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The Process of Issuing the Work Code in Morocco

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INTRODUCTION

After several years of intense debates, dramatic turns of events and aborted conferences, the Work Code has finally come out. It was adopted by the Chamber of Counsellors and that of the Representatives, respectively the 23rd June and 3rd July 2003.

Published in the official Bulletin on December 8th, 2003, the Code entered into force on the 8th of June, 2004, six months after its publication. Nevertheless, the application texts of the new Code, -as we are writing- are not yet adopted. The old application texts remain effective while waiting for the appearance of the new ones.

The social partners heaved a sigh of relief after the adoption of the Code, a working agreement (Modus Vivendi) obtained with difficulty, taking into consideration the stakes of negotiation that delivered it! With the Family Code, the Work Code constitutes the juridical star of the year 2003!

The last minute coming out of the Code would have been impossible without the agreement of the 30th of April 2003 on the social dialogue. The settlement of April 30th had released the blocking situations, which left the Code in abeyance for years. The predecessors of this social dialogue mechanism had reached some agreements on the 1st of August 1996 and the 23rd April 2000. However, the consensus on the main elements of the Code was almost impossible because each party held fast on its positions, in spite of the accession of the “consensual” alternation government in 1998. Nevertheless one must acknowledge that this one has tried as well as can be expected, to get the Code in its initial version out of the tunnel, without being able to have it adopted by the parliament. Was it afraid to take the responsibility of adopting a text judged to be “unpopular” by its detractors of the time, one of them being the Work Democratic Confederation? With the enthronement of King Mohamed VI in 1999, and later the designation of Mr.Driss Jettou in 2002 as Prime Minister, the process of adoption of the Work Code has been accelerated, the economic logic having at least won the upper hand on the political quarrels!

Our objective in this paper is neither to ask questions about the content of the Code, nor about its working, but rather about its elaboration process. Thus we will have to retrace the political as well as the juridical (legislative and regulatory) itinerary followed by the text.

A substantial text, made up of 589 articles, inaugurating a new era of professional relations, based on negotiations rather than on confrontations –this being the first wish of the legislator- the Work Code is worthy of careful thought. This is, however, a complex task for many reasons; first of all because of the multiplicity of the actors having participated in the elaboration of the text, from the main actors (Government, Parliament and Unions) to the secondary actors (International Work Organization, National and International NGO(s)). Furthermore, the remarkable nature of the very process of text elaboration makes the process in this particular case an exception to the ordinary procedure for the adoption of laws. Finally, the scope of the subject and its sensitivity makes it specially politicized: Work is a theme at the heart of society and with great economic importance.

Many questions will guide our endeavor: why a new Work Code? What progression did this law follow? How did the de-blocking of the situation unfold? We will trace the role of the social partners and particularly focus on the work done at the competent parliamentary commission, in this case that of justice, legislation and of the rights of man. We will schematize the positions of the negotiation actors as a synthesis under the guise of synoptic charts. A few conclusive reflexions will be drawn at the end of this off-handed view on the elaboration process of the Moroccan Work Code.

1 WHY A WORK LEGISLATION REFORM?

The ruling elite wanted to reform the work code since the end of the seventies. But it is starting from the nineties that this reform has become imperative, under the conjugated effect of two factors, internal and external.

1.1. An Internal Necessity

The 1990's was the decade of juridical¹ as well as social leveling in Morocco. On this last point, one is forced to note that the negative consequences of the structural adjustment program (SAP) on the social plane (increasing rates of unemployment, growth of social opposition, etc.) have dictated the establishment of a “social readjustment” plan. This required updating the work code and releasing much of the pressure created within an atmosphere of almost permanent social tension.

The old work code, in great part inherited from the Protectorate time, was far behind in relation to the socio-economic evolution of the country. If adaptation efforts of this code were supplied after independence, they were limited, in the absence of a real will for social change. A big negative aspect characterized the old law; it was big and contained scattered and uncoordinated texts which made its application difficult. The old texts suffered from many insufficiencies, for example on the protection plan of the wage-earner against abusive firing, the absence of wage-negotiation mechanisms, and the inadequacy of conciliation mechanisms.

