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LLM IN: International Human Rights Law

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DISSERTATION TITLE

Business and Human Rights and Modern Slavery: a comparative analysis between the Modern Slavery Act (2015) and the Brazilian Law

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*"To deny people their human rights  
is to challenge their very humanity"*

*- Nelson Mandela*

## INTRODUCTION

The word 'slavery' tends to remind us of what happened from the mid-sixteen century to the mid-nineteen century: the Atlantic slave trade. However, it is still a problem that must be tackled. 'Modern slavery' is an umbrella term that encompasses a number of activities that violate human rights and it is something that happens in every part of the world. This means that it is not an issue that only concerns developing countries or the so called Global South.

Legally speaking, the international community abolished slavery in 1926 when the Slavery Convention to Suppress the Slave Trade and Slavery, hereinafter the 'Slavery Convention',<sup>1</sup> established that no one should be held in slavery or servitude and actions towards securing the complete abolition of all forms of slavery should be taken. Despite that, slavery has not been overcome yet.

According to the International Labour Organization (ILO), as of 2016 more than 40 million people were subjected to modern slavery and 24.9 million were victims of forced labour.<sup>2</sup> When it comes to forced labour, 16 million people were being exploited in the private sector such as domestic work, construction or agriculture field, 4.8 million people were forced into sexual exploitation, and 4 million were victims of forced labour imposed by state authorities.<sup>3</sup>

In this sense, the lack of a concrete definition of what 'modern slavery' actually is creates a legal instability which leads to impunity and uncertainty.<sup>4</sup> The fact that modern slavery encompasses different types of exploitation can raise the argument that every type of exploitation cannot be linked with slavery<sup>5</sup> and, as a consequence, if they are all put under the same concept it can 'risk

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<sup>1</sup> League of Nations, *Convention to Suppress the Slave Trade and Slavery* (signed 26 September 1925 entered into force 9 March 1927)

<sup>2</sup> ILO, 'Forced labour, modern slavery and human trafficking' (ILO, September 2017) <<https://www.ilo.org/global/topics/forced-labour/lang--en/index.htm>> accessed 22 July 2019. According to the ILO, forced labour encompasses 'traditional practices of forced labour, such as vestiges of slavery or slave-like practices, and various forms of debt bondage, as well as new forms of forced labour that have emerged in recent decades, such as human trafficking.', in other words "modern-slavery" to shed light on working and living conditions contrary to human dignity.', see ILO, *General Survey on the fundamental Conventions concerning rights at work in light of the ILO Declaration on Social Justice for a Fair Globalization*, Report of the Committee of Experts on the Application of Conventions and Recommendations, 2012, ILC.101/III/1B, para. 272.

<sup>3</sup> ILO, 'Forced labour, modern slavery and human trafficking' (ILO, September 2017) <<https://www.ilo.org/global/topics/forced-labour/lang--en/index.htm>> accessed 22 July 2019.

<sup>4</sup> See Yvonne Eloise Mellon 'Exploring Modern Slavery and the Modern Slavery Act 2015: how does the framing of modern slavery limit the efficacy of legal and policy responses to human trafficking and slavery?' (DPhil thesis, University of Liverpool 2018), Introduction.

<sup>5</sup> Yvonne Eloise Mellon 'Exploring Modern Slavery and the Modern Slavery Act 2015: how does the framing of modern slavery limit the efficacy of legal and policy responses to human trafficking and slavery?' (DPhil thesis, University of Liverpool 2018), p.178.

undermining the effective application of the relevant legal regimes'.<sup>6</sup> In this sense, one can infer that 'labour exploitation' can be vast and there is no 'clear line demarking the beginning and end of one form of exploitation to another'<sup>7</sup> which can lead to implications to the victims and to the offenders.<sup>8</sup> Therefore, the first part of this dissertation is going to be used to address the different definitions that the term 'modern slavery' might have in the literature, under international law, as well as in the two jurisdictions that are studied throughout this dissertation: the Brazilian law and the law applicable in the UK.

Furthermore, this research is going to provide an insight regarding both legislations, including its strengths and shortcomings as well as how they are being enforced by analyzing national jurisprudence and if the remedies provided for the victims in each country are enough. This dissertation's aim is to analyze and criticize these two different laws and realities in order to fill the gap in anti-slavery laws and to facilitate existing legislations to have a stronger and more positive effect. A comparative law methodology is going to be applied in order to fulfil this research's objective. The methodology is going to follow the stages set by Walter Kamba. First the descriptive phase is going to be fulfilled by tackling the description of concepts, norms, and institutions and later on the identification phase is going to be completed by identifying the differences and similarities of both legal systems. Lastly, the explanatory phase under which the divergences and resemblances are accounted for is also going to be considered.<sup>9</sup>

Also, for the purpose of strengthening anti-slavery legislations some recommendations are going to be made. However, it is important to emphasize that these recommendations are going to be based on the analysis and criticism discussed throughout this dissertation.

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<sup>6</sup> Janie Chuang, *Exploitation Creep and the Undermining of Human Trafficking Law* (2014) 108 (4), *American Journal of International Law*, 609, p. 634.

<sup>7</sup> Klara Skrivankova, 'Between decent work and forced labour: examining the continuum of exploitation' (Joseph Rowntree Foundation, 2010) <<https://www.jrf.org.uk/report/between-decent-work-and-forced-labour-examining-continuum-exploitation>> accessed 10 September 2019.

<sup>8</sup> Yvonne Eloise Mellon 'Exploring Modern Slavery and the Modern Slavery Act 2015: how does the framing of modern slavery limit the efficacy of legal and policy responses to human trafficking and slavery?' (DPhil thesis, University of Liverpool 2018), p.178 – 179.

<sup>9</sup> Walter Kamba, 'Comparative Law: A Theoretical Framework' in *The International and Comparative Law Quarterly*, (Vol. 23, No. 3, July 1974), p. 511 – 512.

## 1. APPRAISAL OF 'MODERN SLAVERY'

As it is going to be addressed in further detail below, even though the Slavery Convention defines what slavery was, neither the international nor the national laws establish what 'modern slavery' is. This is the reason why the first thing that is going to be analysed in this chapter is what scholarships and the academic literature understand as modern slavery. In the sequence, the concept of modern slavery is going to be examined through the lenses of different bodies of law: the International law, the Brazilian law and the English law.

