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Countries: the case of China, India  
and Brazil

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# Recent Labour Policies in the BRICS Countries: the case of China, India and Brazil\*

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**Abstract:** The article aims to examine labour policies and labour legislations of the BRICS countries in order to highlight any common trend in this topic between these five Nations. For this purpose, the article is divided into two different levels of analysis: firstly, an examination of the institutional activities of cooperation and exchange between the BRICS countries to resemble regarding national labour legislations; secondly, an analysis of three case studies (China, India and Brazil).

In the first part, in particular, we examine how labour policies have been taken into account in the institutional activities of the five countries Leaders, which were gathered mainly from the BRICS Summits' statements and from the first Trade Union meetings of these countries.

In the second part, we analyse the labour legislations, with particular reference to the introduction of the labour flexibility within the three selected legal orders (China, India and Brazil), in order to identify differences and the first elements of convergence of the national rules.

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**Key words:** labour policies, labour legislations, labour flexibility, cooperation intra-BRICS countries, China, India, Brazil.

**Table of contents:** 1. Introduction. 2. The cooperation intra-BRICS for the labour policies. 3. Labour policies and legislations: three case-studies – China, India and Brazil. 4. Final remarks.

## 1. Introduction.

The article aims to examine labour policies and labour legislations of the BRICS countries in order to highlight any common trend in this topic between these five Nations. In other words, we propose to understand whether it may highlight an early form of legal network<sup>1</sup> in the labour topic among the BRICS or any first mutual influences.

In this perspective, we have decided to proceed on two levels of analysis: firstly, we examine the institutional activities of cooperation and exchange between the BRICS countries to resemble regarding the national labour legislations; secondly, an analysis of three case studies (China, India and Brazil) and their recent labour policies.

In the first part, in particular, we examine how labour policies have been taken into account in the institutional activities of the five countries Leaders, which were gathered mainly from the BRICS Summits' statements and from the first Trade Union meetings of these countries.

In the second part, we analyse the labour legislations, with particular reference to the introduction of the labour flexibility within the three selected legal orders (China, India and Brazil), in order to identify differences and the first elements of convergence of the national rules. These countries are characterized by substantial similarity of the challenges that they are facing. Firstly, they are pursuing the urgent priority of the reduction of poverty, through the implementation of policies relating to the development of education and health protection. Moreover, they also share the goal of making their national labour market more productive, flexible and skilled.

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<sup>1</sup> L. SCAFFARDI, *BRICS, a Multi-Centre "Legal Network"?*, Beijing Law Review, 2004, 5, 142, <http://dx.doi.org/10.4236/blr.2014.52013>; M. CARDUCCI, *Il BRICS Come "Legal Network" e le sue implicazioni costituzionali*, in *Costituzione, Economia, Globalizzazione. Liber amicorum in on. di Carlo Amirante*, Napoli, ESI, 2013; A. COOPER, A. B. FAROOQ, *BRICs and the Privileging of Informality in Global Governance*, Global Policy, 2013, 4, 428-433, <http://dx.doi.org/10.1111/1758-5899.12077>; D. B. WILKINS and M. PAPA, *The Rise of the Corporate Legal Elite in the BRICS: Implications for Global Governance*, Boston College Law Review, 2013, 54, 1149, [http://lawdigitalcommons.bc.edu/bclr/vol54/i\\_ss3/12](http://lawdigitalcommons.bc.edu/bclr/vol54/i_ss3/12).



## 2. The cooperation intra-BRICS for the labour policies.

Since the first meetings between the BRICS countries, the five national Leaders have decided to conduct an idea of an alternative economic development, different from the one followed hitherto by the Western countries. This alternative model is based on an economic, environmental and social development<sup>2</sup>, which draws inspiration from the Rio Declaration of 1992. This objective was initially expressed in the Yekaterinburg Summit Declaration of 2009<sup>3</sup>, albeit briefly, and in the statements of the following Summits, year after year, the BRICS have better specified and determined the meaning of sustainable development.

To achieve this goal, together with other more strictly economic-financial objectives that these countries are setting<sup>4</sup>, the BRICS have decided to adopt a method of collaboration and cooperation, based on the dialogue “*among our countries in an incremental, proactive, pragmatic, open and transparent way*”<sup>5</sup>.

It is on this framework that we have to focus our research to verify how the BRICS countries are dealing with the labour policies topic at the level of institutional relations: on one hand, these policies could be seen to fall into the larger project of the sustainable development; on the other hand, as in the case of labour, it could be applied to the approach based on the exchange and proactive incremental dialogue between these countries.

Scrutinizing the official documents (declarations and action plans) of the six Summits undertaken hitherto, it is possible to immediately notice there is no direct reference to labour policies or, more specifically, it has not been addressed as yet. For example by devoting a specific section in one of the declarations of labour policies, or workers’ rights.

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<sup>2</sup> A definition of sustainable development is “*Sustainable development is development that meets the needs of the present without compromising the needs of future generations to meet their own needs. It contains within it two key concepts: The concepts of needs, in particular the essential needs of the worlds poor, to which overriding priority should be given, and: The idea of limitations imposed by the state of technology and social organization on the environments ability to meet present and future needs*”, cfr. Brundtland Report- World Commission on Environment and Development, 1987. For a reconstruction of the different meanings of the sustainable development and of the three spheres of sustainability (the so called Venn Diagram) see L. DAVICO, A. MELA, L. STARICCO, *Città sostenibili*, Roma, Carocci, 2009, 25.

