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## Combating the decent work deficit in agricultural production

### **Regulation of employment rights on supply chains in the Brazilian and British agricultural sector: something is missing**

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#### **1- Introduction**

Despite structural differences between the Brazilian and the British labour markets, many cases of labour exploitation have been uncovered, including slave-like conditions, in both countries during the last decades. We are talking about situations detected by public institutions in which labour rights are severely disrespected, several times beyond the limits imposed by penal law, as article 149 of the Brazilian Penal Code (*labour analogous to slavery*) and the British Modern Slavery Act 2015 (Chapter 30).

Huge amount of these exploitative conditions are found in the agricultural sector, and most of them are associated with supply chains made of outsourcing/subcontracting arrangements. Achieving decent work in these pictures depends on dealing with supply chains and outsourcing.

This paper's subject is the public regulation of employment rights through outsourcing/subcontracting arrangements on agricultural sector in Brazil and in the United Kingdom. Its main aim is to problematize the possibilities of promoting decent work through employment rights on the so-called supply chains.

Supply chain has become a very popular expression in the academic field and among policy makers, commonly bringing together very different arrangements. We consider that there are two main distinct phenomena framed as supply chain. The first one is the division of labour between companies (such as a factory that produces machines and buys energy from the electricity company), a fact that has always existed in capitalism history. The second one is outsourcing/subcontracting, a strategy to manage labour power that has increased in recent

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This paper is a product of the research that I developed in the UK to compare working conditions between Brazil and the United Kingdom. One of the main issues investigated in the research are the differences and/or similarities between outsourcing/subcontracting carried out in Brazil and in the UK. The research was funded by São Paulo Research Foundation (FAPESP) (Grant: 2015/02096-0).

I must thank Gangmasters Licensing Authority (GLA), specially Darryl Dixon and Paul Kenneally, for talking to me about GLA activities, helping me to find data and taking me to join an inspection as an observer.

decades and is frequently confused with the deepening of the division of labour. Presumed by institutions as an assumption, this mix of different things has heavily contributed to restrict protective labour regulation, undermining or eliminating the effectiveness of employment rights around the world, avoiding decent work to come closer to becoming a reality for millions of people.

This paper deals with public regulation of employment rights on supply chains featured by outsourcing/subcontracting arrangements, considering that supply chains defined only by independent enterprises operating in the same sector does not bring important changes to the regulatory framework already instituted.

We define outsourcing and subcontracting as one single concept, meaning a strategy of contracting workers using an intermediary to do so. An intermediary is an entity interposed between a worker and the actual commander of labour and production process. It can be formally named in many ways, but is normally presented as a company.

Regarding each company individually, the very specific reasons to adopt outsourcing/subcontracting may differ slightly in each case, but the main intention, directly calculated or not, is to increase profits by reducing the chances of labour power of limiting exploitation. That is why outsourcing/subcontracting and worst forms of labour exploitation are strongly related.

Another conceptual approach to outsourcing/subcontracting is urgently necessary for those who seek to promote decent work. Based on the mainstream concept of outsourcing/subcontracting, institutions tend to focus regulation on the intermediaries and leave the main companies in comfortable position to manage despotically their labour power, systematically perpetuating deplorable work conditions.

This paper is an output of a Postdoc research carried out in the University of Campinas (UNICAMP, Brazil) and in the University of London (SOAS, UK). The methodological approach combines analysis of official data, legal framework, documents and reports (regulation figures, as inspections, prosecutions, convictions) from Brazilian and British government, ethnographic activities (inspections in Brazilian farms; a joint inspection in a labour supplier in the UK); interviews with stakeholders in both countries.

## **2- Outsourcing/subcontracting and labour exploitation**

In Brazil, more than 50 thousand workers have been rescued from slave-like conditions since the 1990's, when, after decades of denounces, the State instituted special forces to investigate and carry out inspections to tackle slave-like labour.

Slave-like conditions, or *labour analogous to slavery*, are defined by article 149 of the Brazilian Penal Code, which includes and considers as sufficient conditions to characterize the crime subjecting a person to exhausting working days, or subjecting such a person to degrading working conditions. Also, but not necessarily, the crime may be perpetrated through any kind of mobility restriction (for instance, debt bondage). According to the law and the majority of Jurisprudence, threats or physical violence are not required to configure the crime, even though they are eventually detected.

Since the beginning of the inspections (generally performed by Inspectors from the Ministry of Labour (*MTE*) and Prosecutors from the Public Ministry of Labour (*MPT*)) to tackle slave-like labour, the agricultural sector has always been one of the leaders in terms of number of workers submitted to degrading exploitation. In recent years, slave-like conditions uncovered on urban areas have increased, but rural activities have maintained huge relevance overall.

For instance, in 2014, 1.490 workers were rescued from labour analogous to slavery in Brazil. The rural sector (including agriculture, cattle, vegetal extraction on charcoal) represented four out of the five economic activities with the highest number of workers detected in such conditions.