### 1.1. MODERN SLAVERY ACCORDING TO THE ACADEMIC LITERATURE

Discussions about slavery have been under the spotlight for the past two decades and as a consequence the term 'modern slavery' has entered into commonplace usage.<sup>10</sup> It is an update of the term 'contemporary forms of slavery' and it refers to complex crimes such as human trafficking, forced labour, and debt bondage.<sup>11</sup> Therefore, it can be described as an umbrella term that is applicable to a range of practices that go beyond legal and historical definitions of slavery<sup>12</sup> as well as to a variety of exploitative conditions to which the person 'cannot refuse or leave because of threats, violence, deception, and/or abuse of power'.<sup>13</sup>

Even though the term is recognized by the international community and it is used in consistence with international efforts and legislation,<sup>14</sup> it is important to say that it has no fixed legal definition in either regional and international instruments.<sup>15</sup> Hence the necessity of addressing what it is considered to be modern slavery in the academic literature. In this sense and given the fact that there is not a solid

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<sup>10</sup> Yvonne Eloise Mellon 'Exploring Modern Slavery and the Modern Slavery Act 2015: how does the framing of modern slavery limit the efficacy of legal and policy responses to human trafficking and slavery?' (DPhil thesis, University of Liverpool 2018), p. 148.

<sup>11</sup> Walk Free Foundation, 'Joint Standing Committee on Foreign Affairs, Defence and Trade: Inquiry into an Australian Modern Slavery Act' (Walk Free Foundation, 28 April 2017), para. 2.1.4.

<sup>12</sup> Annie Bunting and Joel Quirk, 'Contemporary Slavery as More than Rhetorical Strategy? The Politics and Ideology of a New Political Cause' in Annie Bunting and Joel Quirk (ed), *Contemporary Slavery: popular rhetoric and political practice* (UBC Press, 2017) p. 6.

<sup>13</sup> ILO and Walk Free Foundation, 'Global Estimates of Modern Slavery: forced labour and forced marriage' (ILO and Walk Free Foundation, September 2017) <[https://www.ilo.org/global/publications/books/WCMS\\_575479/lang--en/index.htm](https://www.ilo.org/global/publications/books/WCMS_575479/lang--en/index.htm)> accessed 20 August 2019, p. 9.

<sup>14</sup> Walk Free Foundation, 'Joint Standing Committee on Foreign Affairs, Defence and Trade: Inquiry into an Australian Modern Slavery Act' (Walk Free Foundation, 28 April 2017), para. 2.1.4.

<sup>15</sup> Yvonne Eloise Mellon 'Exploring Modern Slavery and the Modern Slavery Act 2015: how does the framing of modern slavery limit the efficacy of legal and policy responses to human trafficking and slavery?' (DPhil thesis, University of Liverpool 2018), p. 148.

legal concept that unifies the understanding of the term, it proves that the expression 'umbrella term' is rightfully applied to it.

The usage of the term 'modern slavery' started in the late 1990s thanks to Kevin Bales, an anti-slavery advocate and Professor of Contemporary Slavery. In his book *Disposable People* he states that 'old slavery' and 'new slavery' are different since the new form does not encompass the idea of legal ownership.<sup>16</sup> But, according to him, modern slavery turns the slaves disposable since it could be characterized by the avoidance of legal ownership, an increase of the number of potential slaves, the low purchase cost and short-term relationship.<sup>17</sup> Later on his work, Bales replaces the term 'new slavery' with 'modern slavery' because he noticed that the lines and differences between the usage of slave labour in different countries had become blurred considering that they were 'becoming more alike'.<sup>18</sup>

In 2009 Bales defined modern slavery as a 'relationship in which one person is controlled by another through violence, the threat of violence, or psychological coercion, has lost free will and free movement, is exploited economically and is paid nothing beyond substance'.<sup>19</sup> Moreover, he established that the term comprehends four kinds of enslavement: chattel slavery, debt bondage/bonded labour, contract slavery and forced labour.<sup>20</sup>

However, Orlando Patterson, a historical and cultural sociologist that focuses on the comparative study of slavery and ethno-racial relations, argues that the concepts of 'corporeal possession, violence and of extreme power over another are more appropriate terms in defining the slave relation which, as it happens, also facilitates its applications to certain modern forms of domination'.<sup>21</sup> Also, he says that even if slavery is considered illegal in most societies, the same is not true when it comes to forced labour, especially because the laws that forbid this practice are not taken seriously.<sup>22</sup>

Moreover, when it comes to the definition of modern slavery, Patterson criticizes Bales' description in many fronts. He does not agree with Bales' statement that slave prices are lower nowadays. In this

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<sup>16</sup> Kevin Bales, *Disposable People* (3<sup>rd</sup> Edition, University of California Press 2012) p. 29.

<sup>17</sup> Kevin Bales, *Disposable People* (3<sup>rd</sup> Edition, University of California Press 2012) p. 35.

<sup>18</sup> Kevin Bales, Zoe Trodd, Alex Kent Williamson, *Modern Slavery: the secret of 27 million people* (One World 2009) p. 30.

<sup>19</sup> Kevin Bales, Zoe Trodd, Alex Kent Williamson, *Modern Slavery: the secret of 27 million people* (One World 2009) p. 31.

<sup>20</sup> Kevin Bales, Zoe Trodd, Alex Kent Williamson, *Modern Slavery: the secret of 27 million people* (One World 2009) p. 33 - 35.