<sup>3</sup> See the First Summit – Joint Statement of the BRICS Countries Leaders, Yekaterinburg, Russia, 16 June 2009, paragraph 7: “*The implementation of the concept of sustainable development, comprising, inter alia, the Rio Declaration, Agenda for the 21st Century and multilateral environmental agreements, should be a major vector in the change of paradigm of economic development*”.

<sup>4</sup> First of all the new BRICS development bank.

<sup>5</sup> In this way paragraph 15 of the First Summit – Joint Statement of the BRICS Countries Leaders, Yekaterinburg, Russia, 16 June 2009. See also paragraph 5 of the Second Summit Joint Statement, paragraph 6 of the Third Summit Declaration.



However, there are several elements that may make us indirectly suppose there is an interest of the BRICS countries to dialogue and cooperate on labour topics. In this regard, it is appropriate to make a distinction between the first five Summits (from that of 2009 in Yekaterinburg to that of 2013 in Durban) and the most recent one, the sixth, which took place in Fortaleza last summer. As it has been noted<sup>6</sup>, the Summit of Fortaleza marks the transition towards a new strategy of a greater cooperation and collaboration among the BRICS. Even for labour policies, as we will highlight, the Fortaleza Action Plan could have important implications in the coming years.

In the first five Summits<sup>7</sup>, the theme of labour policies can be traced back to the main topic finalized in the achievement of sustainable development, with particular reference to the importance of work as a means to reduce poverty within the BRICS countries. Indeed, there is almost always a reference to labour among the objectives to achieve sustainable social development. First of all, we would like to remind of the Brasilia Declaration of 2010, where in the section dedicated to the fight against poverty, it is expressively referenced: “*We support technical and financial cooperation as means to contribute to the achievement of sustainable social development, with social protection, full employment, and decent work policies and programmes, giving special attention to the most vulnerable groups, such as the poor, women, youth, migrants and persons with disabilities*”<sup>8</sup>. Moreover the New Delhi Declaration of 2012 states “*Accelerating growth and sustainable development, along with food, and energy security, are amongst the most important challenges facing the world today, and central to addressing economic development, eradicating poverty, combating hunger and malnutrition in many developing countries. Creating jobs needed to improve people's living standards worldwide is critical. Sustainable development is also a key element of our agenda for global recovery and investment for future growth. We owe this responsibility to our future generations*”<sup>9</sup>. Or, again, noted in the eThekweni Declaration of 2013, that reaffirms “*We will also continue to prioritise the G20 development agenda as a vital element of global economic stability and long-term sustainable growth and job creation*”<sup>10</sup>.

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<sup>6</sup> See A. ABDENUR, *Remarkable Opportunities and Uneasy Choices*, Diplomatist, August 2014; C. SUESS, *What the West Should Do About the BRICS*, Atlantic-Community.org, 18 August 2014.

<sup>7</sup> Except for the Yekaterinburg Summit, where there are not any references to the labour policies or employment.

<sup>8</sup> In this way paragraph 18 of the Second Summit Joint Statement, Brasilia, Brazil, 16 April 2010.

<sup>9</sup> In this way paragraph 28 of Fourth Summit Declaration, New Delhi, India, 29 March 2012. See also paragraph 24 of the Third Summit Declaration, Sanya, China, 14 April 2011: “*We underscore our firm commitment to strengthen dialogue and cooperation in the fields of social protection, decent work, gender equality, youth, and public health, including the fight against HIV / AIDS*”.

<sup>10</sup> In this way paragraph 8 of the Fifth Summit eThekweni Declaration, Durban, South Africa 27 March 2013.



Regarding the sustainable development perspective, labour has also been the subject of an indirect reference regarding energy policies. In fact, this area may be enhanced not only for the achievement of environmental sustainability through renewable and alternative energies, but it may be a sector to create new jobs<sup>11</sup>.

The concept of labour is also mentioned, though more limited, in relation to economic policies in a stricter sense: both with reference to the possibility that the intra-BRICS trade and investment can contribute to the improvement of industrial development and the full employment objectives in the five countries<sup>12</sup>; both in relation to the Small and Medium Enterprises (SMEs), as economic actors in the creation of new jobs and in the improvement of health conditions within the BRICS<sup>13</sup>.

In general, the approach to labour policies was certainly mediated and indirect in the first five Summits, that highlighted these policies in a larger framework regarding the goal of sustainable development. Labour seems to be interpreted as a means for improving the standard of living and the society in general. In other words, it is not so much a tool to contribute to the economic growth of the BRICS countries, but to better achieve sustainable development in the social sphere, as proclaimed in different international declarations, such as the Rio Declaration and the Agenda 21.