**Table 1: Economic Activities  
Greatest number of rescued workers in slave like conditions in 2014**

Activities	Number of workers rescued
Construction	437
Agriculture	344
Cattle	228
Vegetal extraction	201
Vegetal Charcoal production	138
Total	892

Source: DETRAE. Available in: <http://portal.mte.gov.br>

In situations like these, workers are commonly subjected to drink water contaminated by pesticides; to work, eat and sleep among animals and their excretion; to have spoiled food or even no food at all; sometimes they have no shower or basic items to clean themselves; among innumerable different degrading conditions that have been registered and make working conditions similar or even worse than those experienced during formal slavery in Brazil (FILGUEIRAS, 2015). It is worth mentioning that people engaged on sugar cane harvesting in the beginning of the 21<sup>st</sup> century had an estimated productive life between 10 and 15 years, while during the second half of 19<sup>th</sup> century the estimation was 20 years (SILVA, 2008).

In recent years, the relation between outsourcing/subcontracting and slave-like conditions became common sense for everyone who was engaged in the subject. To throw light on the

hypothesis of this supposed relation, in 2014 we decided to carry out a quantitative survey based on the biggest rescues annually registered by the Special Forces inspections between 2010 and 2014 (FILGUEIRAS and CAVALCANTE, 2015). The findings follow below:

**Table 2: workers rescued from slave-like conditions in Brazil  
(Data regarding the 10 largest rescues in each year)**

Year	Cases involving subcontracted workers among the 10 largest rescues	subcontracted workers rescued	Directly employees rescued	Total workers rescued
2010	9	891	47	938
2011	9	554	368	922
2012	10	947	0	947
2013	8	606	140	746
2014	8	384	246	630
TOTAL	44	3382	801	4183

Source: DETRAE (Departamento de Erradicação do Trabalho Escravo).

Considering these five years, almost 90% of the cases (44 out of 50) involved subcontracted workers. Over 80% of the rescued workers (3382 out of 4183) were hired through intermediaries by main companies, even though they do not reach 25% of the employed population. These data include different regions, sizes of companies, intermediaries' appearance, ranging from “*gatos*” (“cat” are how labour intermediaries are traditionally called in Brazil) to formal business that make some profit. No matter the perspective chosen to compare, outsourced workers are by far the majority of workers exploited. Even considering only labour analogous to slavery in formal employment (employees with written contracts), the prevalence of subcontracted workers is also perceived, reaching 90% in 2013 (FILGUEIRAS, 2014A).

Therefore, it is very reasonable to state that there is a strong relation between slave-like labour conditions and outsourcing in Brazil.

In recent decades, labour exploitation and regulation of labour in the British rural area are strongly linked to outsourcing. Since the 1990s, there has been a sharp increase in the employment of migrant workers and temporary jobs in the British countryside (ROGALY, 2008), which are predominantly arranged by intermediation of so-called Gangmasters, as workforce intermediaries in rural UK are known.

The Gangmasters are currently the main tool to manage labour power on rural Britain. According to Rogaly (2008), the use of labour suppliers (intermediaries) for seasonal harvesting in Britain's countryside has a long history. However, in recent decades, the use of intermediaries has grown strongly. Rogaly identifies the picture as the "return of the gangmaster".

In the UK, labour exploitation in rural activities had been widely known before it reached a peak with the death of 23 Chinese subcontracted workers on Morecambe Bay, in 2004<sup>2</sup>. After the tragedy, a specific institution was created to regulate intermediaries that provide labour in the agricultural sector. The institution is called Gangmasters Licensing Authority (GLA) and it states its aim is to work to protect vulnerable and exploited workers (GLA, 2015A).

Over 10 years have passed, and the worst forms of labour exploitation in the UK's countryside are still attached to outsourcing, as reports and official data systematically show. During 2014-2015, 779 potential victims of labour exploitation were identified by GLA (GLA, 2015A).

In fact, some working conditions experienced in outsourcing arrangements in Brazil and in the UK are very similar, like uncovered cases involving egg farms. In Brazil, it happened in 2011, and was caught by Labour Inspection - the employer is now facing a criminal trial for exploitation of labour analogous to slavery. In the UK, the event took place in 2012, and was revealed by the GLA, later becoming the first case in the UK in which a company was taken to court for claims relating to the new modern slavery act (LAWRENCE (2015A)).

In Brazil, the workers were gathering chicken excrements to be used as fertilizer. They were hired by "cats", being subjected to work, feed and sleep on the bodily waste of chickens having no kind of bed, table or seat. There was no protection to prevent health risks, workers, received no boots, gloves, and there was no water supply. During the transportation between farms, the workers were taken along chicken excrements on the back of a truck (FILGUEIRAS, 2013).