All in all, the reform project was part of a recasting program of the right of firms: trade code, trade tribunals, companies' rights. The Work Code then constituted one element of the puzzle. Yet, while other codes with a purely commercial character could easily be adopted, it wasn't the same for the Work Code because of its complex connection to the social fiber of society.

The national conjecture of the beginning of the nineties was difficult: social agitation consecutive to the Gulf War, besides the 1991 Fez events and their shock wave. Social demand grew. The country had, in a way, entered into a turbulent zone provoked by the mutations of the international system: Fall of the Berlin Wall, breaking up of the Soviet Union. The social atmosphere was thus strained: repeated strikes, the questioning of the results of legislative and municipal elections of 1992, an increase of social conflict, the

¹ Due to the entry of Morocco in international Competition: Signature of the GATT Agreements-association agreement with the European Union, among others.

closing of firms, and other social signs of unrest which could have dissuaded foreign investors from coming and settling in Morocco.

It is suitable to note that in 1992, Morocco amended its Constitution, going towards broadening government attributions and reinforcing parliamentary power. In fact, the Palace was trying, by this step, to prepare for the normalization of the opposition. Such an action necessitated the taming of the syndicates which were, until now, rebellious, -at least the protestors among them. Thus the Work Code appeared within that context to have major political stakes and to be used as a considerable pressure card.

1.2. An external constraint

Morocco doesn't live in isolation. The country has, since its independence, opted for openness, a choice strengthened by the SAP, the deepening of relations with the European Union, and the adherence to the World Trade Organization (WTO). This choice had a price to be paid: to reform the national juridical norm to adjust it to the principles of the International Labour Organization (ILO) and to accept the criticisms coming from the international NGO(s) in case these norms are not respected.

Between 1980 and 2000, Morocco had not ratified many of the conventions of the ILO², which brought reproaches from the ILO, especially that the ILO forged in 1998 the "fundamental work norms" by adopting a Declaration pertaining to it³. These norms including respecting trade union liberties, are imposed on all countries, even those which, while being members of this institution, didn't ratify the corresponding conventions. Hence the necessity for Morocco to re-activate, or rather to put the finishing touches to its process of ratification of these conventions, later on to integrate them in its internal mechanism⁴.

Some international NGO(s) joined this campaign directed against Morocco to make it conform to the appropriate international texts. One example was the ICFU (International

² Cf. Mohamed Tadili, *La Reforme de la legislation sociale au Maroc*, Rabat, 2004, p.19.

³ <<Declaration de L'IWO relative aux principe et drIWOs fondamentaux au travail>> adopted in June 1988. see www.ilo.org

⁴ The last convention ratified by Morocco concerns <<The worst forms of children's work>> published in the official bulletin of 4-12-2003. The international pressures have thus borne their fruits!

Confederation of Free Unions), of which the Moroccan Work Union MWU is the only member. During the third examination of Moroccan Commercial Policy done in June 2003, the (CISL) addressed to WTO an overwhelming report about the non-application by Morocco of the conventions of the ILO, though ratified by the country. Among the violations listed were practices against two conventions related to child labour (convention number 138 about the minimum age of working and convention number 182 about the abolition of the worst forms of the children's work). In this report, the (CISL) pressed the (WTO) to attract Morocco's attention on the commitments contracted during the ministerial conference of the (WTO) in Singapore in 1996 and that of Doha in 2001, bearing on respecting the fundamental work norms.

Finally, to some extent the text of the work code was finally adopted in 2003 because the parliamentarians as well as the government were under the pressure of time: the spring season was coming to a close and the United States affirmed that it wouldn't sign a free-exchange agreement with Morocco if the latter adopted the new Work Code.

2. ELABORATION OF THE CODE: A LONG BUT PAINSTAKING PROCESS

The first attempt for the elaboration of a new Work Code goes back to the 1979, in the aftermath of the strikes of the 10th and 11th April 1979. But this attempt was short-lived, through lack of sufficient consensus around the question, at the very moment the country was initiating its negotiations with the International Monetary Fund (IMF) and the World Bank. It was not until the beginning of the nineties that a will to reform the work code was felt.

2.1. Aborted attempts

The first real sketches for the elaboration of a new work code dated from the beginning of the nineties. They are noted down in the framework of a general juridical leveling.