Before continuing the examination of the last BRICS Summit Declaration and the analysis of the new strategy, that seems to emerge from the Fortaleza Declaration, it is useful to make a general clarification. At the time when the BRICS countries initiated this dialogue, other parts of civil society of these five Nations felt the need to establish similar mechanisms to further discussion on specific topics; meetings that have then also been recognised by the BRICS Leaders, placing

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<sup>11</sup> In particular see paragraph 20 of the of the Second Summit Joint Statement, Brasilia, Brazil, 16 April 2010: “*We recognize the potential of new, emerging, and environmentally friendly technologies for diversifying energy mix and the creation of jobs. In this regard we will encourage, as appropriate, the sustainable development, production and use of biofuels. In accordance with national priorities, we will work together to facilitate the use of renewable energy, through international cooperation and the sharing of experiences on renewable energy, including biofuels technologies and policies.*”.

<sup>12</sup> In this sense see paragraph 18 of Fourth Summit Declaration, New Delhi, India, 29 March 2012: “*We agree to build upon our synergies and to work together to intensify trade and investment flows among our countries to advance our respective industrial development and employment objectives. We welcome the outcomes of the second Meeting of BRICS Trade Ministers held in New Delhi on 28 March 2012. We support the regular consultations amongst our Trade Ministers and consider taking suitable measures to facilitate further consolidation of our trade and economic ties. We welcome the conclusion of the Master Agreement on Extending Credit Facility in Local Currency under BRICS Interbank Cooperation Mechanism and the Multilateral Letter of Credit Confirmation Facility Agreement between our EXIM/Development Banks. We believe that these Agreements will serve as useful enabling instruments for enhancing intra-BRICS trade in coming years*”.

<sup>13</sup> In this sense see paragraph 19 of the Fifth Summit eThekweni Declaration, Durban, South Africa, 27 March 2013: “*We recognise the fundamental role played by Small and Medium-Sized Enterprises (SMEs) in the economies of our countries. SMEs are major creators of jobs and wealth*”.



them among the various annual events provided by each Summit and action plan. This was the case of the Academic Forum, a platform for the cooperation among the five academic communities and the Business Council, a collaboration group between important BRICS enterprises. In fact, these additional groups usually conduct their exchange meetings on the sidelines of the BRICS Leaders Summit, in order to identify strategies and common challenges in their sectors.

As in the case of labour policies, a formula of cooperation and collaboration between the workers' representatives of the five countries is being structured, although this meeting has not received recognition by the BRICS Leaders as yet. Since 2012, there have already been three meetings<sup>14</sup> of the BRICS Trade Union Forum. This Forum unites national trade unions to start debating common issues in employment policies and labour rights. The BRICS Trade Union Forum, in the wake of the official statements of the five BRICS countries, seeks, on one hand, to reaffirm the necessity to create an alternative model of economic development<sup>15</sup>; and on the other to focus more attention on the current issues of workers in these countries. At the moment, the Forum has decided to debate four areas<sup>16</sup>: improvement of the economic system in a “*just and fair world trade system*”, where the element of solidarity may reduce existing inequalities; development of alternative sources of development finance with the BRICS Development Bank; better structuring of the Forum in order to give a voice to the workers of the BRICS countries, as written “*an end to inequalities, unemployment and poverty for a decent work and inclusive development*”<sup>17</sup>; making emerge the BRICS Trade Union Forum, and consequently obtaining recognition by the

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<sup>14</sup> The First BRICS Trade Union Forum took place in Russia in December 2012, the second one on the 25 March 2013 at Durban, South Africa, the third one at Fortaleza on the 15 July 2014.

<sup>15</sup> See the Second declaration of the BRICS Trade Union Forum, 25 March 2013, Durban, South Africa: “*The significance and the concrete meaning of BRICS to workers under current global conditions should be positioned as an alternative model of inclusive development that serves the interests of the majority in society*”.

<sup>16</sup> See the Second Declaration of the BRICS Trade Union Forum, 25 March 2013, Durban, South Africa and the Third Declaration of the BRICS Trade Union Forum, 15 July 2014, Fortaleza, Brazil.

<sup>17</sup> In this sense the Second Declaration of the BRICS Trade Union Forum. See also the Third Declaration of the BRICS Trade Union Forum (paragr. n. 2), where that Forum better expresses the keys principles in order to reach this objective: “[1.] *Work on the basis of the standards and principles of the International Labour Organization (ILO) to promote Decent Work, boost employment, secure a universal social protection floor and promote the transition from the informal to the formal economy. [2.] Defend the legitimate rights of the working class within a progressive social dimension; promoting a development agenda that puts industrialization, environmental justice and human progress for equitable and fair growth models at the centre of our common commitments; [3.] Establish a dialogue and cooperation to promote peace, security, human rights and global sustainable development; [4.] Strengthen the social protection for young people and women*”.



BRICS Leaders as an institutional official meeting dedicated to the debate on workers' rights, on strategies and challenges in labour policies<sup>18</sup>.

Over the next few years we will see if the BRICS Trade Union Forum will be a part of the official actions of the BRICS countries. In fact, before recognizing this activity of the Forum, the BRICS Governments should initiate a debate on the labour topic. In this perspective, it appears the Fortaleza Declaration and its action plan has emerged.