In the UK, the workers (brought from Eastern Europe) were subcontracted through a Gangmaster and submitted to catch chickens in a situation described as "inhuman and degrading" (LAWRENCE (2015A) and GLA (2014)). They said they were driven to work in different farms in extenuating 8-hours cumulative shifts for days without rest to sleep or to go to the toilet. They were forced to urinate and defecate in bottles and carrier bags inside the vehicle while traveling. When they went back to the accommodation, it was overcrowded, infested with flies and fleas, and workers were so hungry that they had to eat some of the raw eggs gathered.

Given this picture, how do these countries deal with outsourcing and employment rights in the rural sector?

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<sup>2</sup> For instance: "Gangmasters' accused of farm rule by fear: John McGhie reports on allegations of underpayment and intimidation among the army of casual labourers, recruited each year by rural middlemen, who work long hours to harvest Britain's crops". JOHN MCGHIE. Independent, Thursday 14 October 1993. Available on: <http://www.independent.co.uk/news/uk/gangmasters-accused-of-farm-rule-by-fear-john-mcghie-reports-on-allegations-of-underpayment-and-1510810.html> ; "Britain's illegal farm workers". Tasha Kosviner. London Evening Standard, 07 July 2003.

### **3- The regulatory framework and strategies**

Brazil and the UK have different legal frameworks concerning outsourcing/subcontracting. In Brazil, despite a big pressure from corporate interests, there are some restrictions to outsourcing and subcontracting, while in the UK they are more liberated in terms of activities and liability. In Brazil, companies of all sectors cannot outsource their core business, and even on activities allowed to be outsourced (accessory activities), the main company is subsidiarily (secondarily) liable for labour rights, which means it may be convicted in court if the intermediary does not comply with the law. In the UK's rural activities, a company may outsource any part of its business and has no liability over labour rights as far as it contracts a licensed Gangmaster.

In the UK, the Gangmasters Licensing Authority (GLA) is the main public institution that regulates labour on rural sector:

The authority was formed in 2005 in the wake of the Morecambe Bay cockle picking disaster when 23 Chinese workers drowned on the sands. The GLA licences companies that supply labour (gangmasters) for agriculture, horticulture, shellfish gathering as well as all associated processing and packaging. Its main strategic priorities are to prevent worker exploitation, protect vulnerable people and tackle unlicensed and criminal activity. Under the Gangmasters (Licensing) Act (2004), it is illegal both to operate as, or employ the services of, an unlicensed gangmaster.

The minimum standards a Gangmaster must comply with in order to be licensed include issues such as the payment of a minimum wage, preventing forced labour, providing decent working conditions, ensuring health and safety at workplace. GLA has the power to give and to revoke licenses. It is a criminal offense operating as a gangmaster without a license, using an unlicensed gangmaster, or obstructing a GLA officer.

In Brazil, three main public institutions regulate labour and are supposed to enforce employment rights in all economic sectors (ranging from health and safety issues to outsourcing arrangements): Ministry of Labour (MTE), Public Ministry (MPT) and Justice of Labour. All of them have national jurisdiction and act in accordance with Federal law. The MTE carries out inspections through Labour Inspectors, having the power to impose fines and prohibition notices against non-compliant companies. The MPT acts as a public lawyer, making agreements or suing employers when collective interests are undermined. The Labour Justice is responsible to decide over individual or collective labour lawsuits.

The approaches to enforce the existing laws are also different between Brazilian and British public institutions.

In the UK, the GLA commonly seems to repress illegal behaviour, many times working along the police and arresting employers that exploit workers. There are several reports on GLA's website about its inspections, as a press release from April 21<sup>st</sup> 2015:

Thirteen people have been arrested in Peterborough as part of a national day of action against the exploitation of people across the UK. The police, Peterborough City Council and National Crime Agency (NCA) led operation, named Operation Launch, began at 4am today (Tuesday) and also involved the Gangmasters Licensing Authority (GLA), the British Red Cross and the Salvation Army (GLA, 2015C).

The Gangmaster Act explicitly focuses on the intermediaries, who are the main subject of the law. The act itself addresses them and the requirements to be a legal Gangmaster, and even the penalties for those involved in illegal activity support this emphasis. While a Gangmaster unlicensed can face a punishment of 10 years in prison, a company that hires workers through unlicensed Gangmaster may only get up to 6 months in prison.

In spite of this legal emphasis on the intermediaries, GLA could have been directing efforts to regulate the main companies in order to improve working conditions. However, during its operational activities, GLA appears to go after the intermediaries, as table 3 shows.

