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Tackling Forced Labour in Supply Chains: The Brazilian Case

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ABSTRACT
Despite the global prohibition of slavery and the widespread implementation of legal frameworks to combat forced labour, this illegal practice remains widespread, particularly in complex global supply chains. Given this worrying scenario, exacerbated by the expansion of cross-border manufacturing, this study critically examines the effectiveness of existing laws in addressing forced labour in supply chains, with a particular focus on international legal instruments and Brazil's anti-slavery legislation. Brazil was chosen as a case study due to its comprehensive and robust legal framework against forced labour, but persistent incidence of modern slavery cases. Using the traditional research method, this paper conducts a conceptual and theoretical analysis of Brazilian anti-slavery laws, incorporating an examination of relevant international and national legislation, case law and treaties. By examining the Brazilian case study, this article aims to provide valuable insights for other developing countries facing similar challenges. It demonstrates that modern slavery persists in environments where legal enforcement is weak, public institutions are ineffective, and institutional support is lacking.

KEYWORDS: Forced Labour, Supply Chains, Modern Slavery, Brazil Anti-Slavery Law

1. Introduction

Despite slavery being considered illegal worldwide and the widespread implementation of rules and regulations to tackle forced labour, this illegal practice persists, posing a serious threat to social and economic development and raising questions about the role of the law in combating modern slavery. In recent decades, the removal of trade barriers and technological advances have allowed the growth of cross-border fragmentation of manufacturing within a highly integrated global production network. However, it is within these intricate supply chains that many cases of forced labour seem to emerge.

The complexity of this regulatory landscape presents a challenge for the international community, raising questions about the suitability and effectiveness of the existing laws and regulations and whether alternative approaches are needed to tackle modern slavery. Therefore, this study aims to critically examines how current laws address the issue of forced labour in supply chains, with a particular focus on the relevant international law and anti-slavery legislation in Brazil. The choice of the national jurisdiction of Brazil for the study was made due to its robust legal framework to combat modern slavery and the fact that, despite all these legal protections, the country continues to face a high number of forced labour cases.

To properly assess the laws on forced labour in supply chains, this study is structured as follows. First, it outlines the current landscape of modern slavery, and the key challenges faced in the fight against forced labour. Next, it provides an overview of the relevant international and Brazilian anti-slavery legislation, followed by an analysis of important court decisions and treaties to evaluate the applicability and enforcement of these laws. Finally, the study assesses whether Brazil's anti-slavery legislation can adequately and efficiently promote fair and ethical practices in supply chains.

Although Brazil has adopted an advanced set of laws against forced labor, incorporating international best practices and strong legal protections, it seems that a significant gap remains between its legal provisions and real-world enforcement. The persistent challenges

in achieving meaningful progress in the fight against modern slavery highlight a critical issue: laws that exist on paper but lack effective implementation.

2. Methodology

The article uses the traditional research method to make a conceptual and theoretical analysis of the Brazilian anti-slavery legislation. It employs a statutory approach by examining Brazilian anti-slavery legislation, including relevant legal instruments and regulations. Additionally, a conceptual approach is utilized to analyze key legal principles and doctrines related to forced labor within the Brazilian legal framework. This study does not rely on empirical data but instead assesses legal texts, case law, and scholarly interpretations to critically evaluate the effectiveness of existing legislation in addressing modern slavery.

3. Modern Slavery in An Increasingly Globalized World

The Qatar 2022 World Cup event has been the source of substantive controversy after numerous reports of forced labour and other serious exploitation of migrant workers in multiple sectors central to the sporting event came to light.[1] However, few remember that this same issue was also raised back in the 2014 World Cup in Brazil[2] and in the 2018 World Cup in Russia.[3]

Unfortunately, this scenario confirms the analysis of the data collected in the 'Global Slavery Index Report 2018', that modern slavery is a serious global problem that is always worst when there is a weak government response.[4] It also shows that nowadays many of the cases involving modern slavery are happening within complex supply chains led by powerful companies at the top of the chain that deliberately outsources production to reduce costs and avoid liability.[5]