As mentioned above, this Declaration marks a shift to a new strategy, which could well increase the collaboration and the cooperation among the BRICS countries, including a greater and more explicit appeal to the sharing of common policies. Using the words of the Declaration itself *“in this new cycle, while remaining committed to those objectives, we pledge to deepen our partnership with a renewed vision, based on openness, inclusiveness and mutually beneficial cooperation. In this sense, we are ready to explore new areas towards a comprehensive cooperation and a closer economic partnership to facilitate market inter-linkages, financial integration, infrastructure connectivity as well as people-to-people contacts”*<sup>19</sup>. Two main issues essentially emerge from this act: the start of the constitution of the BRICS Development Bank and the emergence of a greater interest in social policy in general<sup>20</sup> and with particular reference to labour and social security policies. In fact, as initiated in the Action Plan of Fortaleza it provided this year there will be the first Meeting of Ministers (or Senior Officials) responsible for social security<sup>21</sup>. Moreover Labour and Employment, Social Security, Social Inclusion Public Policies will be explored in the new areas of cooperation this year<sup>22</sup>.

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<sup>18</sup> In particular see the Third Declaration of the BRICS Trade Union Forum (paragr. n. 11) *“We believe that through the formalization of a labour space it will be possible to formulate propositions and commitments on relevant policy topics of the intergovernmental action plan, working in line with the Sanya Declaration (2011) regarding the dialogue around social protection and decent work”*.

<sup>19</sup> In this sense paragraph 4 of the Sixth Summit Declaration, 15 July 2014, Fortaleza. Brazil. See moreover paragraph 6 of the same Declaration *“In this new cycle, besides its contribution in fostering strong, sustainable and balanced growth, BRICS will continue to play a significant role in promoting social development and in contributing to define the international agenda in this area, building on its experience in addressing the challenges of poverty and inequality”*.

<sup>20</sup> See paragraph 7 of the Sixth Summit Declaration *“To better reflect the advancement of the social policies of the BRICS and the positive impacts of its economic growth, we instruct our National Institutes of Statistics and the Ministries of Health and Education to work on the development of joint methodologies for social indicators to be incorporated in the BRICS Joint Statistical Publication. We also encourage the BRICS Think Tanks Council to provide technical support in this task. We further request the BRICS National Institutes of Statistics to discuss the viability and feasibility of a platform for the development of such methodologies and to report thereon”*.

<sup>21</sup> Point 10 of the Fortaleza Action Plan.

<sup>22</sup> See the Fortaleza Action Plan.





Undoubtedly, these statements could not be followed upon, however it cannot be denied that there has been a shift to a different and greater cooperation among the BRICS countries, which would go beyond the mere international agreement on trade matters<sup>23</sup>.

In this perspective, labour could be another sector, such as health and education, on which the BRICS could decide to start a sort of policy harmonization or, in a more general way, sharing of strategic objectives. In the next paragraph we will try to demonstrate whether, despite labour policies not having had a real resonance at the institutional level as yet, it is possible to identify first elements of convergence of national rules.

### **3. Labour policies and legislations: three case-studies – China, India and Brazil.**

Among the most interesting phenomena to be observed in the economic world, the integration of the BRICS countries emerges in size and scope. The extraordinary economic rise of Brazil, Russia, India, China and South Africa is all in their numbers, that certify the exceptional level of growth in terms of wealth (estimated to be around 20% of global GDP in 2012)<sup>24</sup>. The increase in the prosperity is an important result on the political national ground, in particular in terms of poverty reduction, and it is also important for the OECD countries, which have a significant interest in promoting trade and investment with these new emerging economies. In fact, the BRICS absorbs a significant portion of foreign investment in the OECD area, with a growing trend that shows no signs of stopping. The stock investment of the OECD countries directed to these emerging economies has almost doubled over the last decade, mainly due to the significant increase of foreign direct investment in the People's Republic of China<sup>25</sup>. According to recent statistics, if we consider the percentage of trade between the OECD countries and the BRICS

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<sup>23</sup> There are an huge debate on the nature of the BRICS group. Among the many contributions, see: M. PANEBIANCO A. L. VERDECCHIA, *BRICS: Gruppo internazionale di stati*, Diritto comunitario e degli scambi internazionali, 2013, n. 1 /2, 3; C. MANZOLILLO, *Nuovi modelli organizzativi a livello internazionale fra antiterrorismo (SCO) ed intercontinentalismo (BRICS)*, Diritto comunitario e degli scambi internazionali, 2012, 1, 158; A. GROMYKO, *La geometria del policentrismo sta cambiando: a proposito del BRICS*, Roma e America – Diritto romano comune, 2012, 33, 313; P. CATALANO, *Principali finalità e fondamenti del BRICS: natura e storia. Riflessioni iniziali*, Roma e America – Diritto romano comune, 2012, 33, 277; M. EMERSON, *Do the BRICS make a bloc?*, CEPS Commentary, 30 April 2012; F. A. KORNEGAY, *BRICS in search of identity*, Institute for global dialogue, 20 March 2012; O. SLOBODNÍKOVÁ, R. NAGYOVÁ, *Global Influence of the BRIC Countries*, in P. MÁCHA, T. DROBÍK (eds), *The Scale of Globalization. Think Globally, Act Locally, Change Individually in the 21st Century*, 2011; Z. LAÏDI, *The BRICS Against the West?*, CERI STRATEGY PAPERS, N 11 – HorsSérie, November 2011.