**Table 3: Convictions under the Gangmasters Act 2004: arising out of investigations by the GLA working either independently or in partnership with other law enforcement agencies.**

Offence	Operating as a gangmaster without a licence	Using an unlicensed gangmaster	Obstructing a GLA officer	Other	Offenders
2015-16	5	0	0	6	1
2014-15	9	0	0	4	5
2013-14	5	1	0	3	6
2012-13	11	15	0	0	26
2011-12	8	4	0	0	12
2010-11	14	3	0	0	16
2009-10	5	1	1	2	8
2008-09	1	0	0	0	1
Totals	58	24	1	15	75

**Last updated 6 May 2015. Available in:** <http://www.gla.gov.uk/Our-Impact/Convictions/>

Except in 2012-2013, being convicted for using an unlicensed Gangmaster has been rare for the users of subcontracted labour. Being an illegal intermediary (operating as a gangmaster without a licence) appears to be much riskier than contracting workers through an illegal intermediary is. The news about GLA operations also indicates that intermediaries are its core target. They seem to be preferentially investigated and, when there is an arrest, they are the ones put in jail, as the following reports illustrate:

Gangmaster couple whose business was ‘built on a lie’ are jailed. “A Lincolnshire couple who both first entered the UK as illegal immigrants then built up a property empire and successful gangmaster business using a stolen ID have both been handed prison sentences”. (GLA, Press release. 26 June 2015).

Suspected unlicensed gangmaster arrested in Northern Ireland. A man suspected of acting as an unlicensed gangmaster in Northern Ireland was arrested in Lurgan by the GLA, assisted by officers

from the Police Service of Northern Ireland. The 39-year-old Romanian national was apprehended as part of the authority's ongoing investigations into unlicensed labour provision on fruit farms in County Armagh. He is suspected of supplying workers to pick apples and other fruit without a licence at various locations in the area. The man was bailed pending reports being submitted to the Public Prosecution Service. (GLA, 2015B).

Thus, in the UK, even though GLA has commonly a hard approach over the illegal exploitation practices, it concentrates its attention on the intermediaries, instead of the main companies in the supply chains.

In Brazil, the regulatory approach to outsourcing arrangements differs from the UK's picture. Firstly, in Brazil the institutions commonly consider outsourcing arrangements as illegal, stating that the main companies are the real employers of the subcontracted workers. Therefore, the liability relies more over the main companies of supply chains than in the UK.

Secondly, in Brazil, instead of imposing the law against illegal behaviours, the institutions are likely to address non-compliant employers through conciliation attempts. As we have seen in many surveys since Filgueiras (2012), law enforcement by MTE, MPT and Justice of Labour is normally yielding to companies that break rules. When a company is caught disrespecting the law by the institutions, the later tend to give rhetorical or formal recommendations and offer time to regularise the detected problem, a procedure normally repeated many times for the same employer, instead of imposing fines or coercive measures. The worst cases of exploitation, especially when regarding slave-like conditions, generally face a less soft approach from the institutions, but even so, they use to be permissive in terms of fines and convictions (FILGUEIRAS, 2015).

It is worth pointing that there is a trend in Brazilian labour regulation to reduce liability of main companies in outsourcing arrangements, as institutional approach in the garment sector and the new law for "integrated production" at rural activities indicate (FILGUEIRAS, 2016).

Besides the differences, the regulation of labour on the agricultural sector has experienced a similar trend in Brazil and in the UK. In both countries, there has been a decrease in the number of inspectors, available resources etc. (FILGUEIRAS, LIMA JUNIOR, 2015). Considering the new powers recently given to GLA, the situation might change in the UK during the next years<sup>3</sup>.

To evaluate the possibilities and understand the consequences of the regulatory approaches to outsourcing arrangements, we have to take a step back to analyse the concept of outsourcing and how it influences institutional practices.

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<sup>3</sup> See: HOME OFFICE. Tackling exploitation in the labour market: Government response. Department of business, innovation and skills. 2016B



#### **4- The so-called outsourcing or subcontracting**

Outsourcing or subcontracting is one of the main strategies adopted by capitalist companies worldwide over the last four decades. This management strategy has heavily affected economies, policies, labour markets, working conditions and lives around the globe.

Despite being two different terms to which people frequently try to give distinct meanings, outsourcing and subcontracting are essentially the same thing. Many different analytical approaches differentiate outsourcing and subcontracting. To give just one example, outsourcing may be described as a long-term relationship, which usually takes place outside the contracting company's walls. In this case, the factories where smart phones are manufactured is a good example of outsourcing. Subcontracting can be defined as a contract to carry out specific tasks for shorter periods. In the United Kingdom, arrangements made in the construction sector would exemplify what subcontracting is.

The definitions and the distinctions between the words may vary, but the essence of both concepts is the same: the transference of accessory (or less important) activities from a company to another party, normally another company that has been formally established. That is why I refer to both words as equivalents, using the term outsourcing/subcontracting.

Nonetheless, what makes these words essentially equivalents is not what has become the common sense about outsourcing/subcontracting. Defenders of outsourcing/subcontracting argue that, in the current context, companies cannot engage directly in all the steps of production as they used to do during Fordism. Nowadays they have to focus on their core business and on increasing their productivity, and, there for, contract other agents (normally other companies, though the intermediary may be described in different ways) to perform less important activities, in which these intermediaries are specialized. In other words, their arguments are based on the idea that the companies are delegating to someone else the production of accessory activities related to their business.