The new technological developments and the removal of trade barriers in an increasingly globalized world have facilitated the fragmentation of manufacturing across borders, creating highly integrated global production networks. While these developments have boosted economic growth and efficiency, they have also made the fight against modern slavery significantly more complex. This complexity stems from the fact that supply chains now span multiple jurisdictions, each with different legal frameworks, enforcement capabilities, and levels of regulatory oversight. As companies outsource production to lower-cost regions, it becomes more challenging to monitor labour conditions and ensure compliance with anti-slavery laws. Many cases of forced labour occur deep within supply chains, where

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1 Amnesty International, 'Qatar World Cup of Shame' (2016) <https://www.amnesty.org/en/latest/campaigns/2016/03/qatar-world-cup-of-shame/> accessed 01 December 2022.

2 Thomson Reuters Foundation, 'Brazil adds World Cup stadium builder to slave labour "dirty list"' (2022) <https://news.trust.org/item/20140704074731-3ih6d/> accessed 01 December 2022.

3 Business & Human Rights Resource Centre, 'North Korean slaves allegedly building key Russian World Cup stadium - Business & Human Rights Resource Centre' (2022) < https://www.business-humanrights.org/en/latest-news/north-korean-slaves-allegedly-building-key-russian-world-cup-stadium/> accessed 01 December 2022.

4 Walk Free, 'The Global Slavery Index 2018' (2022) <https://www.globalslaveryindex.org/2018> accessed 01 December 2022.

5 Marcio Amazonas Cabral de Andrade Jonas Ratier Moreno, Virgínia de Azevedo Neves, Marcelo Estrela Fiche, 'O Trabalho Escravo Contemporâneo no Brasil sob a ótica da análise econômica do Direito' (2019) 208 Revista de Direito do Trabalho - Revista dos Tribunais RR.

subcontracting, informal employment, and weak enforcement mechanisms make detection and accountability difficult. [6]

While countries like Brazil have developed robust legal frameworks to combat forced labour, these laws seem to lack the enforcement mechanisms needed to hold national and multinational corporations accountable for forced labour occurring within their supply chains.

4. International and National Anti-Slavery Legislation in Brazil

To carry out a critical analysis of the existing laws and regulations against forced labour in supply chains, this study starts the study with a summary of the current international and national anti-slavery legislation, focusing on the Brazilian jurisdiction. Modern slavery is not defined in law and different countries use different terminologies to refer to it. However, a commonality that can be observed between the different terms is that the denomination of 'modern slavery' is essentially used as an umbrella term to refer to different types of illegal exploitation of a person for personal or commercial gain, including forced labour, debt bondage and human trafficking.[7]

In line with the adoption of an umbrella term, capable of encompassing various complex forms of abuse and exploitation of the person, that are not so apparent as they were in colonial times, the Brazilian legislator made the right choice to adopt a wide legal concept of modern slavery that is not restricted to the deprivation of liberty and that places the dignity of the human being as the main element of que equation. According to article 149 of the Brazilian Penal Code, decree law nº 2.848/1940, which uses the term 'slavery-like' ('trabalho análogo ao de escravo'), it is a crime to submit a person to forced labor, bounded labour, and degrading working conditions.

Forced labour is defined in the International Labour Organization (ILO) Convention on Forced Labour 1930 (No. 29), which was signed and agreed to by Brazil, as 'all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily'. Despite the use of a term that is suitable to cover most modern forms of exploitation, the penalty provided by the Brazilian law of two to eight years of imprisonment does not seem to fulfill the function of discouraging the practice of future crimes when compared to the punishment of other systems, such as the English law that provides for a maximum penalty of imprisonment for life (Modern Slavery Act 2015).

It should also be noted here that although Brazil had ratified several instruments of international law, which provide for the immediate adoption of measures for the eradication of slave labor, the main ones being ILO Convention nº 29 (Decree nº 47.721/1957), ILO Convention nº 105 (Decree nº 58.822/1966) and American Convention on Human Rights 'Pact of San José, Costa Rica' (Decree nº 678/1992), it was only in the mid-1990s that the Brazilian government has recognized the existence of 'slavery-like' work and began to take steps to eradicate it in the country.[8] Being a major commodity production nation, most 'slavery-like' cases in Brazil are found in activities linked to the agricultural sector, followed by the civil

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6 Otaviano Canuto, 'Overlapping Globalisations' (2022) World Bank <https://drive.google.com/file/d/1bBZ4Q3snT8GWDaKmVdgcX2WkpZktj4ZO/view> accessed 01 December 2022.