<sup>24</sup> L. SCAFFARDI, *Pensare l'impossibile: BRICS, tra miraggio e realtà*, in L. SCAFFARDI (ed.), *BRICS: Paesi emergenti nel prisma del diritto comparato*, Giappichelli, 2012, pp. 112 et seq.

<sup>25</sup> T. MANFREDI, *L'aumento dello stock di investimenti diretti esteri*, in <http://www.linkiesta.it/fdi-brics-ocse>

countries, it has gone from 1.7% (total trade) in 2001 to 2.9% in 2008<sup>26</sup>. Therefore, it has become crucial the maintenance of high rates of growth of the emerging economies for the OECD countries. In this perspective, the economic performance of the BRICS countries cannot be separated from the functioning of their labour markets. It is obvious that the choice of investing in emerging countries is influenced by the working standards of the countries to which these investments are addressed<sup>27</sup>. Among the BRICS, although it is possible to notice that labour legislations exhibit significant differences between countries, it may be identified some common elements. In particular, China, India and Brazil are characterized by substantial similarity of the challenges that they are facing. Firstly, they are pursuing the urgent priority of the reduction of poverty, through the implementation of policies relating to the development of education and health protection. These countries also share the goal of making their national labour market more productive, flexible and skilled. The significant changes, in the face of what these countries have come to be, have imposed to adopt innovative measures for the regulation of the labour market. For example, the People's Republic of China has had to take effective measures to ensure the transfer of 450 million workers from the public sector to the private one, with dramatic consequences in terms of re-allocation of this huge mass of workers.

Before turning to the general lines which characterize the labour market in these Countries, it is necessary to make some general considerations in order to better contextualize the analysis of their national labour legislations. If we consider GDP data, it is possible to note that only Brazil can boast an acceptable level of GDP *pro capite*, amounting to \$ 11.208 in 2013. On the contrary, India ranks with the lowest level worldwide with \$ 1.499, in any case well below from China, which is placed in the middle position between the two countries with a GDP per capita of \$ 6.807. With regard to the labour force, while India is characterized by a particularly young working population, Brazil has the oldest workforce compared the other two countries. In terms of income inequality, Brazil has the highest degree of inequality. In fact, analysing the so-called GINI coefficient (the index that measures this type of inequality), it shows that Brazil has a coefficient of 54.7 points, compared to 33.9 points of India (referring to 2010) and 42.1 points of the People's Republic of China (referring to 2010). However, it should be noted that both China and India have grown their respective GINI coefficient in the last two decades: in the Chinese case, it has gone from 32.4 points in 1990 to 42.1 in 2010, while in the case of India it has gone

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<sup>26</sup> CAMERA DI COMMERCIO DI MILANO, *I Paesi BRIC e le relazioni con l'economia italiana e milanese*, Ufficio Informazione Economica e Statistica (eds.), Milano, December 2011.

<sup>27</sup> DUANMU, JING-LIN, *A Race to Lower Standards? Labor Standards and Location Choice of Outward FDI from the BRIC Countries*, *International Business Review*, 23/2014, pp. 620 et seq.



from 30.8 in 1994 to 33.9 in 2010. Instead Brazil has an opposite trend, which has seen reducing inequality in the redistribution of national wealth from 63.3 points in 1989 to 54.7 in 2009<sup>28</sup>. The presence of such high rates of inequality focuses on important issues in the face of what it is right to think on how it may be conjugated the economic development of these emerging countries with a contextual reduction of inequalities or, at least, on how it is possible associate economic development without causing a corresponding increase in social inequalities.

As part of these considerations, there is a debate on the flexibility of the labour market, a very lively debate also in public opinion of the Western countries. Several reasons may be able to establish the need for flexibility in the labour market, if we refer to the meaning of flexibility as an exit policy that may ensure an easier conclusion of a labour contract. Undoubtedly, the changing nature of the employment relationship, that undergoes a natural evolution in terms of technology over time, as well as in terms of greater or lesser demand from the market, can only lead to the conclusion that even the labour market should deal with the need for restructuring and reorganization, so inherent to the development of the global economy. Moreover the goal of flexibility policy ensures companies the opportunity to improve their operational efficiency and their market competitiveness. Therefore, it would be intuitive to think in terms of a direct correspondence between the increased efficiency of companies and the following growth of investments; in this sense the economic doctrine has focused closely on the study of correlations between labour market flexibility, efficiency and welfare. According to some commentators, the best performance in terms of the functioning of the national economy would occur in those countries that combine flexibility policies and further measures improving the social safety net for workers<sup>29</sup>. In this perspective they define the concept of *flexicurity*, which highlights the complexity of the relationship between flexibility and workers' benefits. In other words, it seems to surprisingly emerge the fact that those countries that have a high level of flexibility in the labour market within a poor social safety net, would not reach better economic results. Moreover, the same studies have showed that those countries characterized by a systemic rigidity of the labour market, combined with a high level of social protection, would not be able to achieve high economic performance too. In other words, there would be side effects, especially with regard to developing countries from the creation of flexible labour markets without an efficient social safety net for workers. It is evident that this considerations on the issue of flexibility in the labour

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<sup>28</sup> A. VERMA & A. V. MOREIRA GOMES, *Labor Market Flexibility & Trajectories of Development: Lessons from Brazil, India & Cina*, *The Indian Journal of Industrial Relations*, 50/2014, pp. 51 et seq.