Around the world, there are many criticisms of outsourcing/subcontracting, claiming that this phenomenon undermines working conditions, reduces salaries, increases accidents at work etc. Countless studies carried out in many countries indicate that these allegations are true<sup>4</sup>. Nevertheless, even when they are engaged in serious struggles against its consequences, critics of outsourcing/subcontracting tend to use the same conceptual understanding of it, as that used by those who defend this management strategy. Thus, no matter if the consequences for workers are regarded as good or bad, it is accepted that different companies are in charge of different parts of the production. Upon this assumption, the idea of a chain of production or supply chain is normally used.

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<sup>4</sup> HSE 203, Thebau (2011), Filgueiras (2014), Filgueiras (2015A), Filgueiras and Dutra (2014).

However, empirically, outsourcing/subcontracting differs greatly from this description. Invariably, the contracting company directs the process of production and work according to its needs. There are numerous examples of this situation in companies from all around the world and all sectors.

For instance, Toyota, the paradigm and precursor of the contemporary outsourcing/subcontracting process, was the owner of small subcontracted companies upon which its outsourcing/subcontracting arrangement was developed, and it is not the only case in the automotive sector<sup>5</sup>. Still inside this sector, I have personally been in a car factory where the subcontracted workers who built the vehicles were directly selected and managed by the car company, which carried out a kind of tendering processes or auctions among the intermediaries to get the cheapest workers<sup>6</sup>.

Several studies conducted in recent decades, involving companies from many different countries, has shown that no matter how outsourcing is formally arranged, the contracting company always directs the workforce according to its needs<sup>7</sup>.

In outsourcing/subcontracting, the command of activities remains with the contracting company, which effectively determines when, where and how production takes place. Ways of controlling the subcontracted workforce may vary a little among contractors and economic sectors, and are heavily influenced by labour market features. Sometimes the methods of control are very explicit, being carried out as traditionally employers do. Other times different management methods are adopted, such as pay per task, imposing deadlines, on-line monitoring, making auctions between the subcontractors etc. However, in fact, they have the same purpose and tend to achieve the same targets. Over recent decades, technology has helped a lot to implement these less obvious ways of managing workers, although sometimes they are even more despotic than traditional management. Indeed, in many cases they are used intentionally, as firms try to avoid labour law, for instance.

The appearance assumed by outsourcing/subcontracting may range from a piece of paper, like a document stating that the employee is now “his/her own company”, to legal entities that can formally employ thousands of workers. At most, and only in a very few cases (proportionally), the intermediary might be a minor partner in a business controlled by the

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<sup>5</sup> Hirata apud Druck (1999) and Marcelino (2007).

<sup>6</sup> For this and other examples in different arrangement in the automotive sector, see Filgueiras and Souza (2011)

<sup>7</sup> They have been carried out mainly in Brazil, such as Filgueiras (2012, 2013, 2014A, 2014B), Dutra (2014), Druck and Filgueiras (2014), Mercante (2015), but also in the UK, from which some findings are presented in Filgueiras and Cavalcante (2015).

contracting company<sup>8</sup>. In all circumstances, the control of production belongs to the dominant company<sup>9</sup>.

Thus, production may be formally fragmented, even geographically fragmented, but, in fact, the contracting company remains in charge. It directs labour and the production process and absorbs most of the social wealth produced.

In addition to this empirical inconsistency of the mainstream outsourcing/subcontracting concept, two main contradictions within this discourse throw light on the real phenomenon. Firstly, if outsourcing/subcontracting was the deepening of the division of labour, then the markets should have been fragmenting, divided into smaller companies, because of the higher number of companies sharing the same economic sectors. Although, the economies as a whole have experienced exactly the opposite trend, becoming each time more concentrated in terms of wealth absorbed, even though employment are formally fragmented. The second contradiction of the mainstream concept is even more obvious: if outsourcing/subcontracting is a management strategy to focus on the core business and increase specialization, how come contracting companies try to outsource/subcontract all their workers? In the UK, for instance, many companies have no employees<sup>10</sup>. What do they specialise at? And the same is true for intermediaries: if in many cases they have no employees, then what are they specialised at?

The profound and core issue in this debate is related to the division of labour. By saying that outsourcing/subcontracting is the deepening of the division of labour, the concept tries to make the phenomenon appear inexorable. The division of labour between companies inherent to any capitalist economy, where different companies exchange goods and get surplus from their own workers. In fact, if outsourcing/subcontracting were just the deepening of capitalist division of labour, there would be nothing substantially new to say. Understood in such terms, the problem would be how outsourcing/subcontracting is carried out, not the phenomenon itself. Indeed, how difficult is it to criticize and fight against increasing productivity derived from division of the labour and specialisation if it does not necessarily harm workers?