<sup>21</sup> Orlando Patterson, 'Trafficking, Gender and Slavery: past and present' in Jean Allain (ed), *The Legal Understanding of Slavery: from the historical to the contemporary* (Oxford University Press, 2012), p. 7

<sup>22</sup> Orlando Patterson, 'Trafficking, Gender and Slavery: past and present' in Jean Allain (ed), *The Legal Understanding of Slavery: from the historical to the contemporary* (Oxford University Press, 2012), p. 7



regard, Patterson states that if the analysis goes beyond the Americas it is possible to observe that in the past the prices of slaves could be 'incredibly low' in many other places around the world.<sup>23</sup> Also, in order to counter argue the point Bales makes in relation to modern slavery and its short-term relationships, Patterson gives examples that prove that modern slavery are not only about short-term relationships. In this sense, he declares that situations such as debt bondage in Pakistan and India, the restavek<sup>24</sup> system of child slavery in Haiti, the cases of child slavery in farms in West Africa, and forced marriages in China<sup>25</sup> are all situations that encompass long-term relationships. Finally, Bales' statement that slaves are disposable today is rebutted by Patterson when he explains that there are situations in which the victims' work is indispensable for their employers, such as in the cases involving snakeheads<sup>26</sup> and their smuggled victims, women held in domestic servitude in Europe whose work is essential for their exploiters, and the prostitutes who work for Nigerian madams.<sup>27</sup> Moreover, Kara, an expert on contemporary slavery, explains that the terms 'modern slavery', 'modern-day slavery', and 'contemporary forms of slavery' can be used to describe 'the condition of a person who is treated in much the same way that slaves who were legally owned in the past were treated'.<sup>28</sup> In other words, slavery dishonors and degrades people through the violent coercion of their labour activity and submits them to conditions that dehumanize them.<sup>29</sup> This violence does not need to encompass only physical abuse since it can also include verbal and physiological violence together with 'the deprivation of security or sustenance as penalties for lack of submission'.<sup>30</sup>

## 1.2. SLAVERY ACCORDING TO INTERNATIONAL LAW

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<sup>23</sup> Orlando Patterson, *Slavery and Social Death: a comparative study* (Harvard University Press, 1982) p. 166 – 169.

<sup>24</sup> Restavek is a child in Haiti who is sent by his/her parents, in hope of a better life, to work for a host household as a domestic servant.

<sup>25</sup> Orlando Patterson, 'Trafficking, Gender and Slavery: past and present' in Jean Allain (ed), *The Legal Understanding of Slavery: from the historical to the contemporary* (Oxford University Press, 2012), p. 8 - 9

<sup>26</sup> Chinese human smuggling organizations.

<sup>27</sup> Orlando Patterson, 'Trafficking, Gender and Slavery: past and present' in Jean Allain (ed), *The Legal Understanding of Slavery: from the historical to the contemporary* (Oxford University Press, 2012), p. 9

<sup>28</sup> Siddharth Kara, *Modern Slavery: a global perspective* (Columbia Press 2017) p. 7.

<sup>29</sup> Siddharth Kara, *Modern Slavery: a global perspective* (Columbia Press 2017) p. 8.

<sup>30</sup> Siddharth Kara, *Modern Slavery: a global perspective* (Columbia Press 2017) p. 9.

Throughout History, slavery has had different interpretations depending on cultural and historical contexts. Nevertheless, the most accepted idea was that the 'word refers to the practice of treating people like property, or chattel'.<sup>31</sup>

In this sense, the Slavery Convention establishes that 'slavery is the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised'.<sup>32</sup> This Convention was amended and augmented by the Protocol amending the Slavery Convention (1953)<sup>33</sup> and the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (1956),<sup>34</sup> respectively. But given the fact that owning someone is not legally accepted nowadays, only applying this definition would be insufficient. In this sense, the High Court of Australia in the *Tang* case established that modern slavery can happen when it is proven that an individual was treated like a slave, which does not imply that a person has to legally own another in order to be held accountable for slavery.<sup>35</sup>

Even though the Supplementary Convention was signed 30 years after the Slavery Convention, it did not change the concept of slavery.<sup>36</sup> However, it established a difference between slavery and a person held on servile status. Moreover, this document added institutions and practices that fall under the scope of slavery, such as debt bondage, serfdom, denial of women's right to refuse marriage, the right to transfer a woman to another person for value received, and the transference of a person under the age of 18 years to another person with a view to the exploitation of this individual.<sup>37</sup>

When it comes to the International Labour Organization (ILO), its first step to fight slavery was to adopt when it created the Forced Labour Convention (No. 29) in 1930. In its Article 2 (1) it set that forced or compulsory labour means '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' and part (2) provides situations that should not be considered forced labour:

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<sup>31</sup> Ibid., p. 5.

<sup>32</sup> Slavery Convention 1926, Art. 1.

<sup>33</sup> General Assembly, *Protocol amending the Slavery Convention* (1953) (Entry into force 7 December 1953)

<sup>34</sup> General Assembly, *Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery* (Entry into force 30 April 1957)

<sup>35</sup> *R v Tang* (2008) 237 CLR 1, 7, para. 33.

<sup>36</sup> Supplementary Convention 1956, Art. 7.

<sup>37</sup> Ibid. Art. 1.

- (a) any work or service exacted in virtue of compulsory military service laws for work of a purely military character;
- (b) any work or service which forms part of the normal civic obligations of the citizens of a fully self-governing country;
- (c) any work or service exacted from any person as a consequence of a conviction in a court of law, provided that the said work or service is carried out under the supervision and control of a public authority and that the said person is not hired to or placed at the disposal of private individuals, companies or associations;
- (d) any work or service exacted in cases of emergency, that is to say, in the event of war or of a calamity or threatened calamity, such as fire, flood, famine, earthquake, violent epidemic or epizootic diseases, invasion by animal, insect or vegetable pests, and in general any circumstance that would endanger the existence or the well-being of the whole or part of the population;
- (e) minor communal services of a kind which, being performed by the members of the community in the direct interest of the said community, can therefore be considered as normal civic obligations incumbent upon the members of the community, provided that the members of the community or their direct representatives shall have the right to be consulted in regard to the need for such services.

After the adoption of the Convention 29, in 1957 the ILO adopted the Abolition of Forced Labour Convention (No. 105). This Convention did not create a new definition on slavery but it determined that each member of the ILO who ratified the Convention must undertake steps to fight any form of forced or compulsory labour.<sup>38</sup> It has also established that forced labour must not be used as means of political coercion or education, for the purpose of economic development, as means of labour discipline, as a punishment for having participated in strikes or as means of discrimination.<sup>39</sup>

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<sup>38</sup> Convention No. 105 1957, Art. 1.