<sup>29</sup> M. A. SHARKH, *Are There Optimal Global Configurations of Labor Market Flexibility and Security? Tackling the "Flexicurity" Oxymoron*, Employment Sector, International Labor Organization, 15/2008.



markets are perfectly suited to the new economic powers that are watched with interest by the Western companies, that would relocate their activities in these countries.

Even in countries such as India, China and Brazil, the debate on the issue of flexibility is lively and intertwined with the latest developments of the world economy. In particular, in India the debate has been recently rekindled, after the elections of May 2014 have marked a clear turning point in the composition of the Indian Parliament; political observers are unanimous in highlighting the clear defeat of the Congress Party (in favour of the new Prime Minister Narendra Modi) should be also sought in the fact that the party that had ruled the country in the past decade had failed in reforming the labour market. The peculiarities of the Indian labour market deal with certain elements of the work force of this huge country.

First of all, it should be remarked the weight that is played by the geographical distribution of the population in the context of the overall labour force. In fact, in India 68% of the total population resides in rural areas (data of 2013). This data is particularly high, given that the Chinese rural population accounts for 47% of the total, while in Brazil the percentage falls to 15%. The data relating to urbanization has a direct impact on the level of education and training, since it is extremely difficult to have an increase in income, as well as an improvement in the level of education and social services for the population living in rural (and often the poorest) areas of the country. Not surprisingly China has launched a program of urbanization of its population. No policy can work regardless of political intervention tending to the urbanization of the labour force, since such strategies would require massive investment in urban infrastructure.

Secondly, it is appropriate to take in consideration a further peculiarity of the Indian system, consisting in substantial backwardness of infrastructure development should accompany the economic development of the country. What is more significant is the particular backwardness and neglect of educational institutions in India, which is revealed in all its drama in the literacy rate of India's population (according to statistics of 2010 it stood at 62.8% of the population). This percentage is very low, considering that in China it is 94%, while in Brazil it reaches 90%.

Another aspect that characterizes the Indian labour market is related to the fundamental importance that, in the Indian context, takes on the so called informal employment, indicating the fact that companies have chosen to bypass the labour legislation in order to achieve a saving on labour costs. This latter aspect is particularly significant especially in light of the fact that India has one of the strongest social protection systems, whose effectiveness and usefulness is substantially frustrated when companies are circumventing the social safety net that has been prepared for the benefit of the working population. In addition, there is a further problem, in



technical terms, given by the continued stratification of the regulations and the related problems of lack of legal certainty. This means that, as mentioned previously, there cannot be identified any direct correlation between the increase of social protection and labour. Therefore, what emerges is a paradoxical situation: the (complex) labour legislation providing protection to the working population is bypassed with the informal employment that creates a labour market in which flexibility, while it is not provided by the legislations, is achieved *de facto*. In this situation it is clear that fundamental reform of labour legislation could have strong importance.

In this sense, a reform would take account of some aspects. Firstly, it should facilitate the reallocation of the labour force currently employed in the informal sector in order to give full benefits of the social safety net to these workers. Secondly, this reform should be bypassed by huge investments in the two weaknesses of the Indian system: education and urbanization. The gap that prevents the development of India (compared to China and Brazil) is unbridgeable, but requires a political will to concrete action. However, with regard to the need to reform the labour market in terms of greater flexibility, the Indian Parliament would be called to balance the greater freedom of dismissal with a series of measures that should accompany the process of reallocation of workers in the system. Scholars suggests the right to a financial compensation for the dismissed employee, parameterized on the length of the employment relationship and on the real opportunity to be relocated in another job. Moreover, India should take action to reduce the informal labour sector, in order to ensure that all workers who were deprived of being able to benefit from the guaranteed protections by the network of social protection of the Indian State.

If the debate on reforms in India is just at the initial stage, China is already in an advanced stage of implementation of the reforms in the labour market. The reason is easy to understand, since the major impetus originated as a result of liberalization of the economy that made their entry into the Chinese legal order from the end of the seventies, decreeing the transition to a market economy. Similarly to what is expected from the Indian system, since the early eighties China has been directed toward the urbanization option of working population, to which was added the need to transfer from the public sector to the private one of 450 million workers. Until 1978, the year of initiation of the reform process, Chinese people did not choose their own career path at the end of their educational training; it was the State that dealt with the assignment of a job to the citizen, who in turn received a salary set by the central political power. There was not any forms of flexibility, and employment was assured for the whole population. A system like this could not survive in the challenges of globalization, since it had its downside in low productivity and the



absence of incentives to improve the production<sup>30</sup>. Therefore, since the mid-eighties, Chinese authorities implemented the first measures of economic liberalization, ensuring employers the freedom of hiring workers on a contractual basis and a substantial deregulation of the amount of the salaries in the private sector. However, the deregulation measures were not devoid of adverse effects, particularly in terms of social costs, with the consequent need for intervention for the population deprived of work. In this framework the need to proceed in a re-regulation of the labour market emerges, in order to correct the excesses of the new market economy.