In sum, to face outsourcing and regulate it in order to guarantee employment rights and decent working conditions, it is essential to understand what it really is.

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<sup>8</sup> I have found some cases where stronger intermediaries were used to outsource, such as in the “integrated” production process in the Brazilian agrarian sector. The intermediaries’ strength to manage their own production and face the contracting companies as equals ruined the arrangement (Filgueiras, 2013).

<sup>9</sup> Obviously, the intermediary can become an effective capital at some point in the relationship. And it eventually happens. In these cases we are no longer talking about outsourcing/subcontracting, but the exchanges between different capitals that have always occurred in capitalist societies.

<sup>10</sup> According to research quoted by Drahoukoupil, in the UK 23% of all companies uses outsourcing. Within this companies, 49% full outsources their activities (2013 - The outsourcing challenge. Organizing workers across fragmented production networks — Edited by Jan Drahoukoupil).

Like I said on the introduction of the present paper, regarding each company individually, the very specific reasons to adopt outsourcing/subcontracting may differ slightly in each case, but the main intention, directly calculated or not, is to increase profits by reducing the chances of labour power to limit exploitation. This is so because outsourcing/subcontracting tends to:

1- Reduce individual resistance: the greater instability and insecurity that feature these contracts make workers unlikely to confront orders and complain about any issue. At the same time, it also increases the subsumption of labour under capital, as the workers often do not even see themselves as part of the production process of the biggest or sole beneficiary of their work.

2- Undermine collective actions: outsourcing/subcontracting normally makes it harder for workers with different types of contracts to build common identities, increasing the challenges of organizing workers together. It is also common to find legal barriers to achieve collective actions involving direct employees and subcontracted workers.

3- Weaken effectiveness of public regulation: *as the intermediary emerges as the supposed employer, liability often does not lie on the main party responsible for the workers situation, leaving the contracting company in a comfortable position. The intermediary is used as a tool to manage labour power and avoid liability.*

Upon these conditions, the consequences of outsourcing/subcontracting, which enable companies to increase their profits, are usually the same:

- Lower costs: cutting salaries, undermining labour rights, avoiding or reducing legal and union-related issues, making it more flexible and cheaper to manage staff (sack them, move them etc.).

- Increased productivity: the workers tend to put more effort into attenuating their precarious conditions, being less likely to strike or take any kind of time off from work (such as sick leave, rest breaks at work and weekly rest).

The weakening of institutional measures is precisely the problem of current social regulation over outsourcing/subcontracting in many countries. Institutions uncritically assume corporate rhetoric about division of labour, and target the intermediaries, when the protagonist is the main company of the arrangements. If much, like in the Brazilian case, institutions seek to determine "true" or "false" (legal or illegal) outsourcing, disregarding its inherent content.

Undermining regulation effectiveness and working conditions are not contingences, but part of the essence of outsourcing. The way outsourcing has been faced in Brazilian and in British rural sector, for different reasons, is helping to perpetuate bad work conditions.

## **5- Regulation of outsourcing and employment rights in the Brazilian and British agricultural sector**

Companies' behaviour regarding employment rights is influenced by many possible factors. Public regulation is definitely one of them, but not the only. Through public regulation, there are assumptions needed to be followed by law, although its interpretation is a central aspect of regulation itself. In Brazil and in the UK, it is also necessary to take into account that law enforcement institutions have been facing many restrictions during the last years, such as a lack of inspectors, equipment, resources and funding.

As far as these ponderations are considered, it is possible to evaluate the regulatory approach that has been undertaken in Brazil and in UK. There are some indications of how public regulation has affected companies' behaviour regarding outsourcing and labour rights in agriculture in both countries.

In Brazil, some liability still tends to lie on main companies of outsourcing arrangements. On the other hand, each time companies are caught disrespecting employment rights, they are very likely to get "advices" or make promises upon agreements to follow the law, but face no consequences in terms of paying for their illegal acts. Thus, they face little financial threat in breaking the law, making it profitable to maintain a non-compliant behaviour and just wait for new "advices" from public institutions. This dynamic stimulates companies to keep disrespecting employment rights.

There are many indicators showing that working conditions have not improved through this approach from public regulation in Brazil, as the companies are caught breaking the same rules repeatedly. Furthermore, non-compliant companies themselves commonly claim for "advices" from the public institutions each time illegal acts are uncovered, suggesting that they have learned it is worth keeping disrespecting employment rights and eventually receive, if much, a rhetorical advice or reprehension.

Filgueiras (2012) investigated this dynamic involving MTE, MPT and Labour Justice in several economic sectors, including agriculture. Following his research, many other surveys have been carried out finding similar results for different sectors, such as Filgueiras (2013B, 2014B) Souza (2013, 2014, and 2015) and Mercante (2015). Filgueiras and Lima Junior (2015) gathered specific data from regulatory practices and enterprises' behaviour in the sugar cane sector, disclosing once more how this soft regulatory approach helps to perpetuate bad working conditions. Indeed, this regulatory strategy may even facilitate the worsening of exploitation, as Filgueiras and Lima Junior (2015) reveals that non-compliant farms, after numerous "advices" and agreements to improve their behaviour, intensified illegal practices up to slave-like conditions.

