fulfils a need of populations, which are more and more interested in the future of their localities. It sometimes resulted from pressures of the local elite, aware of the state's limitations, with strong identities in need of recognition and of a space for expression. Decentralisation was also instrumentalised by the state in order to neutralise regionalisms and separatisms, especially in Casamance.

5. Decentralisation is also a consequence of the 'convincing' arguments of donors, based on the concept 'less state, better state', accounting for the new liberal paradigm on an international scale, and worrying not to put all one's eggs in the same state's basket. This logic hereby underlies the emergence of NGOs as local actors in the context of fighting against poverty.

6. In Senegal, the creation of 320 rural communities covering the whole territory, and the acceleration of this process during the '80s and the '90s, and finally, regionalisation and the creation in 1996 of communal districts are the outstanding stages of an excessive decentralisation, which ended up in transferring 9 fields of competence to the communities: environment and natural resources management; health and social action; youth; sports and leisure; culture; education; planning; national and regional development; urbanism and habitat.

7. This process is governed by a body of normative texts: laws 96-06 of 22 March 1996 on the Code of Communities; law 96-07 devoting the transfer of jurisdiction to these communities; law 96-09 setting-up the organisation of the territorial administration. These laws have been completed by important decrees, of which the most important are: 96-1126 setting-up the organisation of the distribution of the donation fund to local communities; decrees 96-1132 and 96-1139 on the application of law 96-07 on transfer of jurisdiction. The region is a local collectivity, legal entity of public law managed by a regional council. The 11 regions are divided into 60 communes and in 320 rural districts. The Dakar area is subdivided into 43 communal districts consisting of neighbourhoods functioning as other local communities. The commune is defined as the grouping of inhabitants of a zone of the same locality willing to treat their own interests, and able to find the necessary resources to do so. Rural communities include villages belonging to the same territory, with common interests. No local community is under the supervision of another

8. What are the consequences of this process? Are local decentralised communities viable and heading towards a real local development? What impact does this process and all these different combinations have on the improvement of the daily life of these populations? To what extend are these populations involved in decision-making? Have local communities the necessary human and financial resources for a local development policy, mainly the fight against poverty.

9. The awareness, after years of implementation of structural adjustment programmes, that the human dimension of development has been neglected by policies, is real. But what is poverty? Its material and financial dimensions long put forward by the World Bank, the IMF, UNDP, etc are now overridden by a more complex approach taking into consideration social and politic

poverty. Someone who is poor, indeed, is less someone without money than someone lacking the ability to value him/herself, i.e., who has no more social connections and who can no longer rely on others. It is also someone who has no direct or indirect influence on decisions concerning his daily life and his future. Poverty is nowadays understood by the World Bank as the lack of opportunities to participate in politic and social life, as the lack of security, of access to (natural, financial, etc) resources, the lack or difficulty of accessing basic services (roads, adequate health centres, schools, markets for selling goods, drinking water, etc), the strong vulnerability to shocks coming from the outside. **In this view, decentralisation defines itself as a framework and an instrument for satisfying the needs of local populations and therefore, for fighting against poverty.** Strategic Document on the Reduction of Poverty (SDRP) worked out for Senegal highlights, through a survey in local communities on the perception of poverty, a multi-dimensional approach to poverty. In this document, poverty is defined as "an absence of belongings/assets, education and power". This document represents a framework referencing interventions, and a mobilisation tool for the consistency of public resources. At present, though, this process is not decentralised. There is a risk that this process may contribute to a re-centralisation of the state's financial means although there is a strong need for these means to be increased and more decentralised (the 2004 report of the World Bank opens perspectives aiming at budgetary decentralisation in order to reach the real targets).

10. The strategic document for local communities is the Local Development Plan (LDP). The LDP is implemented in most local communities as they become partners of the state, but above all of the main capacity building projects financed by the World Bank, by other donors or by decentralised co-operation.