With regard to the private sector, that has become the engine of national economic development, in 2003 there has been already a reform of the so-called "Enterprise Minimum Wage Regulation" issued in 1993; this reform, while not introducing a national minimum wage, has created a regulatory framework that allows local authorities to set minimum salary agreed with the trade unions and the employers' associations. This reform was followed by other reform measures of the labour market. First, a new legislation on labour relations, which came into force in January 2008; this measure has completely redrawn the labour contracts, providing three types of contracts: the open-term contract, the fixed-term contract and the contract for performing specific task<sup>31</sup>. This new legislation represents an advanced regulation in the field of labour policies worldwide, because it intervenes in two specific aspects: firstly, it aims to create the conditions to combat the use (or the misuse) of the informal work, meeting the needs of flexibility of the business world; secondly, it protects workers with measures that pursue the objective of ensuring them, after an initial intake of fixed-term employment contract, to stabilize their professional position, thus avoiding the inconvenience of the contract renewal. Basically, after the signing of a first contract renewal of fixed-term employment, the new legislation provides the conclusion of an open-term contract, which has to necessarily include explicit agreements about the number of hours of work, the payment of the overtime, the social insurance, the conduct of a trial period and, more generally, it provides all the other general conditions of an open-term contract. In particular, article 14 of the new legislation limits the abuse of fixed-term contract, that was occurred as a result of the liberalization of the labour market in the mid-nineties<sup>32</sup>. This reform has provided that, in addition of the fixed-term employment contract, further forms of protection of workers. In fact, workers may also request

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<sup>30</sup> X. MENG, *Labor Market Reform in China*, Cambridge University Press, 2000.

<sup>31</sup> G. ALLARD & M. J. GAROT, *The Impact of The New Labor Law in China: New Hiring Strategies for Foreign Firms?*, *Rivista Diritto GV*, 6/2010, pp. 527-540.

<sup>32</sup> J. T. WANG, *Article 14 of China's New Labor Contract Law: Using Open-Term Contracts to Appropriately Balance Worker Protection And Employer Flexibility*, *Pacific Rim Law & Policy Journal Association*, 18/2009.



the signing of an open-term contract in case a worker had worked for the same employer for ten consecutive years. In this way, the legislation intends to put a form of additional protection of the stabilization of employment relationship<sup>33</sup>. According some scholars<sup>34</sup>, the reform of the labour market in China, which is now going at full speed, could have an impact not only on Chinese workers, but also on foreign investors. In fact, the new legislation would increase labour costs (as evident effect of the transition from the informal to formal economy), with a corresponding decrease (or at least a decline) of the treacherous behaviour of Chinese enterprises in trade world, because they have always been able to benefit from profitable labour costs.

Other two additional regulatory measures, adopted by Chinese authorities, have to be mentioned. Firstly, the so-called "*Law on Mediation and Arbitration of Labour Disputes*" that innovated the judicial system in the labour sector. This new system provides that the two sets of proceedings are preceded by an attempt of mediation, in which a negative outcome follows an arbitration between the parties. In this way the State Court are only involved in the third stage of the proceedings<sup>35</sup>. Secondly, the "*Labour Promotion Law*" is aimed at promoting sustainable economic development in terms of "*balance between economic development and the expansion of employment opportunities, and promoting social harmony and stability*" (Article 1). The new regulatory framework provides general rules in order to contrast discriminations in the workplace against women, disabled people and people belonging to certain ethnic groups, establishing also a specific judicial protection.

Even Brazil, like China, can boast of a labour legislation rather recently, though some adjustments would not be superfluous in relation to some controversial aspects, such as the risk of a possible abuse of flexibility. In Brazil the first regulatory measures on the flexibility in the labour market were approved during the Cardoso Administration (1995-2002). However, this reform failed to bring down unemployment, that were reaching high levels especially in certain metropolitan areas, where it remained beyond the threshold of 20%<sup>36</sup>. Paradoxically, the unemployment rate decreased during the next Lula Administration (2003-2010), during which,

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<sup>33</sup> V. H. HO & H. QIAOYAN, *The Recursivity of Reform: China's Amended Labor Contract Law*, *Fordham International Law Journal*, 37/2013, p. 1016.

<sup>34</sup> T. LAN & J. PICKLES, *China's New Labour Contract Law: State Regulation and Worker Rights in Global Production Networks, Capturing the Gains*, 5/2010.

<sup>35</sup> M. GALLAGHER, J. T. GILES, A. PARK, M. WANG, *China's 2008 Labor Contract Law: Implementation and Implications for China's Workers*, *I.Z.A. Discussion Paper*, 7555/2013.

<sup>36</sup> Among the measures approved by the Cardoso Administration, it is important to cite those relating to flexible working time, the economic incentives of the variable part of the salary (parameterized with the productivity of work performance) and the reduction of compensation claims in cases of dismissal.

despite the absence of the adoption of significant regulatory measures, innovative economic policies were inaugurated<sup>37</sup>, that contributed to the creation of 16 million new formal jobs in eight years, compared with 2 million created during the previous Cardoso Administration<sup>38</sup>. The huge problem of the Brazilian labour market, shared with the Indian case, is precisely the great weight of the informal economy. Despite of considerable progress reached since 2000 the informal job continues to be a decisive factor in the labour market of Brazil. The percentage of formal employment, which in 2000 amounted to 44.6% of the total workforce, has made an extraordinary leap forward reaching 56.9% of the total workforce of the country in 2012. On the other side, the informal work<sup>39</sup> has declined from 38% in 2010 to 33% in 2013.