7 Walk Free, 'The Global Slavery Index 2018' (2022) <https://www.globalslaveryindex.org/2018> accessed 01 December 2022.

8 Ministério do Trabalho e Emprego (MTE), *Manual de Combate ao Trabalho em Condições Análogas às de Escravo* (MTE 2011).

construction sector, and finally the clothing sector.[9] That being the case, it seems to make sense that most legislative and administrative actions to combat forced labour are internal with a focus on products and production carried out within Brazil, as opposed to the position adopted by countries like the USA and England.[10]

Despite already having investigative bodies, the Brazilian government saw the deficiency of its investigative system exposed in a case taken to the Inter-American Commission on Human Rights of the Organization of American States. Therefore, in 1995, the Brazilian government created the Special Mobile Inspection Groups (GEFM) to investigate more effectively incidents of forced labour throughout Brazil.[11] Later, during the years of the Labour government, led by the then President Luiz Inácio Lula da Silva, elected in 2002, the Brazilian government began to show a more active posture in the fight against slave labour. In 2003, the government created the National Commission to Eradicate Slave Labour (CONATRAE) to coordinate government efforts to combat forced labour, and it also initiated its first National Plan for the Eradication of Forced Labour, with the main goal to integrate and coordinate the actions of different public bodies and society.[12]

In addition to legislative changes and the implementation of more effective measures for the monitoring and repression of forced labour, Brazil introduced in 2004 one of its most famous anti-slavery tools called the 'dirty list' or ‘lista suja’, which creates a register of names of employers that have been caught by GEFM exploiting workers in conditions analogous to slavery, including forced labour within their supply chains.[13] The list is seen as more than a symbolic ‘naming and shaming’ tool as it involves an investigation by the GEFM and it could represent to the employer more than a threat of bad publicity for non-compliance, as it may also have to pay fines and other labour and social security debts to have its name removed from the list.

Another important initiative of the government is the creation of a ‘Negative Certificate of Labour Debts’ (CNDT), an essential document for participation in public tenders.[14] Unlike the annual statement created by the English law (Modern Slavery Act 2015), where companies are expected to voluntarily disclose their efforts to eradicate trafficking and forced labour in their supply chains, the Brazilian transparency and disclosure regulations heavily relies on regulatory institutions.

The peculiarities of the Brazilian scenario, where most cases of forced labor occur in the agricultural sector, not so susceptible to the negative effects of bad publicity, would probably mean that the legal transplant of the English rules of disclosure would have little practical effect in the fight against forced labour in supply chains in Brazil. Furthermore, doubts already surround the efficiency of the English tools due to the lack of incentives and penalties, making the disclosure response appear to be more symbolic than substantive in nature.[15]

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9 Radar S. I. T. Painel de Informações e Estatísticas da Inspeção do Trabalho no Brasil, *Plataforma SmartLab de Trabalho Decente* (Radar SIT 2022).

10 Ashley Feasley, 'Deploying Disclosure Laws to Eliminate Forced Labour: Supply chain transparency efforts of Brazil and the United States of America' (2015) Anti-Trafficking Review 30.

11 Inter-American Commission on Human Rights, *Report nº 95/03* (Brazil 11289 Friendly Settlement, 2003).

12 Gov.br, 'Plano Nacional para Erradicação do Trabalho Escravo' (*@gov.br,* 2022) <https://www.gov.br/mdh/pt-br/navegue-por-temas/combate-ao-trabalho-escravo/plano-nacional-para-erradicacao-do-trabalho-escravo> accessed 01 December 2022.

13 MTE Decree nº 540/2004 (BRA) and MTPS/MMIRDH nº 4, 11 May 2016 (BRA).

14 Lei nº 12.440/2011 (BRA) e Ato CGJT nº 1, 21 January 2022 (BRA).

15 Rachel N. Birkey and others, 'Mandated Social Disclosure: An Analysis of the Response to the California Transparency in Supply Chains Act of 2010' (2018) 152 Journal of Business Ethics 827.