11. **The essence of decentralisation is to support local development and the reduction of poverty. But what are the factors that prevent or support the fulfilment of essential needs of populations, especially legal, political obstacles, at the local level as well as between local communities, the state, and other actors? The interest of the International Council on Human Rights Policy's study is to introduce human rights in the reflection on the stakes and impact of decentralisation. To what extend are human rights perceived as an explicit objective of decentralisation? What is their importance in texts dealing with decentralisation in Senegal? What do human rights represent in the Senegalese constitution as well as in the political objectives of the Senegalese state, beyond decentralisation, which is only a sectorial policy? Do the state, local councillors, local or international organisations of civil society, and donors think respect of human rights is presupposed? Decentralisation and human rights have an undeniable theoretical link as the fulfilment of population needs means that economic and social rights, as solemnly stated in International Law, are addressed. But on a political level, are human rights a challenge and an important purpose for the actors of decentralisation? Do strategies for local development take them into account? Would taking them into account favour the fulfilment of needs, especially those of vulnerable groups?**

12. An explanatory and general analysis on the importance of human rights in the founding texts of the Senegalese state, and of its decentralisation policy should, at this stage, give some background information, setting up the first framework of analysis of the challenges and impact of human rights in decentralisation.

HUMAN RIGHTS IN SENEGAL: GENERAL PRESENTATION

The Solemn Assertion of Human Rights

13. Since independence, Senegal has shown a will to establish a state based on the rule of law and

human rights. All its legislation is marked with the spirit of the Conference of Lagos, January 1961, on the rule of law. The result of this conference is that "the rule of law as a principle should be implemented, by which the will of the people prevails, political rights of an individual are consolidated, and economic, social and cultural conditions are adapted to the aspirations and proper blooming of the human being, in all countries, independent or not". The first Constitution of 7 March 1963, as well as the one of 22 January 2001, has reflected this engagement for human rights.

14. **The fundamental text, adopted by referendum on 7 January 2001, declares in its preamble that "national construction is based on individual freedom and on the respect of the human person" and that "the respect of fundamental freedoms and of civil rights is the basis of Senegalese society".**

15. Such an agreement is linked with the evolution of the international society, by which, since World War II, a remarkable number of such agreements on human rights have been adopted, the respect of which has even become one of the "evaluation criteria of societies and of their degree of civilisation". **One should, therefore, not be surprised that Senegal has ratified or approved all major international instruments on human rights.** The preamble recalls the adhesion to the Declaration of the Rights of Man and of the Citizen of 1789, to the conventions of the United Nations, and to the Organisation of African Unity (African Union). Among these instruments, one can cite the Universal Declaration of Human Rights; pacts and protocols on civil and political rights; on economic, social and cultural rights; conventions on the prevention and repression of the crime of genocide; on refugees; on the elimination of all sorts of discrimination against women; on the rights of the child; on torture; ILO conventions, etc.

16. **To the provisions of the preamble (which is an integral part of the Constitution and, thus, to the constitutionality block), needs to be added the second title of the Constitution** entirely devoted to "public freedoms and of the human person, and to economic, social and collective rights" (articles 7 to 25). This list contains essentially several rights and freedoms:

- **Right to life, freedom, security, to the free development of the person, to corporal integrity;**
- **Equality of all in front of the law, and between men and women;**
- **Freedom of opinion, expression, of the press, of association, of reunion, of movement, of demonstration;**
- **Cultural, religious, philosophical, freedom of trade-unions and of undertaking;**
- **Right to education, to reading and writing, of ownership, to work, to health, to a healthy environment and to information.**

Guarantees of Human Rights

17. The Constitution did not limit itself to a solemn declaration of the acknowledgement of human rights, it also determined, in the broad lines, guarantees, the law fixing the conditions of their exercise. There are four types of guarantees:

18. **On one hand, judicial power is specifically put at the level of guardian of rights and fundamental freedoms** (article 91). Two consequences arise from such option of judicialisation: the independence of the judge becomes a determining factor of the credibility of the protection of fundamental rights system (article 88); independence secured by law under the principle of irremovability of magistrates, and the institution of the Superior Council of the Magistracy; the access to justice for citizens is the unquestionable instrument for the implementation of the

rights they were granted. The judge's role of guardian of these rights is twofold: control of the constitutionality of laws which falls under the exclusive competence of the Constitutional Council, by way of action or of exception, and the control of legality by way of appeal for abuse of power drawn before the Council of state or of the plea of illegality before all the judges.