As each one knows, laws follow an ordinary elaboration process⁵. The Work code was an exception⁶. In 1993, the Work Legislation reform project was conceived by the Work

⁵ Refer to the intervention of professor Mohamed Amine Benabdellah on “the juridical law elaboration process”

Ministry, in concert with the government's general secretariat, of course, but this project remained still-born. Indeed, at that time, there was no answer to the question whether the social partners (unions and employers) were to be associated to this action.

So, very quickly, the project was laid low, showing the limits of a “technical” approach that only copied imported texts on Moroccan reality. Yet the government presented part of the project to the parliament, but the latter rejected it because of the numerous gaps taxing this project.

Also at that time, it must be noted that the late Hassan II was preparing a political normalization strategy, consisting of the integration of the opposition in the government. The Unions were thus appealed to in this endeavour. And to pass a text in parliament without their knowledge and against their will, could only dissuade them from participating in this vision (that is, normalizing relations with the opposition), and, consequently, could provoke strong reactions from them.

One understands that the political context of the time wasn't ready to have such a sensitive electoral text adopted, while the “political pre-requisites” were not yet resolved.

Another project has been prepared by the government of “technocrats” in 1994, concomitantly with other juridical reforms. In 1995⁷, this project was presented to the parliament, still under a uni-cameral regime. But, like its predecessors, this project didn't get the consent of the social partners, which minimized its chances at success. At the *legislation, justice and the rights of man parliamentary commission*, discussions took place exclusively between government representatives and the opposition parties. Nevertheless, the latter served as a link for the claims of the unions specifically those affiliated to political parties, meaning the (WDC) Work Democratic Confederation and the (GUMW) General Union of Moroccan Workers. Many of the text amendments⁸ presented

⁶ Professor Ben Ali put forward in his intervention a typology of decisions: sovereignty, arbitrage, consensus and emergency decisions. We can thus, place the elaboration of Work Code process among the decisions based on consensus.

⁷ Between 1994 and 1995, the government was partially paralyzed because of the King's illness who was forced to remain bedridden for many days in the united states in the summer of 1994.

⁸ These propositions related to basic questions such respect to union liberties, limiting of abusive laying-offs, flexibility in employment...

were appropriate, a reason which urged the government to withdraw the project from the parliamentary circuit.

In fact, the economic atmosphere and the socio-political context of the time were strained. In the mid-nineties, the national economic conjuncture wasn't ideal: a terrible year of drought aggravated by the so-called rehabilitation campaign. At the same time, Morocco had signed agreements that made the adoption of the code imperious (e.g. GATT agreements and the Association Agreement with the European Union). This strained economic situation was accompanied by social objections due to unfavourable economic conditions. Social objection manifested itself in strikes of the unemployed diploma holders, which led to compression of the state budget because of the creation of employment posts.

The political atmosphere wasn't ready to start a serene debate on the Work Code. Now a political reform was shaping up, materialized by the adoption of a new constitution introducing the bicameral regime, thus preparing the country for political rotation.

In 1995, the position of social partners were diametrically opposite, that of the government being a *priori* neutral. The Unions aggressively defended the principle of Union Freedom, the reinforcing of work inspection; the limitation of abusive laying offs. The employers demanded flexibility in employment, recognition of part-time work, and reorganizing of working time.

So we were faced with a fundamental dilemma: to introduce doses of flexibility in the work code without it having adverse consequences on workers' conditions. This complex task was complicated further because none of the social partners was ready to present concessions.

2.2. Glimmers of hope: the nascent institutionalization of social dialogue (or the holding back theory of late Hassan II)

If the work code was delayed, it is because the institutional game wasn't straight. At the beginning of the nineties, the late Hassan II tried to convince the opposition to enter in political normality, but in vain! The constitutional reform of 1992 participated in it.

Nineteen ninety four (1994) saw the birth of an institution that was going to stimulate the adoption process of the work code: *the Advisory Council for the follow-up of the social dialogue*. This council is to be compared with two others having appeared at the same time and which participated in what we could call “the holding back theory of the late Hassan II: *the national council of youth* (dissolved later on) and *the advisory council of the rights of man*. Indeed, faced with the potential social perils the deceased king looked to establish institutional means of a social consensus to prepare for a political alternation.