<sup>39</sup> Ibid.

Moreover, the Universal Declaration of Human Rights (1948) in its Article 4 says that no one shall be held in slavery or servitude and that slavery and the slave trade shall be prohibited in all their forms.<sup>40</sup> Also, the International Covenant on Civil and Political Rights 1966 (ICCPR) recognizes that no one shall be held in slavery; that slavery and the slave-trade in all their forms shall be prohibited, that no one shall be held in servitude, and that no one shall be required to perform forced or compulsory labour.<sup>41</sup>

In order to rule in a case involving modern slavery, the International Court for the Former Yugoslavia in the *Kunarac* case accepted the definition of slavery provided by the Slavery Convention but it also established that it had evolved

'[...] to encompass various contemporary forms of slavery which are also based on the exercise of any or all of the powers attaching to the right of ownership. In the case of these various contemporary forms of slavery, the victim is not subject to the exercise of the more extreme rights of ownership associated with 'chattel slavery', but in all cases, as a result of the exercise of any or all of the powers attaching to the right of ownership, there is some destruction of the juridical personality; the destruction is greater in the case of 'chattel slavery' but the difference is one of degree.'<sup>42</sup>

Moreover, it also established that because modern slavery is a multifaceted phenomenon it is not possible to enumerate all forms of contemporary slavery, but it was found that there are factors which suggest that someone is being enslaved, such as 'control of someone's movement, control of physical environment, psychological control, measures taken to prevent or deter escape, force, threat of force or coercion, duration, assertion of exclusivity, subjection to cruel treatment and abuse, control of sexuality and forced labour'.<sup>43</sup>

Now, when it comes to the regional systems, both the American and the European have legal provisions that address this phenomenon. The American Convention on Human Rights (1969),

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<sup>40</sup> General Assembly, *Universal Declaration of Human Rights (1948)* (Proclaimed 10 December 1948)

<sup>41</sup> International Covenant on Civil and Political Rights 1966, Art. 8 (1)(2)(3.a).

<sup>42</sup> *Prosecutor v Kunarac and others*, Case No: IT-96-23&IT-96-23/1-A, ICTY Appeals Chamber, Judgment, 12 June 2002, para. 117.

<sup>43</sup> *Ibid.*, para. 119.

hereinafter 'the American Convention' states in Article 6 that 'no one shall be subject to slavery or to involuntary servitude, which are prohibited in all their forms, as are the slave trade and traffic in women'<sup>44</sup> and the European Convention on Human Rights 1950 (ECHR) declares in its Article 4 that no one shall be held in slavery or servitude and that no one shall be required to perform forced or compulsory labour.<sup>45</sup>

In the case *Fazenda Brasil Verde*, the Inter-American Court of Human Rights (IACHR) has also recognized that the interpretation of slavery has changed and that its concept and its analogous forms are

'not limited to ownership of the person, but also encompassed the loss of the person's own will or a considerable reduction of personal autonomy. That manifestation of the exercise of the attributes of property, in modern times, should be understood as control that significantly restricted or denied individual liberty with an intent to exploit by using, managing, taking advantage of, transferring or disposing of the person concerned, usually through the use of violence, force, deception and/or coercion.'<sup>46</sup>

In the same vein, the European Court of Human Rights (ECtHR) noted that in the *Siliadin v France* case the victim had had her right to not be held in slavery or servitude and to be required to perform forced or compulsory work violated. The Court found that even though she 'was not threatened by a "penalty", the fact remains that she was in an equivalent situation in terms of the perceived seriousness of the threat'.<sup>47</sup> Moreover, the facts that she did not perform the work of her own free will, she was deprived of her personal autonomy, she had no freedom of movement and she had no free time, characterized forced labour and servitude respectively.<sup>48</sup> The ECtHR emphasized that even

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<sup>44</sup> Organization of American States (OAS), *American Convention on Human Rights*, "Pact of San Jose", Costa Rica, 22 November 1969, Article 6.

<sup>45</sup> Council of Europe, *European Convention for the Protection of Human Rights and Fundamental Freedoms*, as amended by Protocols Nos. 11 and 14, 4 November 1950, Article 4.

<sup>46</sup> Inter-American Court of Human Rights, 'Non official brief' (IACHR) <<http://www.corteidh.or.cr/cf/Jurisprudencia2/overview.cfm?doc=1728&lang=en>> accessed 31 July 2019; *Fazenda Brasil Verde Workers v. Brazil*, Judgment of 20 October 2016, Series C No. 318, paras 268 - 273.

<sup>47</sup> *Siliadin v France* App No 73316/01 (European Court of Human Rights, 26 July 2005) para. 118.

<sup>48</sup> *Ibid.*, paras. 119-129

though the perpetrators did not exercised the right of legal ownership over her, she was subjected to slavery and servitude.<sup>49</sup>

From what it was presented so far, it is clear that the international community has been trying to fight slavery. It has developed a number of international and regional conventions in order to establish a framework to protect people from slavery and its analogous forms, forced labour, and servitude. Despite that, it is possible to state that no international convention has created a clear definition of 'modern slavery'. In this sense the ILO noted in its *Global Alliance Against Forced Labour* report that the concept of “modern slavery”, “slavery-like practices” and “forced labour” are not well understood, even if there are numerous conventions that tackle these problems.<sup>50</sup>

### 1.3. SLAVERY ACCORDING TO THE BRAZILIAN LAW

The adoption of the *Lei Áurea* (the Golden Law) on the 13th of May 1888 made Brazil the last Western country to abolish slavery.<sup>51</sup> However, despite the fact that slavery has not been legal for more than a century, the Global Slavery Index estimates that in 2016 there were 369,000 victims of modern slavery on any given day in Brazil.<sup>52</sup>

Even though the number of people in modern slavery is still high, Brazil has adopted strong measures 'to combat forced labour and impunity' in the country.<sup>53</sup> According to Gabriela Delgado, there are three main pillars that establish the absolute inviolability of labour rights within the Brazilian context: international treaties signed by Brazil; the rights provided by the Brazilian Constitution (1988); and the infra-constitutional regulations.<sup>54</sup>

Among others international treaties, Brazil has ratified the Slavery Convention in 1965 alongside with the Supplementary Convention. It has also signed the Convention No. 29 in 1957, the ICCPR in 1992,

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<sup>49</sup> Ibid., para. 122

<sup>50</sup> International Labour Organization (ILO), "A Global Alliance Against Forced Labour". *Global Report Under the Follow-up to the ILO Declaration on Fundamental Principles and Rights At Work* (May 2005) <[https://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---declaration/documents/publication/wcms\\_081882.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_081882.pdf)> accessed 31 July 2019, p. 5.