Despite significant advances in the fight against forced labor during the workers' government, the right-wing governments that followed adopted a posture that led to the retrogression of the rights acquired by workers. Initially, in the government of the then-president Michel Temer, the 'Labor Reform' was approved, which, among its provisions restricted access to justice for the most vulnerable workers and determined the prevalence of the negotiated over the legislated even if it results in less favorable working conditions.16 Currently, the government of President Jair Messias Bolsonaro adopted measures aimed at weakening important governmental bodies that monitor and repress forced labor, like the Public Ministry of Labor and Labour Courts, as well as trade unions. It is believed that the return of the newly elected labour government in 2023 will bring hope to this scenario.[17]

5. The Suitability and Effectiveness of the Existing Laws and Regulation

The study now turns to the analysis of the applicability and efficiency of the existing international and national laws and regulations against forced labour in supply chains in Brazil. Although the Brazilian legislation does not expressly provide for the legal responsibility of the last link in the production chain, the jurisprudence of the labour courts have been predominantly in the sense that the law allows the accountability of all actors in the production chain in the case of the use of forced labour.

In the Zara case, the Court adopted the theory of structural subordination, which recognizes the responsibility of the company at the top of the production chain for the employees of its suppliers and sewing workshops, regardless of the existence of direct subordination, given the financial power that the company exerts interfering in the productive chain of its garments.[18] The Labour Court confirmed its role as one of the most efficient institutions in the country in the combat against forced labor, emphasizing a broad set of social responsibilities a company has, since being the party in a position of power it has the deontological duty to use power responsibly and the obligation to positively influence the weaker parties (stakeholder theory of corporate social responsibility).[19]

Despite the apparent progress during the Labour government, the condemnation of the Brazilian State in 2016 by the IACHR undermined its international image in the fight against slave labor and raised questions about the effectiveness of the current international and national laws and regulations.[20] Important scholars believe the ‘labour reform’ was one of the main setbacks in the fight against forced labour in Brazil. The reform was approved in a troubled political context, immediately after the impeachment of President Dilma Rousseff, with a substantial part of its final text written by lobbyists from large corporations and banks, as well as under the false promise that the reform would generate more jobs and help the

16 Reforma Trabalhista (2017) Lei nº 13.467, 13 June 2017.

17 Anti-Slavery International, 'Bolsonaro election raises fears for Brazil’s anti-slavery progress - Anti-Slavery International' (*@anti_slavery,* 2018) <https://www.antislavery.org/bolsonaro-election-raises-fears-for-brazils-anti-slavery-system/> accessed 03 December 2022.

18 TRT 2, RO 00016629120125020003, rel. Des. Ricardo Artur Costa e Trigueiros, 4ª T., j. 7.11.2017, publ. 17.11.2017.

19 Kenneth M. Amaeshi, Onyeka K. Osuji and Paul Nnodim, 'Corporate Social Responsibility in Supply Chains of Global Brands: A Boundaryless Responsibility? "Clarifications, Exceptions and Implications"' (2008) 81 Journal of Business Ethics 223.

20 *Trabajadores de la Fazenda Brasil Verde* (Judgment) Inter-American Court of Human Rights, Case 12.066 (06 March 2015).

economy. However, not only did the promises fail to materialize, but they also aggravated the already precarious labour market, negatively impacting the fight against slave-like work.[21]

The Brazilian State failed to observe the international principle of the irreversibility of fundamental rights by reducing the scope of the crime of slave-like labour, which in its contemporary form and especially in complex supply chains, occurs through the degradation of working conditions. There are also concerns from the national and international community about the recent attacks of the Brazilian government, led by its president Bolsonaro, on important state, non-state, and international institutions that play an active role in the fight against slave labour. At a certain point, the right-wing government even considered discussing the extinction of the labour courts, one of the most prominent institutions in the fight against forced labour in supply chains.[22]