Royal will established an institution for social dialogue. It is a so called “tri-party” dialogue negotiations table: government, unions and employers, these being united in the (GCME). Yet at this time, the (MWU) hadn't enrolled in this process, using the pretext of the government's refusal to recognize the Union's liberties, which, it argued, must come prior to any discussion. As we can see, the work code was for certain people a real pressure card. Nevertheless, *the advisory council for the follow up of the social dialogue* has attained some results.

The 1st of August 1996 agreement

The first result of that negotiation was on the first of August 1996, formalized in a document, a common declaration or a kind of gentlemen's agreement and a code of good behaviour. The contribution of this arrangement is that it has put in place several commissions, one of them devoted to the work code project.

It is suitable to note that, a few weeks later; the Constitution was amended, introducing specifically the bicameral regime, further to an old request of the opposition parties. Political alternation was coming into view. Two major events must hold our attention here: the accession of the alternation government in 1997, and the enthronement of King Mohammed VI in 1999.

The Accession of the Youssoufi's Government

No one will deny the social “fibre” of Mr. Youssoufi's government and his will to deepen the social dialogue, and by this reactivate the process of adoption of the Work Code.

During the year 1998, the newly established government has undertaken a new revision of the draft of the work code withdrawn from the parliament in 1995, by injecting into it several modifications based on the propositions put forward by the opposition in 1995, but also by the international conventions of the ILO and also the conventions of the Arab Labour Organization.

A new version of the Code was drawn up in 1998. On the 21st of January 1999, the government invited the three main central unions (GUMW, MWO, DCW) plus the GCME to start –in the framework of the tripartite commission on the project of the Code, negotiations on the revised platform of the project in question.

At the end of four months of discussions, the negotiators agreed on 570 articles out of a total of 576. A real progress! Having been enriched by these propositions, the Code was approved by the government council on December 30th 1999, and by the Council of Ministers on February 29th, 2000. On March 21st 2000 the project landed in parliament, more precisely at the Counsellor's Chamber (upon the initiative of the government, which keeps the choice to submit the text to any of the two chambers at first according to the constitution).

Work started in March 29th, 2000 at the *commission of legislation of justice and of rights of man*. But dissensions had already been felt about the approach to follow. Some counsellors thought that parliament didn't have to stand by the results of the social dialogue. Others, taking over from the Union world, considered that the text would only come into existence after the social dialogue decides on all unsolved matters. Still others said that the project under discussion was a regression on the plane of union liberties and that it was dictated by the international financial institutions⁹.

Consecutive to the social agreement of 19th, Moharram 1421, to which we will come back later, the actors of the negotiation have asked that there be a consensus on the six points still hanging. Yet discussions have taken place between May 2000 and March 2001 between the government and the social partners without reaching a compromise.

⁹ Cf. Report of the commission of Justice Legislation and the rights of main on the law project no.99.65 on the Work Code, service of printing and distribution of the chamber of counselors. Rabat 2003. p.11

The six points of contention set the Unions of Workers against employers. They enclosed, in a certain way, the last resistance pockets. These six points were:

❖ **The principle of freedom at work (art.39)**

The employers believe that freedom at work is correlated to the right to strike. The Unions saw suppression of the rights of freedom at the workplace as a serious fault.

❖ **Placing a ceiling on abusive severance pay (art. 41)**

The employers have asked for a ceiling on severance pay in order to avoid abusive practices on the part of tribunals in the evaluation of relative amount.

❖ **Determining severance pay levels (art. 53)**

The Unions have requested an increase in severance pay levels as legislated by the royal decree of the 14th of August 1967. The employers opposed this motion.

❖ **Administrative authorization for termination of contract (art. 67)**

What happens when the Wali (governor) is faced with a request for closing down an enterprise and he doesn't answer? The employers interpreted silence to mean acceptance while the Unions thought the opposite.

❖ **The reduction of the duration of work consecutive to an economic crisis in the enterprise (art. 185)**

The social partners disagreed on the appropriate number of days of technical unemployment at the heart of an enterprise and the percentage of salary reduction consecutive to this unemployment.

❖ **Union representation**

Union representation was a point of dispute, this time among the unions themselves. The work code, in its final version, has brought clarification to this issue. Prior to this time, the government has based its decision on the results of the elections of the personnel delegates in the public arena and in the private sector to determine the most representatives unions.