<sup>51</sup> Júlia Dias Carneiro, 'Brasil viveu um processo de amnésia nacional sobre a escravidão, diz historiadora' (BBC, 10 May 2018) <<https://www.bbc.com/portuguese/brasil-44034767>> accessed 1 August 2019.

<sup>52</sup> Walk Free Foundation, 'Global Slavery Index' (The Minderoo Foundation Pty 2018) <[https://www.traffickingmatters.com/wp-content/uploads/2018/08/GSI-2018\\_FNL\\_180807\\_DigitalSmall\\_p.pdf](https://www.traffickingmatters.com/wp-content/uploads/2018/08/GSI-2018_FNL_180807_DigitalSmall_p.pdf)> accessed 1 August 2019, p. 78.

<sup>53</sup> International Labour Organization (ILO), "A Global Alliance Against Forced Labour". *Global Report Under the Follow-up to the ILO Declaration on Fundamental Principles and Rights At Work* (May 2005) <[https://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---declaration/documents/publication/wcms\\_081882.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_081882.pdf)> accessed 31 July 2019, para. 90.

<sup>54</sup> Gabriela Delgado, 'Direito Fundamental ao Trabalho Digno' (LTr 2006) p. 214 - 215.

the Universal Declaration of Human Rights in 1948, the Palermo Protocol in 2000 and the American Convention on Human Rights in 1969.

When it comes to domestic legislation its main legal document that fights slavery is the national Constitution.<sup>55</sup> In its Article 1(III) and (IV) it states that the Republic is founded on the principles of dignity of the human person and on the social values of labour and of the free enterprise, and Article 5 establishes that every human being must not have its right to liberty violated. Moreover, Article 7 specifically promotes the improvement of the social condition of workers through the right to have a decent work, and Article 227 prohibits the exploitation of children.

Furthermore, the Consolidation of Labour Laws (1943),<sup>56</sup> the decree that regulates the relationship between employer and employee, establishes both their rights and legal duties, protects both rural and urban workers and it imposes rules in order to fight analogous conditions to slavery. In Article 58 and 59 it determines that no one should work more than 8 hours per day or 44 hours per week. Moreover, Article 5 states that all workers have the right to have equal pay regardless of their sex and on Article 462 it addresses debt bondage. According to the text, the employer cannot make any deductions from the worker's salary, except cash advancements, legal requirements or collective agreement provisions.

The Brazilian Penal Code (1940) addresses the criminal liability for those who reduce someone to a condition analogous to slavery. In other words it tackles human trafficking, forced labour and slavery by establishing a penalty of 'imprisonment from two to eight years and a fine in addition to the penalty corresponding to violence'.<sup>57</sup> Nevertheless, since this Article was vague, criminal judges found it difficult to identify the elements of modern slavery when ruling on cases brought to them.

Hence, in 2003 the Congress passed the Decree No. 10.803 that modified its definition. In the new text it was set that 'condition analogous to slavery' encompasses exhausting workday or degrading conditions, restriction of movement, debt bondage, seizure of documents, and strict surveillance with the aim of confining the worker.<sup>58</sup> When it comes to redress, the Brazilian Civil Code in its Articles 186, 187 and 927 provides that when someone is a victim of labour analogous to slavery this person can seek reparation in order to recognize the civil liability of the perpetrator.

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<sup>55</sup> Constitution of the Federative Republic of Brazil 1988.

<sup>56</sup> Consolidation of Labour Laws 1943 (BR).

<sup>57</sup> Brazilian Penal Code 1940, Article 149.

<sup>58</sup> Decree No. 10.803, Article 1.

In this sense, Magalhães and Maciel explained what they consider to be the definition of modern slavery. According to them, there are four different kinds of slavery: forced labour, exhausting workday, degrading conditions and debt bondage. The first element is characterized by a person who has not offered him/herself voluntarily for the work, the second is related to workdays with prolonged hours and situations in which the worker is super-exploited and as a consequence his/her physical and mental health are affected. The degrading condition is marked by precarious sanitation, health, and lodging conditions. Lastly, debt by bondage occurs when the employer retain part of the worker's money to pay the debt they contracted when the employer paid for their transportation to the workplace or for the 'benefits' they receive, e.g. lodging, food, and clothing.<sup>59</sup>

In 2017 the Brazilian Executive Power passed the Ordinance No. 1.129<sup>60</sup> in which it is explained the different types of modern slavery. According to Article 2-C, forced labour is characterized as a situation when an individual is working for someone against their will. When it comes to exhausting workday, it established that it means that an employee has his/her right to freedom violated and works in an illegal context, for example when he/she works more than 8 hours per day. Degrading condition breaches the workers' fundamental rights and the right to 'come and go' (*direito de ir e vir*) which implicates a violation to his/her dignity. Last but not least, analogous conditions to slavery embodies the threat of punishment at work, the implementation of strict surveillance, the prohibition to use any means of transportation and the seizure of the employee's documents in order to keep the victim in the workplace.

Despite all the legislations, the definition of modern slavery or conditions analogous to slavery is not firm yet.<sup>61</sup> Therefore, it is important to analyse how the national jurisprudence has been interpreting the law and how it has been defining this phenomenon. In this sense, the Federal Supreme Court established that the right 'to come and go', in other words the right to freedom, does not need to be violated in order to be understood that someone was subject to modern slavery, since the law also protects the human dignity. As a consequence, if a person is working in degrading conditions or if

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<sup>59</sup> Luís Felipe Aires Magalhães and Lidiane Maciel, '35% dos resgatados em ações de combate ao trabalho escravo são imigrantes: O agronegócio é o setor que mais apresentou ocorrências, seguido da construção civil' (Demografia UNICAMP, 29 March 2017) <<https://demografiaunicamp.wordpress.com/2017/03/29/35-dos-resgatados-em-acoes-de-combate-ao-trabalho-escravo-sao-imigrantes/>> accessed 2 August 2019.