Thus, despite reaching the right target, Brazilian institutions tend to stimulate illegal behaviour, even though it might not be their intention.

In the UK, on contrary, GLA seems to have commonly a hard approach over the illegal exploitation practices. However, it focuses its attention on the intermediaries, instead of the main companies in the supply chain, as observed from its own data. The problem on this approach lies on the fact that the “client” companies are the main players in this game. They say how, where and when the production is carried out. The intermediaries, regardless of the individual features of the people involved (honest or dishonest, well or badly intentioned), are tools in the main companies’ workforce management strategy. The main companies, normally growers or retailers, which effectively play the core role in this picture, use the intermediaries, among other reasons, to avoid liability regarding employment rights and decent work.

It does not seem to be a coincidence that, after the first years of commotion following the tragedy of Morecambe Bay, when some signs of improvement in working conditions had been observed, reports of legal breaches started to emerge again. A survey published in 2008 indicates how GLA regulation was affecting intermediaries, who were squeezed buy growers that refused to pay a higher percentage fee per worker, and at the same time saw their costs rising for being responsible to comply with employment rights (ROGALY, 2008).

In December 2015, I had the opportunity to join a GLA’s inspection over an intermediary in Billericay, UK, and could listen to its description of the relation between the so-called labour supplier and the main companies. In sum, according to the intermediary, the client companies drive the industry and squeeze intermediaries’ margins. In addition, she said labour suppliers cannot even complain about anything, otherwise the clients say: “then I will go elsewhere”.

For farmers and retailers, a perfect picture has become real. They can manage their workforce through intermediaries, avoiding liability and changing providers as they wish, creating a race to the bottom among Gangmasters, which means, indeed, a race to the bottle among workers.

There is a double pressure over the workers’ payments and working conditions, from the client companies and from the intermediaries, both seeking to absorb from the labourers as much as they can. Intensification of work and non-compliance to employment rights are common consequences of the picture.

Labour exploitation still goes on in the UK rural areas, and seems increasingly frequent, as releases and reports by GLA have shown. Between 2013 e 2015, GLA helped 900 victims of exploitation and rescued 38 potential victims of human trafficking, besides having broken down 42 illegal groups. GLA estimates that there were 300 Gangmaster operating without being licensed in 2015, exploiting 1280 workers (GLA, 2015. CEO’s Quarterly Report).

In 2015, after the arrest of 13 people linked to exploitation in Peterborough (UK), the city Commander, Superintendent Tony Ixer, gave details about conditions face by workers:

Victims are often promised a better life in the UK with well-paid work but often end up in overcrowded accommodation and immediately placed in debt to a criminal who controls their affairs. They are generally deceived as to the type of work they'll be doing, the conditions of it and the pay they receive. They are paid wages well below the legal minimum for extremely long hours and their pay is often taken to service debt on their accommodation.

In recent years, GLA has systematically acknowledged the growth of labour exploitation in the UK, including human trafficking and slave-like conditions:

During 2013 -14, 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 committed by organised and determined criminals who have sought to infiltrate the legitimate human resource supply chain. (GLA, Strategy for Protecting Vulnerable and Exploited Workers. 2014-2017. 2014, P. 1)

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It is important to stress that within GLA's explanation about the exploitation context outsourcing/subcontracting is not questioned as a factor linked to the issue. On contrary, the "legitimate human resource supply chain" would be harmed and infiltrated by specific bad individuals. Outsourcing/subcontracting and its logic are not points to be discussed, letting the main companies to be spectators of a process in which they are main protagonists.

In sum, instead of concentrating regulation on the strongest players, the Gangmaster Act and GLA inspections institutionalise and address the intermediaries. It makes the problem even more complicated to solve, simply because its main factor is put apart.

The crucial mistake that sustains this regulatory approach is to assume outsourcing/subcontracting as an amplification of the division of labour, guiding the regulation to the wrong target. Outsourcing/subcontracting is a strategy of a main company to manage workforce, and intends to reduce the chances of limiting corporate power. In order to achieve this aim, one of its faces is precisely to put an intermediary as the focus of State regulation. Outsourcing/subcontracting is not a supply chain made of different/independent players, but a corporate arrangement for its own production and labour process. The main corporations are responsible for how the workers are treated, there is a causal relation between them and the facts, no matter how it is formally established or considered.

In the UK scenario, things are going well for the main companies in the agricultural sector, because they are able to exercise their power despotically via intermediaries, facing little liability and exploiting the workers continuously, maintaining the sector far away from decent work, despite the great effort undertaken by GLA staff. It does seem to be a coincidence that, not only

GLA, but also the UK central government admit that, during the last years, the UK has seen a marked increase in labour exploitation in the agricultural production.