The major impetus recorded in the early nineties, involving in the first instance the controversial issue of flexibility, has its origins in the constitutional revision of 1988, when the Federal Constitution expressly provides the legitimacy of the dismissal power exercised by employers, while tempering this power with the obligation to pay an adequate compensation to workers. In this perspective new legislation was adopted in the early nineties, introducing the fixed-term employment contract (Law 9,601 of 1998) and recalculating the amount of wages (Law 10.101 of 2000). In recent years no other legislative measures have been adopted. This inactivity is rather driven by new forms of *de facto* flexibility, which pushed to the extreme lack of protection for workers, whose employment contracts are masked with other legal instruments. Firstly, this is the case of many workers formally classified as members of cooperatives<sup>40</sup>, who works for the same cooperative. While respecting the formal legislation<sup>41</sup>, workers lost all the benefits of welfare and social security, which would be entitled in a case of a employment contract. Another emblematic case is that of the outsourcing<sup>42</sup>, legal recognised by the Labour Section of the Supreme Court, which has provided the absence of formal subordination as a condition of validity. However, this recognition seems insufficient in terms of regulation of the outsourcing, which would require a specific legislative measure. Therefore, the Brazilian case appears peculiar than the other case

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<sup>37</sup> In particular: macroeconomic policies promoting formal labour demand; incentives for educational and training policies; policies aimed at including within the formal labour even micro-enterprises.

<sup>38</sup> CARDOSO A., *Brazil's Labor Market. Limitations and Opportunities for Emancipation*, in J. N. PIETERSE & A. CARDOSO, *Brazil Emerging: Inequality and Emancipation*, Routledge, 2013, pp. 64 *et seq.*

<sup>39</sup> Informal work is that carried out in the absence of formal registration at public register, as well as that of persons recruited irregularly, or even one of the fake independent employees, without any type of welfare and social security net.

<sup>40</sup> The so-called *cooperativas de mao-de-obra*

<sup>41</sup> Law 12.690 of 2012

<sup>42</sup> The so-called *terceirizacão*



studies (China and India), because it is possible to highlight how the new social and economic opportunities (and, in particular, the thrust in the formalization of labour relations) were not the result of legislative measures, aimed at introducing new and additional forms of flexibility, but rather the consequence of economic and social policies aimed at encouraging the most excluded segments of the society. So, the Brazilian experience may be considered noteworthy for having been able to combat informal economic sector through stimulus measures aimed at supporting the registration of labour contracts, through simplification measures and through a wise use of tax leverage, made of incentives for companies that opt for competitiveness strategies<sup>43</sup>.

#### 4. Final remarks.

In light of this first reconstruction of the institutional activities related to labour policies and the analysis of labour legislations of the three selected countries (China, India and Brazil), it is possible to draw some general considerations. At the moment it is not possible to confirm yet that there are sharing objectives still to be achieved. As it turns out, in fact, on the institutional level of the co-operation and collaboration of common policies among the BRICS countries has yet to be discussed. This possibility is not ruled out, however abstractly: firstly, because in the early Summits, albeit indirectly, we have seen, the five countries have expressed an interest in this matter; in second place due to the new strategy launched by the Summit of Fortaleza, in the next few months we could see the realization of a meeting between the ministers responsible in matters of social security; last, but not least, in the analysis of the three cases it seems possible to outline some common elements in the labour legislations.

Surely the new strategy post-Fortaleza should take into account a number of challenges in labour policies that the BRICS countries will face, such as unemployment<sup>44</sup>, youth employment<sup>45</sup>, women's work<sup>46</sup>. In other fields, such as health care<sup>47</sup>, which represent the hard

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<sup>43</sup> J. BERG, *Laws or Luck? Understanding Rising Formality in Brazil in the 2000s*, ILO office in Brazil, Working Paper n. 5.

<sup>44</sup> In a general perspective, on the future challenges of the social security problems see International Social Security Association, *Social security coverage extension in the BRICS A comparative study on the extension of coverage in Brazil, the Russian Federation, India, China and South Africa*, Geneva, 2013; D. PIETERS, P. SCHOUKENS, *Social Security in the BRIC Countries*, European Institute of Social Security, 2012.

<sup>45</sup> In this sense the recent report International Policy Centre for Inclusive Growth, United Nations Development Programme, *Youth and employment among the BRICS*, Brasilia, 2014.

<sup>46</sup> See in this sense P. LALTHAPERSD-PILLAY, *Gender Influences in the Labour Market: the case of BRICS*, Mediterranean Journal of Social Sciences, 2014, 5, 10, 146.

<sup>47</sup> In this sense see Global Health Strategies initiatives (GHSi), *Shifting Paradigm. How the BRICS Are Reshaping Global Health and Development*, 2012. Moreover see the important work that every year the BRICS National Statistics Offices are having done in order to collect BRICS national data.



core of a country's policies, the BRICS have initiated a process of dialogue. Labour could well be the next BRICS policy!