It is true that Mr. Youssoufi's government, although close to the unionist circle, has stimulated the process of elaboration of the Code, by bringing a sizeable contribution, but it lacked political courage. Nevertheless, this attitude did not prevent the bursting of the Social Union of Popular Forces (SUPF), hard core of the alternation government, with the creation of the (NIC) National Ittihad Congress, under the leadership of a dissident Mr. Nouri Amaoui, who was the leader of the DCW¹⁰.

2.3. The Enthronement of King Mohamed VI & the Primacy of Economics

With his enthronement, King Mohamed VI the process of the issuance of the work code was accelerated. Indeed, the utmost priority for the young King was the promotion of investment as clearly stated in his program-speech inaugurating the parliament's autumn session in October 2002. The work code and the organic law on the right to strike were put upfront. We couldn't expect a strong promotion of investment and therefore of economic growth to reduce unemployment in the absence of a modern work code.

Practically, since the 23rd of April 2000 agreement, no notable progress had been made in the Work Code arena, specifically on the six points of contention. With the appointment of Driss Jettou as Prime Minister in 2002, to the surprise of the parties that won the elections, the negotiation process entered into a decisive phase.

Jettou, a “Conciliator” Prime Minister, close to the business circle

The Jettou government, we will see later, was more sensitive to royal solicitations regarding promoting investments and increasing growth. A pragmatic man, himself a contractor, with a conciliatory spirit, in everyone's opinion, Mr. Jettou knew how to convince the social partners to go past their differences to build a “New Morocco” in conformity with the wishes of the Sovereign.

Strengthened by royal directives and learning lessons from past failures, the Prime Minister followed an uncommon work approach: he substituted to the traditional social

¹⁰ Later, the FDT: Democratic Federation of Work was created by the non-dissident socialists to counter the DCW. Let's recall that Mr. Youssoufi has resigned from his function as general secretary of the SUPF in 2003...

summits, i.e. separate meetings with the Unions and employers, which -in the opinion of some- were not very productive and prone to over-bidding¹¹. In the opinions of others, he might have followed the principle of divide and rule.

If previously, the negotiation themes were treated in a jumble, without hierarchical organization, the discussions were organized in three mixed commissions:

- Work code and the right to strike;
- Illness insurance compulsory, social housing and retirement;
- Salaries and severance pay.

This procedure was quite effective –After a marathon reunion, the minutes were signed on April 30th, 2003, on the eve of the strong moments of expressing unionist demands.

The “historical” agreement of April 30th 2003: the code draft goes to Parliament

With this agreement, a decisive step was taken for the definitive adoption of the final text. The ambiguities were thus removed, at least in part, on the contentious points. The only thing left was to present the text to the parliament. The Chamber of Counsellors was the first to take hold of it on June 5th 2003, followed by the Chamber of Representative on June 24.

The faithful translation in the agreement of governmental announcements on Union freedoms has therefore allowed the reopening of parliamentary works. Particularly, article 288 of the Penal Code, which allows for sentences depriving of liberties in case of hindrance to the freedom of work, will be revised in virtue of this compromise. This has as a consequence the integration, in the projected code, of the conventions of the (ILO) relative to Union Liberties: Convention no.135 on the protection of the representatives of the wage-earners in its entirety, and the convention no.87 on Union freedom, partially. Other promises were posted, such as the suppression of hindrances to the creation of Unions.

¹¹ As referred to by the counsellor for social affairs of the French Embassy in Morocco, “Actualites Sociales”, 18 June 2003, p.2

And to underline his will to respect the promises given, the Prime Minister addressed to the commission concerned a letter on the 23rd of May 2003. This document underlines the government's attachment to the vision of the code deposited at the Chamber of Counsellors during the preceding legislature, and requests to discuss it in priority, in the light of the results of the last social round and this in accordance with the article 56 of the constitution. After four long meetings, the commission adopted the text after having included the results of the social dialogue, and reformulated the writing of several articles of the code.

The debates took place in the commission of justice, of legislation and of the rights of man. An ad hoc under-commission (called technical under-commission) especially devoted to the work code project, was created to facilitate the discussion work. The text was easily passed in the general assembly of the Counsellors Chamber and was voted unanimously on the June 23rd 2003, after having undergone several modifications, from cosmetic touch ups to the adding of many basic dispositions. Thus, in comparison to the old version, the new Code will have a preface and a prelude. In total, 104 amendments were integrated, including fourteen new articles. All of these amendments were accepted by the government.