Anecdotal and operational evidence from the Gangmasters Licensing Authority (GLA) suggests there has been a change in the nature of non-compliance with labour market regulation over the last ten years, with a shift from abuses of employment regulation towards increasingly organised criminal activity engaged in labour market exploitation (HOME OFFICE, 2016A)

## **6- Conclusion**

The public regulation of employment rights on Brazilian and British rural sector has faced hard challenges to improve their effectiveness.

It must be emphasized that in a capitalist society the core agent of labour regulation is capital. It rules and directs the labour power on a daily basis. Public institutions that regulate employment rights have a very important task, but their powers are set to address capital, trying to influence its practices, rather than replace it. Precisely because public regulation are built via capital, it is necessary to consider which kind of regulation is intelligible for capital, thus increasing compliance with labour rights.

Shortly, one must ask: have public institutions implemented coherent assumptions and strategies regarding their subject of regulation? It seems that both in Brazil and in the United Kingdom there are some consistent strategies, but also approaches that heavily undermine the effectiveness of the goals they claim to seek.

In Brazil, so far, public institutions tend to address some attention to the main companies when regulating outsourcing arrangements on agricultural sector. Thus, they seek the protagonist of labour process and, for this reason, increase chances to promote decent work.

In the UK, public regulation on rural activities, undertaken by GLA, seems to impose the law over illegal acts and labour exploitation via hard procedures, including arrests. This way, people that are subject to this regulation tend to increase their expectation in terms of costs involved to non-compliance. In a capitalist society, it appears to be a rational way to address employers seeking profits.

In Brazil, in contrast, public institutions try to give advices and make agreements with non-compliant employers, a procedure systematically carried out even for the same companies and legal breaches. The assumption underneath this regulatory approach, whether explicit or not, is that corporations in a capitalist society do not make decision regarding labour law based on cost and benefits analysis.



On the other hand, in the UK, the key target of public regulation on rural activities, undertaken by GLA, are the intermediaries. Doing so, GLA reduces the main companies' liability, which perpetuate a strategy to organise labour that makes them the central beneficiaries.

By taking the mainstream concept of outsourcing as an assumption, the public institutions in the UK have created a firewall to the debate in two ways. On the theoretic field, the debate is blocked by the idea of division of labour. On the political disputes, such as the regulatory practices, public policies tend to support and promote outsourcing, like the idea of enlarging GLA licensing system for all sectors.

I recommend that the remit of the Gangmasters Licensing Regulations should be extended to include construction. Alternatively, a Regulation should be made which has the same effect. The further down the subcontracting chain one goes the less secure the worker and the less satisfied with the management of health and safety on site. Society should accept that there needs to be a standard below which no construction worker should have to work. (Rita Donaghy, 2009).

Indeed, GLA has been prepared to undertake regulation activities over all sector after the New Modern Act and the Immigration Bill were introduced in 2015 (HOME OFFICE, 2016, 2016B).

In Brazil, there is a trend to liberate outsourcing for all business activities after decades of corporate pressure. Public institutions are already being supportive to reduce or eliminate corporate liability in many kinds of outsourcing arrangements. In the agriculture, the so-called "integrated production", in which companies hire small producers to work exclusively for them, are already accepted by judges and had a new law just introduced by parliament.

This picture becomes almost ironic because the main companies, while using intermediaries as tools for their use of labour power, systematically claim to have nothing to do with labour exploitation, and even present themselves as victims betrayed by the intermediaries. Many institutions tend to accept these corporate claims, and no effective measure is undertaken against the main companies. Stakeholders all argue to be collaborative, but working conditions remain terrible, forming some kind of "mystery of injustice"<sup>11</sup>.

In summary, Brazilian and British regulation to promote decent work fail because of different reasons. In Brazil, the right target is addressed, but an inefficient method is used. In the UK, a reasonable method is adopted, but focusing on the wrong target. In both cases, these

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<sup>11</sup> The tragedy occurred in Raza Plaza, Bangladesh, illustrates well the picture. For instance: "Bangladesh garment workers still vulnerable a year after Rana Plaza". Sarah Butler. The Guardian, 24 April 2014. Available on: <https://www.theguardian.com/world/2014/apr/24/bangladesh-garment-workers-rights-rana-plaza-disaster> . "Two years after Rana Plaza, have conditions improved in Bangladesh's factories?" Amy Westervelt. The Guardian, 24 April 2015. Available on: <https://www.theguardian.com/sustainable-business/2015/apr/24/bangladesh-factories-building-collapse-garment-dhaka-rana-plaza-brands-hm-gap-workers-construction>

regulation frameworks make it easier for the employers to keep deeply exploiting the workers, and the working condition have not improved sustainably in the agricultural sector.

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