As it was stressed in the 'Sustainable Development Goals (SDGs) 2015, sustainable development requires the efforts and contributions of every part of society, including the public and private sectors. In developing countries like Brazil, where regulatory institutions are prioritized over and above others, courts have played a major role in promoting sustainable development and ensuring the effective application and enforcement of national and internationally agreed sustainable development principles.[23]

The Brazilian courts also play an essential role in counterbalancing the State's high reliance on prescriptive regulations that have often instigated creative compliance measures that ultimately defeat the regulatory goals, a problem of enforcement that has been further exacerbated by globalization and the development of new technologies. Appropriate institutional support is crucial as greater regulation alone may not improve behavior if avoidance is prevalent.[24] It is important to keep in mind that the voluntary character of corporate social responsibility (CSR), where companies voluntarily go beyond what is legally required, is almost entirely based on economic coercions, either through law and policies of the state, ethical and moral pressures of civil society or economic pressures of buyers, consumers, and industry.[25]

6. Conclusion

The analysis of the current international and national legislation, case law, and treatises shows that modern slavery is always worst where law or public institutions are weak. Despite ratifying several instruments of international law and approving a new anti-slavery legislation, the Brazilian State relies heavily on prescriptive regulations that have not been enforced properly due to creative compliance measures and insufficient control of the

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[21] Luciana Paula Conforti, 'A "REFORMA TRABALHISTA" E OS IMPACTOS NO COMBATE AO TRABALHO ANÁLOGO A DE ESCRAVO - DOI: 10.12818/P.0304-2340.2020v77p145' (2020) Revista da Faculdade de Direito (Belo Horizonte, Brazil) 145.

[22] Câmara dos Deputados, 'Entidades criticam fala de Bolsonaro sobre fim da Justiça do Trabalho - Notícias' (*Notícias da Câmara dos Deputados,* 2019) <https://www.camara.leg.br/noticias/551370-entidades-criticam-fala-de-bolsonaro-sobre-fim-da-justica-do-trabalho/#:~:text=No%20in%C3%ADcio%20de%20janeiro%2C%20em,de%20tramitar%20na%20Justi%C3%A7a%20comum.> accessed 03 December 2022.

[23] Onyeka K. Osuji & Paul U. Abba, 'Domestic Adjudicative Institutions, Developing Countries and Sustainable Development: Linkages and Limitations' in Cambridge University Press (ed), *Corporate Social Responsibility in Developing and Emerging Markets* (Cambridge University Press 2019).

[24] Onyeka K. Osuji, 'Corporate Social Responsibility, Juridification and Globalisation: 'Inventive Interventionism' for a 'Paradox'' (2015) 11 International Journal of Law in Context 265.

[25] Rashmi Venkatesan, 'The UN Framework on Business and Human Rights: A Workers' Rights Critique' (2019) 157 Journal of Business Ethics 635.

government. On the other hand, the support for prescriptive CSR in developing countries like Brazil make sense due to governance issues like weak stakeholder pressure and widespread corruption.

In the Brazilian case, courts have played a major role in promoting sustainable development and ensuring the effective application and enforcement of national and internationally agreed sustainable development principles. The advances brought by the Labor government, with the enactment of laws that can cover new forms of modern slavery, the creation of advanced specialized investigative bodies, the coordination of government actions and civil society, as well as the use of 'name and shame' tools to stimulate compliance, was heavily affected with the new right-wing government that removed the political support and weakened the enforcement of anti-slavery laws.

Likewise, the law is currently not sufficiently and satisfactorily promoting fair and ethical practices in supply chains as the basic element of coercion is weakened, mainly due to the poor performance of the government, the lack of penalties proportional to the seriousness of the crime, and the weak support to important public and private institutions that could exert significant pressure in the enforcement of fair and ethical practices in supply chains.

Bibliography

Abba OKOPU, 'Domestic Adjudicative Institutions, Developing Countries and Sustainable Development: Linkages and Limitations' in Press CU (ed), *Corporate Social Responsibility in Developing and Emerging Markets* (Cambridge University Press 2019).

Amaeshi KM Osuji OK and Nnodim P 'Corporate Social Responsibility in Supply Chains of Global Brands: A Boundaryless Responsibility? "Clarifications, Exceptions and Implications"' (2008) 81 Journal of Business Ethics 223.

