

Two different approaches that fail to protect Brazilian or British agricultural workers Vitor Filgueiras

Brazil and the United Kingdom are very different regarding the levels of working conditions achieved historically, but both have faced the same strategies to undermine public regulation lately. The failure of different approaches provides clues about the solutions for similar problems.

Many cases of labour exploitation have been uncovered, including slave-like conditions, in both countries. These exploitative conditions are typically found in the agricultural sector, and most of them are associated with outsourcing/subcontracting arrangements.

In Brazil, almost 90% (44) of the 50 largest cases of slave-like conditions uncovered by public institutions between 2010 and 2014 involved workers hired by main companies through intermediaries. These cases cover different regions, company sizes, and intermediaries' appearance, ranging from *gatos* ('cats', as labour suppliers are called in the Brazilian rural area) to formal contractors. In the UK, labour exploitation and regulation of labour in rural areas are strongly linked to outsourcing, which is predominantly arranged through so-called gangmasters. Between 2013 and 2015, 900 victims of labour exploitation were assisted by the Gangmasters' Licensing Authority (GLA) (GLA CEO 2015).

Some outsourcing arrangements in Brazil and in the UK produce very similar working conditions, such as those uncovered in egg farms. In Brazil, the workers gathering chicken excrement to be used as fertilizer were hired by *gatos*. They had to work, eat and sleep on the chicken waste, having been provided no bed, table or seat. Workers were transported between farms with chicken excrement on the back of a truck. In the UK, the workers, brought from Eastern Europe, were subcontracted through a gangmaster. They were driven from farm to farm to work in 8 hour shifts for days without rest or sleep or a chance to go to the toilet. They had to urinate and defecate in bottles and bags inside the vehicle while travelling. When they went back to the accommodation, it was overcrowded and infested with flies and fleas, and workers were so hungry that they had to eat some of the raw eggs gathered (Filgueiras, 2016).

How have, and how should, these countries dealt with outsourcing/subcontracting and employment rights in the agricultural sector?

The regulatory framework and its consequences in each country

I define outsourcing and subcontracting as a single concept, meaning a strategy of contracting workers via an intermediary interposed between workers and the actual commander of labour and production process. The intermediary can be formally named in many ways, but is normally presented as a company.

Brazil and the UK have different legal frameworks concerning outsourcing. In Brazil, there are still some restrictions on out-

sourcing. Companies cannot outsource core business, and even for activities that can be outsourced, the main company is secondarily liable for labour rights¹. In the UK, a company may outsource any part of its business and has no liability for labour rights when it contracts a licensed gangmaster.

Approaches to law enforcement are also different: in Brazil, public institutions commonly consider outsourcing arrangements as illegal, emphasising that the main companies are the real employers of the subcontracted workers. However, when a company is caught contravening the law, the Labour Inspectorate, the Public Ministry of Labour and the Labour Court, which are the three main institutions enforcing labour law, tend to give warnings and make agreements to rectify the situation – a procedure normally repeated many times for the same employer – instead of imposing fines or coercive measures. Thus companies face little financial threat when breaking the law, making it profitable to maintain non-compliant behaviour and just wait for new warnings or agreements to be issued (see, for example, Filgueiras 2012 and Souza 2016).

There are many indicators showing that this approach has not improved working conditions in Brazil. The data gathered in the sugar cane sector by Filgueiras and Lima Junior (2015) revealed that this regulatory strategy may even facilitate the worsening of exploitation, as non-compliant farms, after numerous toothless warnings and agreements, intensified illegal practices to slave-like conditions.

In the UK, the GLA tackle illegal behaviour by working through the police who arrest individuals who exploit workers. The institution tends to charge intermediaries for offences, instead of the 'client' companies. For instance, from 2008 to 2015, there were 58 convictions against gangmasters operating without a license and only 24 convictions for employers who were using an unlicensed gangmaster.

This repressive approach towards illegal practices is limited by the fact that it focuses on the intermediaries instead of the main companies in the outsourcing arrangements. The 'client' companies are the main players in this game. The intermediaries are instruments in their workforce management strategy. The main companies, normally growers or retailers, use the intermediaries to avoid liability for employment rights, among other reasons. This is a dream-come-true for these companies who can change providers as they wish, creating a race to the bottom among gangmasters, which means, effectively, a race to the bottom among workers. In recent years, the government has acknowledged that: 'During 2014-15, the UK has seen a marked increase in labour exploitation ranging from unlawful travel and subsistence schemes and withholding holiday pay up

to and including examples of human trafficking, forced labour, benefit fraud and other heinous crimes,' (GLA, 2015B, p.1).

What is needed?

A different conceptual approach is urgently needed for those who seek to promote better working conditions.

In both the business and the academic fields, outsourcing is predominantly defined as transferring less important activities to other agents, in order to focus on a core business. Empirically, however, the command of activities remains with the contracting company, which effectively determines when, where and how production takes place.

The key aspect of this issue is the division of labour. By saying that outsourcing is deepening of the division of labour, the phenomenon appears inexorable. The division of labour between companies is inherent to any capitalist economy, where different companies exchange goods and get surplus from their own workers. If outsourcing were just deepening the division of labour, the problem would be how outsourcing is carried out rather than the phenomenon itself. However, undermining regulatory effectiveness and working conditions is not a side effect but the essence of outsourcing.

Absorbed by the idea of division of labour, public institutions and policies in the UK tend to support and promote outsourcing, emphasising the features of intermediaries (honest or dishonest and so on) as key to improving working conditions. The growth of labour exploitation would be related to 'organised and determined criminals who have sought to infiltrate the legitimate human resource supply chain', (GLA, 2015, p.1). Following this path, GLA has been prepared to extend regulation to all sectors.

This picture becomes ironic because the main companies using intermediaries as tools to manage labour power systematically claim to have nothing to do with labour exploitation, and even present themselves as victims betrayed by the intermediaries. For instance, in Brazil in 2011, workers were found labouring in slave-like conditions through intermediaries for the famous brand Zara. The company's response was that the intermediaries had 'seriously broken the behaviour code' of the brand (Hashizume and Pyl, 2011). After this episode Zara made an agreement with Brazilian public institutions to avoid new breaches to the law, but it was broken in 2015 (Rolli, 2015).

In summary, Brazilian and British regulations to enforce labour law in agriculture have failed differently. In Brazil, the right target is addressed, but an ineffective enforcement method is used. In the UK, the enforcement approach is better, but focuses on the wrong target. In both cases, these regulation frameworks make it easier for companies to keep exploiting the workers, and the working conditions have not improved or got even worse in the agricultural sector.

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Footnotes

- 1 There has been pressure from the employers and their spokespeople to make outsourcing legal for all activities. A new law to this effect has been approved in the lower house and is waiting for the senate's vote.