<sup>60</sup> Portaria MTB No. 1.129 2017.

<sup>61</sup>



he/she is being subjected to forced labour or exhausting workday, the situation can be characterized as conditions analogous to slavery.<sup>62</sup>

Unlike the UK law, as it is going to be seen below, the Brazilian law does not have a unique body of law that addresses modern slavery and human trafficking altogether. As it was observed above, the legislation regarding modern slavery can be found spread throughout the Brazilian legal system but the same is not applicable when it comes to human trafficking.

In order to update the laws that were already in place, in 2016 the Brazilian Senate passed the Law No. 13.344/2016 that replaced the Decree No. 3.815/1980, the Code of Criminal Procedure, the Penal Code and it also revoked some specific legal provision found in the Penal Code.<sup>63</sup>

This new legislation was developed to prevent and suppress the internal or external human trafficking, to provide assistance for victims and it was implemented in order to comply with the Palermo Protocol.<sup>64</sup> It broadens the definition of human trafficking and it establishes that human trafficking can also encompass the removal of tissues or organs; the exploitation of individuals in conditions analogous to slavery or servitude; and illegal adoption instead of only sexual exploitation.<sup>65</sup>

Moreover, it criminalizes all forms of human trafficking with harsher penalties for perpetrators as it sets that they can be imprisoned from 4 and up to 8 years, in addition to paying a fine.<sup>66</sup> A more severe penalty can be imposed if the offence was committed by a civil servant or against children, adolescents or against the elderly.<sup>67</sup> Lastly, the penalty can also be increased if the victim is sent overseas.<sup>68</sup>

The law strengthens initiatives to combat human trafficking by targeting the protection of victims, and the prevention and repression of the crime.<sup>69</sup> When it comes to the victim's protection, it has fixed and extended the right to legal, social, health, work and housing assistance to national and foreign victims.

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<sup>62</sup> Inq 3412 / AL - ALAGOAS INQUÉRITO, Relator(a): Min. MARCO AURÉLIO, Relator(a) p/ Acórdão: Min. ROSA WEBER, Julgamento: 29/03/2012, Órgão Julgador: Tribunal Pleno; RE 541627 / PA - PARÁ, RECURSO EXTRAORDINÁRIO, Relator(a): Min. ELLEN GRACIE, Julgamento: 14/10/2008 Órgão Julgador: Segunda Turma; STF - Inq: 3564 MG, Relator: Min. RICARDO LEWANDOWSKI, Data de Julgamento: 19/08/2014, Segunda Turma, Data de Publicação: ACÓRDÃO ELETRÔNICO DJe-203 DIVULG 16-10-2014 PUBLIC 17-10-2014.

<sup>63</sup> *Brazil Law No. 13.344 of October 6, 2016*, available at <[http://www.planalto.gov.br/ccivil\\_03/\\_Ato2015-2018/2016/Lei/L13344.htm](http://www.planalto.gov.br/ccivil_03/_Ato2015-2018/2016/Lei/L13344.htm)> accessed 30 August 2019.

<sup>64</sup> UN General Assembly, *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime*, 15 November 2000, available at: <https://www.refworld.org/docid/4720706c0.html> [accessed 30 August 2019]

<sup>65</sup> Law No. 13.344/2016, Article 13.

<sup>66</sup> *Ibid.* Article

<sup>67</sup> *Ibid.*

<sup>68</sup> *Ibid.*

<sup>69</sup> Elina Rodrigues Pozzebom, 'Nova lei contra o tráfico de pessoas facilita punição e amplia proteção à vítima' (*Agência Senado*, 14 December 2016) <<https://www12.senado.leg.br/noticias/materias/2016/12/13/novo-marco-legal-contra-o-trafico-de-pessoas-facilita-punicao-e-amplia-protecao-a-vitima>> accessed 30 August 2019.

Furthermore, it established that victims of human trafficking shall not be re-victimized and shall receive the same treatment as rape victims.<sup>70</sup>

Besides, it is recognized in Article 4 (I) that for the purpose of preventing human trafficking, it is necessary to implement intersectional action in the following areas: health, education, work, public security, tourism, social assistance, rural development, sports, communication, culture and human rights. It further set that different languages and social contexts must be taken into consideration and that the civil society must be involved in the discussions about the topic.<sup>71</sup>

Others innovations implemented by this legislation was the creation of a database for offenders,<sup>72</sup> the concession of visas for people who were trafficked to Brazil with the possibility of being extended to their families,<sup>73</sup> and the disposal of immovable property of the offender.<sup>74</sup>

#### **1.4. SLAVERY ACCORDING TO THE ENGLISH LAW**

In 1833 Britain passed the Slavery Abolition Act which abolished slavery throughout its Empire. Nonetheless, modern slavery is still an issue in the UK, as it was reported by the Global Slavery Index. According to the Global Slavery Index report, there were 136.000 victims of slavery in the UK in 2016 and most people who were slavery victims came from other countries, such as Albania, Vietnam, China and Nigeria.<sup>75</sup> In order to fight this phenomenon, the UK adopted different legislations, both in the international and domestic level.

In the international sphere the UK signed the Slavery Convention in 1953 and its Supplementary Convention in 1956 and it ratified the Convention No. 29 in 1931, the ICCPR in 1968, the Palermo Protocol in 2000 and the European Convention on 1951.

When it comes to the UK's national legislation, it drafted an Act of Parliament called Human Rights Act (1998)<sup>76</sup> in which fundamental rights and freedoms are set. Its Article 4 prohibits slavery and

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<sup>70</sup> Ibid; Law No. 13.344/2016, Article 6.

<sup>71</sup> Law No. 13.344/2016, Article 4 (II) and (III).

