

MALGACHE LAW IN FRONT OF CLIMATE MIGRATION OF ANTANDROY

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ABSTRACT

The Antandroy constitute the population group of the Androy region, which resides in the extreme south of Madagascar. Even before the colonial period, many Antandroy people leave the Androy every year to other regions, usually in the northwest, in search of a livelihood and revenue. The objective of the article is to establish a concrete evaluation of the enjoyment of fundamental rights, essentially the right to free choice of residence and the right to the environment by Antandroy migrants. For this, we used the normative legal technique which is composed by a quantitative and qualitative approach. The quantitative approach is done through a survey of 500 Antandroy migrants, and took place from April 15 to September 12, 2019. As for the qualitative approach is made using the analysis and interpretation of the actual results of the survey in relation to the legal commitment of the public power to ensure the protection of fundamental rights. The result is that the frequent and alarming migration of the Antandroy people is caused by a violation of the fundamental rights and freedoms of the individual, precisely the right to free choice of residence and the right to the environment.

Keyword : - *Antandroy, Right to free choice of residence, Right to the environment, and Climate migration*

INTRODUCTION

The degradation of the environment, caused by climate change, affects everything in its path. The result is a great disruption of the way of life of the residents. Thus, it must be recognized that the environment forges the state of mind and generally shapes the identity and personality of any individual [1-2]. Moreover, this is one of the reasons why the United Nations Framework Convention on Climate Change (UNFCCC) was adopted at the Rio Earth Summit in 1992. Madagascar ratified this convention on June 02, 1999 and is among the countries that are highly vulnerable to environmental degradation caused by climate change [3].

It is important to emphasize that one of the priorities of the Malagasy government concerns internal climate migration. According to the National Institute of Statistics in Madagascar, the term migration is used to refer to "Any movement of an individual from one district to another or from one country to Madagascar for a stay of at least six months or less with intent to reside for at least six months. So, the climatic migrant in Madagascar, refers to any person who changes district or region because of climatic disasters "for a stay of at least six months or less than six months with the intention to reside there for at least six months"[4].

In the current context of the promotion and protection of human rights, all attempts to respond to this issue are focused on several rights, including the right to free choice of residence and the right to the environment. Migration cannot be studied in law without mentioning, first of all, the right to free choice of residence. It admits that the man can remain living in the residence of his choice without being forced to abandon it because of any influence. In other words, the right to free choice of residence emphasizes the manifestation of the personal will of every individual.

As for the right to the environment, it is the starting point for the effectiveness of all the other fundamental rights. It is in the enjoyment of this right that the man manages to satisfy his needs of subsistence and socioeconomic prosperity. It is determining, to the point of insisting on it amply, in a process of concretizing a real sustainable development. Everything can be rebuilt from the enjoyment of this right.

It should be noted that Madagascar is a state governed by the rule of law as evoked in the first article of the constitution of the fourth republic "Democracy and the principle of the rule of law constitute the foundation of the Republic." The rule of law is a concept of German origin and was formulated in the early XX^e by the Austrian jurist Hans Kelsen (1881-1973). According to the latter, it is a state in which all interventions conform to the hierarchy of legal norms [5].

Therefore, all public and private Malagasy interventions must never be in contradiction with the guarantee of the fundamental rights and freedoms mentioned in the said constitution. According to article 116.1 of the latter, the High Constitutional Court "rules on the conformity to the Constitution of treaties, laws, ordinances and autonomous regulations". This means that the constitution of the fourth republic is at the top of Malagasy positive law.

However, it is important to point out that it is the facts that dictate the law. As many Antandroy are forced to migrate to other regions because of frequent climatic persecution, Malagasy law must be able to take this situation into consideration. For this, it is necessary to analyze the enjoyment of fundamental rights, particularly the right to free choice of residence and the right to the environment in the Antandroy.

It must be recognized that the climatic migration of the Antandroy remains unprecedented and may call into question the concept of the rule of law in Madagascar. It is in this context that this article finds its importance, in order to underline, on the one hand, the protection of these fundamental rights in positive law and, on the other hand, to evaluate their concrete enjoyment by Antandroy migrants. Specifically, it apprehends the link between the enjoyment of these rights and the Antandroy migratory flows.