19. **On the other hand, the international law is the most important source of human rights, superior to internal laws**; the judge has the competence to prevent the application of laws, which are contrary to the international law applicable to Senegal. One should note that the application of international laws implies the right of the citizens to use the juridical and non-juridical supranational mechanisms, the latest of which is the African Court of Human Rights of 25 January 2004.

20. **Thirdly, the principal of separation of power, guarantee of judicial independence, is at the same time a guarantee of the respect of laws protecting human rights** insofar that rules (and not only principles) relating to civil rights and to fundamental guarantees of citizens come under the legislative field. As a result, the ruling power, submitted to law, is subject to the control of legality. The legislator has adopted multiple texts in direct or indirect relation with human rights (Code of the Family, Penal Code; Criminal Law Procedure; code of Labor, etc).

21. **And last, the textual formalisation of human rights goes along with a public institutional implementation mechanism in case of violation of the law**. One should note the adoption of several laws instauring independent administrative authorities: Mediation of the Republic, High Council of the Audio-visual, National Observatory of the Elections. At the same time, the state has set up several bodies in support of the management of human rights, interface between public authorities and citizens, and especially organisations of the civil society. One should note the creation of the Senegalese Comity of Human Rights and the Office of Human Rights.

22. **Senegal, having acknowledged the freedom of association, human rights have led to the creation of several private organisations**, the first one being the National Organisation of Human Rights (NOHR) in 1987. Today, associations relating to defence of fundamental rights are central to the non-institutional mechanism; they are real actors, not only of the change, but also of education, of sensitisation, even of pressure on civil authorities. Their initiatives contributed to the noticeable improvement of the situation of human rights in Senegal and have sometimes had a decisive impact in the adoption of important laws (Law against Female Genital Mutilation; draft reform of the Code of the Family in relation with the Rights of Women, reform of the Code of Penal Procedure, etc). Their role is all the more fundamental as social organisations are in a better position than individuals to impose the primacy of law to public authorities.

Human Rights in the Laws on Decentralisation

23. Before checking if human rights are taken into account in the decentralising process, one should prove that the conditions highlighting these links exist. Texts can be revealing and explanatory of conclusions to which such a research can lead. From what precedes, one could be tempted to draw a rapid conclusion: the question of human rights is not taken into account in its local dimension by the fundamental text. This conclusion should be confronted with specific texts on decentralisation. Of course, the competence of the state in establishing what rights should be granted to citizens, and in defining mechanisms ensuring their effectiveness is not particularly difficult; equality between citizens commands this solution. It would, however, be legitimate to wonder if human rights should necessarily be dealt with at the national level, and if the guarantee mechanisms should be limited to appeals at national or international level, as well as on the administrative and juridical level. Answers to these questions could be found in the limitations

of the actual guarantee system, which would prove that appealing at the local level is sometimes helpful for improving the implementation of certain rights. It should be determined by which interactions decentralisation could benefit from the human rights approach and vice-versa.

24. At this stage, we should limit ourselves on questions based on the analysis of the formal context. **Does the philosophy underlying decentralisation include, directly or indirectly, human rights as one of its dimensions?** It appears from the Code of Local Communities that decentralisation is above all an organisation process of the power of the state, and in the state. Economic, social and cultural development is only seen under the angle of co-ordination of the state and of the local community actions through the creation of intermediate structures, regions; between central administrations and basic communities, formed by communes and rural communities. The second objective is to guarantee local communities more freedom by the disappearance of the state's supervision and of the *a priori* approval control, replaced by an *a posteriori* review of legality (the *a priori* control remains exceptional and only concerns certain acts enumerated by the law).