<sup>72</sup> Ibid., Article 10.

<sup>73</sup> Ibid., Article 7.

<sup>74</sup> Ibid., Article 8.

<sup>75</sup> Walk Free Foundation, '*Global Slavery Index*' (The Minderoo Foundation Pty 2018) <[https://www.traffickingmatters.com/wp-content/uploads/2018/08/GSI-2018\\_FNL\\_180807\\_DigitalSmall\\_p.pdf](https://www.traffickingmatters.com/wp-content/uploads/2018/08/GSI-2018_FNL_180807_DigitalSmall_p.pdf)> accessed 1 August 2019, p. 94.

<sup>76</sup> Human Rights Act 1998.

forced labour and it establishes that no one must be subject to slavery or servitude and forced or compulsory labour. Moreover, it determines what does not encompass 'forced or compulsory labour' such as work required to be done in the course of a detention and military service. In relation to one's liberty, Article 5 states that 'everyone has the right to liberty and security of person' and it stipulates that 'everyone who has been the victim of [...] detention in contravention of the provisions of [Article 5] shall have an enforceable right to compensation'.

The UK created the Anti-Slavery Day Act (2010) 'to raise awareness of the need to eradicate all forms of slavery, human trafficking and exploitation'.<sup>77</sup> It also highlights that trafficking for sexual exploitation, child trafficking, trafficking for forced labour and domestic servitude are forms of slavery.<sup>78</sup>

However, it was only in 2015 that a specific piece of legislation was created to address modern slavery and human trafficking: the Modern Slavery Act.<sup>79</sup> This Act is divided in seven parts and it was established to introduce 'new measures to enable departments, law enforcement agencies and the judiciary to implement' the Modern Slavery Strategy (2014).<sup>80</sup> The first part sets the offenses, penalties and sentencing for slavery, servitude, forced or compulsory labour and human trafficking 'whilst increasing the maximum penalty for such offences'<sup>81</sup> to imprisonment for life:<sup>82</sup>

#### Slavery, servitude and forced or compulsory labour

(1) A person commits an offence if—

(a) the person holds another person in slavery or servitude and the circumstances are such that the person knows or ought to know that the other person is held in slavery or servitude, or

(b) the person requires another person to perform forced or compulsory labour and the circumstances are such that the person knows or ought to know that the other person is being required to perform forced or compulsory labour.

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<sup>77</sup> Anti-Slavery Day Act 2010.

<sup>78</sup> Ibid., Article 3.

<sup>79</sup> Modern Slavery Act 2015.

<sup>80</sup> House of Commons Committee of Public Accounts, 'Reducing modern slavery: Thirty-Sixth Report of Session 2017–19' (25 April 2018) <<https://publications.parliament.uk/pa/cm201719/cmselect/cmpubacc/886/886.pdf>> accessed 2 August 2019, para. 3.

<sup>81</sup> Modern Slavery Act 2015 Explanatory Notes, para. 3.

<sup>82</sup> Modern Slavery Act 2015, Article 5(1)(a).

(2) In subsection (1) the references to holding a person in slavery or servitude or requiring a person to perform forced or compulsory labour are to be construed in accordance with Article 4 of the Human Rights Convention.

(3) In determining whether a person is being held in slavery or servitude or required to perform forced or compulsory labour, regard may be had to all the circumstances.

(4) For example, regard may be had—

(a) to any of the person's personal circumstances (such as the person being a child, the person's family relationships, and any mental or physical illness) which may make the person more vulnerable than other persons;

(b) to any work or services provided by the person, including work or services provided in circumstances which constitute exploitation within section 3(3) to (6).

(5) The consent of a person (whether an adult or a child) to any of the acts alleged to constitute holding the person in slavery or servitude, or requiring the person to perform forced or compulsory labour, does not preclude a determination that the person is being held in slavery or servitude, or required to perform forced or compulsory labour.

Part 2 in its Article 14 and 23, respectively, enable courts to make a prevention order and risk order against someone who is convicted of slavery or human trafficking offence. The first order is addressed in Article 14(1)(a) and it is applicable to cases in which the defendant has been convicted for slavery or human trafficking, the second order can be made against a defendant who has not been convicted for these offences but who is believed to pose a risk of committing a slavery or human trafficking offence, according to Article 23(2)(a).

The Act's Part 3 tackles slavery and human trafficking at sea. Based on Article 35(2)(a), its aim is to prevent, detect, investigate and prosecute slavery and human trafficking offences at sea since many victims are 'trafficked illegally on vessels, and also may be the subject of slavery, servitude and forced

or compulsory labour on board vessels'.<sup>83</sup> Part 4 sets the necessity of having an Independent Anti-slavery Commissioner, his/her functions and duty to submit a strategic plan to the Secretary of State and an annual report to the Secretary of State, the Scottish Ministers and the Department of Justice in Northern Ireland.

Part 5 focuses on the protection of victims by not punishing slavery or trafficking victims who committed an offence and by establishing special measures for witnesses in criminal proceedings. In Article 47, the Act sets that civil legal aid must be provided for victims of slavery and in Article 48(1) it determines that arrangements must be made by the Secretary of State in order to enable individuals 'to be available to represent and support children who there are reasonable grounds to believe may be victims of human trafficking'. It also states that guidance and regulations to identify and support victims must be issued. According to Article 51(2), in case the age of the victim is not possible to predict, the local authority must assume that the individual is under 18. This Part also addresses the duty to notify the Secretary of State about suspected victims of slavery or human trafficking and foreigner domestic workers.

As it is established in Part 6, Article 54(1)(4)(a), depending on their size, commercial organizations must prepare a slavery and human trafficking statement each year for the purpose of showing the steps they have taken to ensure that these offences are not taking place in their supply chains or in any part of its own business or a statement that the company has not taken such steps. Lastly, Part 7 'requires the Secretary of State to publish a paper on the role of the Gangmasters Licensing Authority and otherwise relates to general matters such as consequential provision and commencement'.<sup>84</sup>

Alongside with the Brazilian legislation, the law applicable in the UK does not clearly define what slavery is. However, the High Court ruled in two cases regarding Lithuanian chicken catchers that they were victims of modern slavery. In the *Galdikas & Ors v DJ Houghton Catching Services Ltd & Ors* case<sup>85</sup> it was found that six Lithuanian workers who have been trafficked to the UK and were not paid for their work in accordance with the applicable legislation, the Agricultural Workers Order, were victims of modern slavery. Moreover, the Defendants were held liable for charging fees for work-finding services<sup>86</sup> and for withholding and deducting<sup>87</sup> money from the Claimants' payments. It was

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<sup>83</sup> Modern Slavery Act 2015 Explanatory Notes, para. 120.