RESEARCH METHOD

The normative legal technique is used to evaluate the concrete enjoyment of the right to free choice of residence and the right to the environment by Antandroy migrants. This technique consists of a quantitative and a qualitative approach. The quantitative approach involved a survey of 500 Antandroy migrants, and took place from April 15 to September 12, 2019. It is important to note that to date, there is no public or private organization that distinguishes the census of Antandroy migrants and other travelers from the region. Therefore, the number of 500 respondents is assumed to be representative of the migration flows.

The qualitative approach consists in analyzing and interpreting the actual results of the survey in relation to the protection of these two fundamental rights in the legal texts in force. In other words, it is a matter of confirming or refuting the idea that the Antandroy's climatic migration is essentially the result of a violation of the right to free choice of residence and the right to the environment.

RESULTS AND DISCUSSION

1 The right to free choice of residence in front of the migration of the Antandroy

1.1 Protection of the right to free choice of residence

The right to free choice of residence is protected by broad texts in international positive law and also in Malagasy positive law. In positive international law, the free choice of residence is protected in a moral and non-binding way according to the Universal Declaration of Human Rights (UDHR) of 1948. The UDHR is essentially inspired by the French Declaration of Human Rights of 1789, which came out of the French Revolution, and the American Declaration of Human Rights of 1791. So it is an essentially Western-inspired declaration that emphasizes the importance of freedom.

The effectiveness of this right in a State can be illustrative of good governance in the eyes of the international community. Article 13.1 of the said declaration states that "Everyone has the right to freedom of movement and residence within the borders of each State". This freedom of movement is also provided for between States in its article 13.2 as follows "Everyone has the right to leave any country, including his own, and to return to his country".

Moreover, this principle is still included in a binding regional text, namely the African Charter on Human and Peoples' Rights of 1981. In this charter, the right to free choice of residence is binding on all countries that have

ratified it, including the Republic of Madagascar since 9 March 1992. According to article 12.1 of this charter, "Everyone has the right to freedom of movement and residence within a State, subject to compliance with the rules laid down by law".

Note that this freedom is also valid at the international level as enumerated in its article 12.2 "Everyone has the right to leave any country, including his own, and to return to his country. This right may be subject to restrictions only if they are provided for by law, necessary to protect national security, public order, public health or morals". So, for example, it is up to the Antandroy to freely choose the place of residence that suits them without any external interference.

Regarding in the Malagasy positive law, the right to free choice of residence is protected through the Constitution of the Fourth Republic of December 11, 2010. It is the supreme reference act, which defines the legal order in a state. It is stipulated in its Article 7 that "individual rights and fundamental freedoms are guaranteed by the Constitution and their exercise is organized by law. The purpose of this provision is to promote, protect and defend the rights and fundamental freedoms in favor of every individual in the Malagasy population.

However, Article 12 stipulates that "all Malagasy nationals have the right to leave the national territory and to return to it under the conditions established by law. Every individual has the right to move and settle freely throughout the territory of the Republic in respect of the rights of others and the prescriptions of the law". This is the legal protection of the right to free choice of residence in Madagascar. At present, it is important to analyze concretely at the end of the investigation, the enjoyment of this right by Antandroy migrants.

1.2 The enjoyment of the right to free choice of residence by Antandroy migrants

The analysis of Antandroy climatic migration reflects the existence of serious difficulties in the effective implementation of the right to free choice of residence, namely, on the one hand, the impossibility of preserving one's residence and, on the other hand, the lack of income generating activities (IGA). The impossibility of preserving residence in the Androy region is characterized by the unavailability of subsistence resources. Agropastoral activities, which are the main means of survival, are no longer developed for climatic reasons, as has already been proven in several research studies [6-7].

In addition, the unanimity of the Antandroy migrants interviewed affirmed that even though migration has cultural origins, but at present, the focus must be on climatic constraints. Despite the desire to stay with their families, they are forced by climatic persecution to migrate in search of livelihoods. According to them, agricultural activities generally include the cultivation of cassava, maize, sweet potatoes, sorghum, cowpeas, konoke and vegetables. Because of the aridity of the soil due to the lack of rainfall, these crops often do not develop sufficiently to meet the subsistence needs of those concerned.