25. Of these two objectives, the result is that the major concern of the law is not so much establishing the advantages citizens can draw of the proximity induced by decentralisation as to regulate the relationships between the state and decentralised communities. Moreover, a close look at acts submitted to preliminary approbation shows that the main aim is more the preservation of the state's interests and prerogatives in certain fields than privileging the defence of citizens. The theoretical explanation of the obsession of the central power towards local power fundamentally remains in the particular conception of the principle of subsidiarity: Relationships between the state and communities are exclusively determined by the state; it is a kind of vertical subsidiarity.

26. **The second remark on laws and decentralisation is related to the position of human rights in the jurisdiction granted to local authorities.** Besides traditional jurisdiction stated in law 96-06, law 96-07 transferred nine fields of jurisdiction to local communities. Some of these jurisdictions have a close link with fundamental rights: environment and management of natural resources; health; population and social action; education; culture; habitat. Concerning these, the relevance of questions on mutual connections between decentralisation and human rights can be checked on the basis of what has been achieved in local communities, and of inadequacies noticed in the exercise of their jurisdiction. One can already notice that besides some police jurisdiction, decentralisation has more links with economic, social and cultural rights than with civil and political rights (not forgetting their importance at the local level; as for example in art. 338, para. 2 of law 96-06 on acts likely to compromise the exercise of public or individual freedom). Chapter XI, title V of law 96-06 on local public services does not mention how these services are applied to citizens, but mentions the legal conditions of their application although we know that the effectiveness of economic and social rights depends largely on public services.

27. **The third observation is that the success of the decentralisation process has always been submitted to the issue of resources and of means available to local collectivities**. In Senegal, most financial means are still provided by the state through a donation fund; but local communities can obtain fiscal resources and use decentralised co-operation for the financing of their activities. One should therefore not wonder about the complex relationship between human rights and decentralisation in this aspect. Without being forced to have results, local communities will nevertheless be judged on their efficiency in providing services to their citizens. Equally, local communities will undergo the same problems as the state: violation of equality of citizens due to a mechanism of uneven redistribution of income; fights between different local bodies; strong influence of national political parties, etc.

28. **The last remark relates to citizen control on local communities**. We already have noticed that, at the national level, access to justice conditions the efficiency of a guarantee system for human rights, essentially based on jurisdictional mechanisms. This remark also goes for local government. The Code of Local Communities, chapter IX of title V, defines legal action open to citizens in the name or against local communities, but only under certain conditions (legal action in the name of a community is subject to fiscal domiciliation in the latter and to a specific procedure; whereas legal action against a community is preceded by administrative prerequisites). The exercise of tasks assigned to local authorities and the threat of sanctions, not only political but also legal (the Penal Code punishes some infringements committed by the elected officials: misappropriation of public funds, etc); civil (responsibility of elected officials can be committed on the basis of rules of civil rights; art. 299 of Code of Local Communities); and administrative (Code of the Administration), can, however, only be efficient if citizens, alone or in groups, are able to set up a strong counter-power, that is respected and have a right to inspection. Texts on decentralisation do, however, not necessarily provide conditions for participation. Each tax payer, of course, has the right to receive, at his own costs, communications on the proceedings of the communities, but this is not enough to conclude that citizens exercise an effective control on the elected officials.

Methodological Approach

29. Research will lead us to the Thiès and Dakar regions. In Dakar and Thiès, we will make an exhaustive identification and analysis of studies, reports and articles related to decentralisation and human rights in Senegal. We will also interview persons in charge of national and international organisations present nationally, but also locally, on the adoption of human rights in their philosophy as in their actions. Another important target will also be local associations, representing an influential civil society. But the choice of the Thiès area for the field study is justified by several elements, the most important of which are the precedence of application of the reform creating rural communities, the area's geographic intermediary position, its reputation for claims (railway men strike, 1988 elections), and the strong presence of NGOs. The community of Thiès, whose mayor is also the Prime Minister, is at the forefront since the state decided to organise the celebration of independence with a 20 billion investment.

30. The choice of Dakar, besides the necessity of the research, can be explained by the fact that, beyond regions, rural and city communes, another type of local community came to life in 1996: the division of Dakar cities, Pikine and Guédiawaye, into 43 communal district playing an increasing role in Senegalese decentralisation.