Birkey RN and others, 'Mandated Social Disclosure: An Analysis of the Response to the California Transparency in Supply Chains Act of 2010' (2018) 152 Journal of Business Ethics 827.

Brasil RSITPdIeEdIdTn, *Plataforma SmartLab de Trabalho Decente* (Radar SIT 2022).

Business & Human Rights Resource Centre, 'North Korean slaves allegedly building key Russian World Cup stadium` (2022) <https://www.business-humanrights.org/en/latest-news/north-korean-slaves-allegedly-building-key-russian-world-cup-stadium/> accessed 01 December 2022.

Canuto O, World Bank 'Overlapping Globalisations' (2022) < https://cfi.co/asia-pacific/2018/02/otaviano-canuto-world-bank-overlapping-globalisations/>.

Case 11289 (Jose Pereira) Inter-American Commission on Human Rights, Report nº 95/03 (Brazil 11289 Friendly Settlement, 2003).

Conforti LP, 'A "REFORMA TRABALHISTA" E OS IMPACTOS NO COMBATE AO TRABALHO ANÁLOGO A DE ESCRAVO - DOI: 10.12818/P.0304-2340.2020v77p145' (2020) Revista da Faculdade de Direito (Belo Horizonte, Brazil) 145.

Deputados Cd, 'Entidades criticam fala de Bolsonaro sobre fim da Justiça do Trabalho - Notícias' (*Notícias da Câmara dos Deputados,* 2019) <https://www.camara.leg.br/noticias/551370-entidades-criticam-fala-de-bolsonaro-sobre-fim-da-justica-do-trabalho/#:~:text=No%20in%C3%ADcio%20de%20janeiro%2C%20em,de%20tramitar%20na%20Justi%C3%A7a%20comum.>.

Feasley A, 'Deploying Disclosure Laws to Eliminate Forced Labour: Supply chain transparency efforts of Brazil and the United States of America' (2015) Anti-trafficking review 30 <https://www.antitraffickingreview.org/index.php/atrjournal/article/view/135/137>.

Foundation TR, 'Brazil adds World Cup stadium builder to slave labour "dirty list"' (2022).

Free W, 'The Global Slavery Index 2018' (2022) <https://www.globalslaveryindex.org/2018 >.

Gov.br, 'Plano Nacional para Erradicação do Trabalho Escravo' (*@gov.br,* 2022) <https://www.gov.br/mdh/pt-br/navegue-por-temas/combate-ao-trabalho-escravo/plano-nacional-para-erradicacao-do-trabalho-escravo>.

International A, 'Qatar World Cup of Shame' (2016) < https://www.amnesty.org/en/latest/campaigns/2016/03/qatar-world-cup-of-shame/>.

International A-S, 'Bolsonaro election raises fears for Brazil's anti-slavery progress - Anti-Slavery International' (*@anti_slavery,* 2018) <https://www.antislavery.org/bolsonaro-election-raises-fears-for-brazils-anti-slavery-system/>.

Jonas Ratier Moreno MACdA, Virgínia de Azevedo Neves, Marcelo Estrela Fiche, 'O Trabalho Escravo Contemporâneo no Brasil sob a ótica da análise econômica do Direito' (2019) 208 Revista de Direito do Trabalho - Revista dos Tribunais RR.

MTE MdTeE, *Manual de Combate ao Trabalho em Condições Análogas às de Escravo* (MTE 2011).

Osuji OK, 'Corporate Social Responsibility, Juridification and Globalisation: ‘Inventive Interventionism’ for a ‘Paradox’' (2015) 11 International Journal of Law in Context 265.

Trabajadores de la Fazenda Brasil Verde (Judgment) Inter-American Court of Human Rights, Case 12.066 (06 March 2015).

Venkatesan R, 'The UN Framework on Business and Human Rights: A Workers’ Rights Critique' (2019) 157 Journal of Business Ethics 635.

Zara Brasil Ltd v União [2017] 4T TRT2 SP/Brasil, RO 00016629120125020003, Des Ricardo Artur Costa e Trigueiros (17 November 2017).

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