It is observed that even the meager harvests are scarce and condemn many Antandroy having no other source of income or subsistence to find themselves in famine, nicknamed in the local language "Kere". They are content to feed themselves with fruits and leaves of the ricket cactus "raketa" extremely resistant and adapted to arid soils. Sometimes even these cactus are very rare. As for the minority of Antandroy, having a little financial means, they manage to achieve an average agricultural harvest by using innovative techniques. It is observed, for example, the introduction of improved seeds followed by the purchase of several containers of water for watering at least once a week.

The other main subsistence activity, namely pastoral livestock, is also experiencing great difficulties. The zebu, goat, sheep, cattle and poultry herds are the best known, but their development is often impacted in two ways. The first is the absence or insufficiency of watering due to desertification. This causes considerable difficulties for the growth of these animals. The second is that farmers do not have the financial or medicinal means to care for their livestock. As can be seen, neither agriculture nor livestock farming can meet the needs of the inhabitants. This is how the unavailability of subsistence resources is characterized and consequently triggers the migration to other regions with favorable climatic conditions for these activities. This situation cannot, in any case, show the expression of a freedom of choice on the new residence by the interested parties.

As for the insufficiency of income-generating activities, it is characterized by the anchoring of two realities. The first concerns the low public and private investment in the creation and expansion of small and medium-sized enterprises (SMEs). The unanimity of the respondents affirms that this hesitation of investors is caused by climatic constraints, namely desertification and the frequent sandstorm called in the local language "TIOAKAMENA". These two climatic disasters greatly disrupt the socio-economic situation of the region. Consequently, this does not allow to increase the existence of a good market of the products of the company. Moreover, in this regard, it is observed a small market of corn and other food products in the district of Ambodovombe of the Androy while many inhabitants are in famine for lack of financial means to get supplies. This kind of situation, for example, does not encourage entrepreneurs to invest in the Androy.

The second reality is that the Antandroy do not seem to be convinced or enthusiastic about replacing agriculture and livestock breeding with the expansion of other forms of activity such as fishing. This relentlessness to agropastoralism comes from their tradition and also from the need to celebrate their habits and customs through the products of pastoral breeding, of which the sacrifice of the zebu is central.

From then on, the respondents, and sometimes even the whole family, were forced to migrate to other regions in search of labor, preferably agropastoral labor. In this case, the decision to migrate results from the impossibility of surviving in the Androy because of insufficient means of subsistence and income. In this case, the Antandroy migrants did not express their freedom to leave the Androy but rather the only possibility available to them to survive. In this sense, the migration of the Antandroy is caused by a violation of the right to free choice of residence. Now, it is judicious to see also the right to the environment in front of the migration of the Antandroy.

2 The right to the environment in front of the migration of the Antandroy

2.1 Protection of the right to the environment

The right to the environment is at the origin of the concretization of thoughts and reflections emanating from eminent political figures and great jurists of the international community. The Republic of Madagascar, like any other country in the world, enshrines this fundamental right because of its relevance. It is protected at the international and national levels. At the international level, it was at the 1972 Stockholm Summit on the Environment that the right to the environment was first consecrated by the international community. Indeed, the Stockholm declaration in its first principle stresses in particular that "Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations".

Thus the environment is set up as a real right that the individual can claim as other fundamental rights. Later, the spirit of the preservation of the right to the environment is always taken up, at least implicitly or at best explicitly in the various international texts, starting from those adopted at the Rio Summit in 1992, Johannesburg in 2002 or Rio called "Rio+20" in 2012. Madagascar has participated in all its summits and gives a margin of reference on the design of all its public policies.

At the national level, it is Article 37 of the Constitution of the Fourth Republic of December 11, 2010 that enshrines the principle of environmental protection. It emphasizes that "The State guarantees the freedom of enterprise within the limits of respect for the general interest, public order, good morals and the environment. This means that any intervention that infringes on the environmental rights of others is prohibited in the positive law.

It should be noted that the wording of Article 37 of the Constitution of the Third Republic of September 18, 1992 is even more explicit in this regard by emphasizing that "Everyone has the obligation to respect cultural values, public property and the environment. All this shows how much the Malagasy leaders have always been concerned about the question of concretizing at best the preservation of the right to the environment.

In the chronicle of sustainable development in Madagascar, the year 2015 is marked by the adoption of the law n°2015-003 on the updated environment charter. It is a text composed by 23 articles that explains in a clear and concise way, the vision of the public power on the preservation of the right to the environment. In this regard, article 6 states that "Everyone has the fundamental right to live in a healthy and balanced environment". The legislator implies that every Malagasy has the right to reside in a productive environment where he can meet his basic needs.