The Position of the Justice and Development Party inside Parliament

In the Chamber of Representatives, at the justice commission, legislation and the rights of man, only the Justice and Development Party (JDP) presented amendment positions, 18 in all, including a proposition for the amendment of the prelude¹². It has in fact proposed that a sentence in homage to the action of the union movement in national liberation be deleted. The JDP even requested that article 274 be amended so that wage-earners benefit from a special authorization for 30 days of absence to go on pilgrimage.

The amendment propositions formulated by the JDP were rejected by the government still under the shock of the murderous events of Casablanca on May 16th 2003. The text

¹² The JDP doesn't have representation in the Chamber of Counsellors. But the JDP has lately created a Union affiliated to it: The National Union of the Works of Morocco (MWOM) on NVWM

was unanimously adopted, the JDP saying that it didn't want to oppose the adoption of such an important text; but it has still marked its position by being different.

The Work Code project was unanimously adopted by the Chamber of Counsellors on June 23rd 2003, followed by the Chamber of Representatives on July 3rd 2003. Then came the work of the government's General Secretariat to check the code's conformity with the Constitution, so that it is not rejected by the Constitutional Council. After this phase, the King promulgated it by the Dahir no 1-03-194, on September 11th 2003. It was then published in the official bulletin on December 8th 2003 for the Arabic version, the French version having been published on May 6th 2003.

The Code came into effect on June 8th 2004, six months after its publication in Arabic. However, its application texts (executive decrees) are not yet out, because they themselves are the object of stormy discussions between the social partners.

CONCLUSIONS AND PERSPECTIVES

At the end of this survey we can make the following observations about the way the Palace and the government dealt with a politicized legislation:

- ❖ The Difficulty of the adoption of the work code came from the fact that it constituted a major political stake, not only for the government (a pressure card) but also for the Unions (a blackmailing instrument). The government could very well have deferred on the remarks of the opposition to have the text adopted. The 1995 government, for example, had at its disposal de facto a parliamentary majority. But, armed with the royal directives, it avoided taking an unpopular measure at a time when the Palace was looking for a “reconciliation” with the opposition.
- ❖ The social dialogue was in fact a political dialogue, and taken as a hostage, the Work Code project had to pay for it (because the dialogue was biased, giving way to several over-biddings) Perhaps, without knowing it, the unions were preparing for political alternation!

- ❖ The social dialogue progressed by fits and starts. Most of the social agreements occurred under social pressure: strikes triggered off and others announced. And to calm the minds, the government decided to increase salaries, letting the code project advance by small steps.
- ❖ The adoption of the Code was made easier because the question of regulation of the right to strike-a point of contention- had been put aside.
- ❖ Several ministers worked on the Code in turn, each putting his touch.
- ❖ The enrollment of Morocco in the globalization logic (an important mass of free trade agreements signed) rushed the appearance of the Code. The opening up on external markets constitutes an element of a complex juridical regulation.
- ❖ The incredible story of the elaboration of the Work Code cannot be dissociated from Morocco's political evolution, from parliamentary practice, from the emergence of a new economic elite and from the reality of unionist power.
- ❖ Taking into consideration the specific nature of the work legislation with a strong social content, high economic value and political as well as cultural meaning, the elaboration of the code followed a particular itinerary, which is an exception to the normal procedure for the adoption of the legislative texts. It remains to be seen whether this exception will remain a unique episode or will become part of the legislative practice.
- ❖ Will the institutionalization of the collective negotiation by the Code constitute a safety cushion against social tensions? What will be the fate of the tripartite social dialogue? It seems that, from now on, the center of gravity of the social negotiation will be moving inside the enterprise and will unite two parties: the most representative unions and the employers. The institutionalized collective negotiation will relay the traditional dialogue which has no object anymore (if, however, we except the preparation of the law on strikes and the application decrees of the work code). The right to work will then take more and more a conventional character. But will this be sufficient to guarantee a durable “social

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peace”, difficult to obtain in a world where the least crisis (for example the rise in the price of oil) provokes prolonged shock waves, reaching deeply in the society.

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