And in the case where an environmental damage is caused to others, Article 9 provides for its repair as follows: "Any natural or legal person of public or private law having caused damage to the environment must bear the repair of the damage, if necessary, rehabilitate the damaged environment. As can be seen, the right to the environment is well protected by law in Madagascar. Therefore, it is necessary to evaluate, the concrete enjoyment of this right by Antandroy migrants.

2.2 The enjoyment of the right to the environment by Antandroy migrants

The investigations raise, a violation of the right to the healthy and productive environment because of the daily degradation of this heritage. It is generated particularly by two great socio-cultural causes. The first cause is the way of life of the inhabitants, which consequently intensifies the migratory tendencies. It is marked by the archaic exploitation of the environment. The term "archaic exploitation of the environment" in this article means the use of environmental resources for everyday purposes without particular regard for the needs of others. The unanimity of the respondents revealed that these environmentally destructive practices, which impede the environmental rights of others, are widespread in the region. This is the case, for example, when residents proceed to deforestation for the production of heating energy.

It should be noted that the degradation of the environment is already imminent due to the effects of global warming. As a result, many Antandroy people have their right to the environment already largely limited and end up migrating to other regions. As a result, the archaic exploitation of the environment perpetrated daily by the Antandroy further intensifies the violation of this right.

It is in this framework that a discordance deserves to be underlined between the positive law imposing the respect of the right to the environment and the way of life bound by the degradation of the environment. The poorest in the Malagasy population, such as many Antandroy, are in dire need of this archaic exploitation of the environment to survive. Henceforth, it remains a means of subsistence to which the Antandroy cannot in any case derogate since no other possibility is at their disposal.

As for the second socio-cultural cause, it remains the absence of solidarity to promote, protect and defend the enjoyment of the right to the environment of every individual. Indeed, the environment cannot be truly protected without community mobilization. The survey revealed a lack of mobilization among the Antandroy for the preservation of their environment.

According to the unanimity of the respondents, it is very rare for the Antandroy to undertake environmental conservation actions on their own initiative. Most of the time, it is the non-governmental organizations or the competent public authorities that manage to mobilize the Antandroy in this area. But this is usually done in return for payment in kind or in cash to the participants. It is important to emphasize that this kind of mobilization, which is not based on the convictions of the community, but rather on the need to be paid, is always temporary. This is explained by the fact that the end of the projects usually means at the same time the end of the financial or material means of incentive to the community mobilization to preserve the environment.

In other words, the daily life of the Antandroy does not give much importance to mobilization for the protection, management and sustainable use of environmental resources. However, many benefits can be derived from this, to the point of contributing to the reduction of migratory flows over time. Moreover, it should be noted that this lack of solidarity goes back even before the colonial era and does not only concern this southern part of Madagascar.

Only it is the latter which already has an environment strongly impacted because of climatic constraints compared to other regions of the island. Consequently, it requires a decisive and constant community mobilization to sensitize the inhabitants to the preservation of the environment. It should be noted that the non-fulfillment of the right to a healthy environment for the Antandroy migrant undoubtedly impacts on the other fundamental rights by virtue of the principle of indivisibility of human rights.

CONCLUSIONS

The right to free choice of residence and the right to the environment are among the fundamental rights that are amply protected in the Republic of Madagascar under international legal norms and also in positive law. The

investigations show that the enjoyment of these two rights by the Antandroy is largely limited. On the one hand, because of climatic persecutions with its socio-economic consequences and on the other hand, because of the traditional way of life marked by destructive socio-cultural realities of the environment. All this greatly aggravates the socio-economic precariousness of the Antandroy.

As a result, migration has become inevitable for all of the 500 people surveyed, as living conditions in the Androy are impossible and do not allow for the enjoyment of their fundamental rights and freedoms. Thus, this migration can underline the failure or negligence of the public power to honor its legal commitment to protect the enjoyment of these rights for any group of Malagasy population, including the Antandroy. This means that this phenomenon undermines the concept of the rule of law, as defined by the Austrian jurist Hans Kelsen (1881-1973). In this context, the migration of the Antandroy must necessarily challenge anyone concerned with a true rule of law in Madagascar.

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