<sup>84</sup> Ibid., para. 3.

<sup>85</sup> *Galdikas & Ors v DJ Houghton Catching Services Ltd & Ors* [2016] EWHC 1376 (QB)

<sup>86</sup> Ibid. para. 34.

<sup>87</sup> Ibid. para. 35 and 40.

also found that the work took place in unpleasant conditions<sup>88</sup> and that there was a lack of facilities to wash, rest, eat and drink.<sup>89</sup>

In the same vein, in 2019 the High Court ruled in the *Antuzis & Ors v DJ Houghton Catching Services Ltd & Ors* case<sup>90</sup> that the Claimants were subjected to 'gruelling and exploitative work regime'.<sup>91</sup> It was found that they stayed on duty overnight,<sup>92</sup> had enormously long working weeks without proper payment,<sup>93</sup> had their money withheld and illegally deducted from their wages<sup>94</sup> as a form of punishment or leverage,<sup>95</sup> and that the Defendants failed to allow them to take any holidays or failed to pay for the holidays taken.<sup>96</sup>

## **2. GOVERNMENTS' RESPONSE TO MODERN SLAVERY**

As it can be assessed from the legislations addressed in the previous chapter and as it was mentioned before, neither of laws analysed in this dissertation have a clear definition of what modern slavery is. Although the two bodies of law establish what acts constitute modern slavery, they all lack a proper definition, what leads to the creation of a legal loophole.

Nevertheless, both governments have developed methods to combat modern slavery by having institutions that are responsible for tackling the issue and by developing plans and mechanisms to better respond to this phenomenon. As a consequence, the governments' actions to fight modern slavery are going to be covered in this chapter in order to better understand what their aims are and how they function before analysing their strengths and shortcomings later on.

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<sup>88</sup> Ibid. para. 43

<sup>89</sup> Ibid. para. 49.

<sup>90</sup> *Antuzis & Ors v DJ Houghton Catching Services Ltd & Ors* [2019] EWHC 843 (QB).

<sup>91</sup> Ibid. para. 58.

<sup>92</sup> Ibid. para. 71.

<sup>93</sup> Ibid. para. 87.

<sup>94</sup> Ibid. paras. 91-92.

<sup>95</sup> Ibid. para. 102.

<sup>96</sup> Ibid. para. 106.

## 2.1. BRAZIL

### 2.1.1 THE SPECIAL MOBILE INSPECTION GROUP, THE NATIONAL COMMISSION TO ERADICATE SLAVE LABOUR AND THE NATIONAL PLANS

After recognizing the existence of forced labour in the country before the Human Rights Committee, the Brazilian Government admitted that there was a lack of effective criminal sanctions against it.<sup>97</sup> Therefore, in 1995 the Government created the Special Mobile Inspection Group (GEFM) to guarantee that complaints regarding forced labour would be investigated.

The GEFM is composed by labour inspectors, labour prosecutors, federal police officers and federal highway police officers<sup>98</sup> whose role is to perform surprise inspections throughout Brazil. Its aim is to 'investigat[e] complaints of slave labour in situ, to free workers and to prosecut[e] the owners of estates where workers have been found in conditions analogous to slavery'.<sup>99</sup> As a result, it has freed 53.998 workers who have been victims of labour analogous to slavery as of today.<sup>100</sup>

In order to make sure that perpetrators will comply with the law and would not pose obstacles to the GEFM, the Ministry of Labour and Employment 'may request to freeze bank accounts of members of the agricultural enterprise inspected, as well as to arrest those involved [in the crime]'.<sup>101</sup>

In 2003, the National Commission to Eradicate Slave Labour (CONATRAE) was created in order to formulate and monitor the First and Second National Plan to Eradicate Slave Labour. The First Plan goal was to improve the administrative structure of the GEFM and of other institutions who fight modern slavery. Consequently, the establishment of this institution has led to the creation of twelve mobile groups whose work is to help and carry out activities for the GEFM.<sup>102</sup> However, since the First Plan had some shortcomings the CONATRAE decided to elaborate a second one. The Second Plan's

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<sup>97</sup> UN Human Rights Council, *Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences*, Gulnara Shahinian, 30 August 2010, A/HRC/15/20/Add.4, para. 10.

<sup>98</sup> Ibid., para. 36.

<sup>99</sup> International Labour Organization (ILO), *"Fighting forced labour: the example of Brazil"* (2009) <[https://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---declaration/documents/publication/wcms\\_111297.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_111297.pdf)> accessed 7 August 2019, p. 79.

<sup>100</sup> Secretaria de Inspeção do Trabalho, 'Statistics and information Dashboard of Labor Inspection in Brazil' (Secretaria de Inspeção do Trabalho, 7 August 2019) <<https://sit.trabalho.gov.br/radar/>> accessed 7 August 2019.

<sup>101</sup> International Labour Organization (ILO), *"Fighting forced labour: the example of Brazil"* (2009) <[https://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---declaration/documents/publication/wcms\\_111297.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_111297.pdf)> accessed 7 August 2019, p. 79.

<sup>102</sup> Comissão Especial do Conselho de Defesa dos Direitos da Pessoa Humana da Secretaria Especial dos Direitos Humanos, 'Plano Nacional para a Erradicação do Trabalho Escravo' (2003) <[https://www.ilo.org/wcmsp5/groups/public/---americas/---ro-lima/---ilo-brasil/documents/publication/wcms\\_227535.pdf](https://www.ilo.org/wcmsp5/groups/public/---americas/---ro-lima/---ilo-brasil/documents/publication/wcms_227535.pdf)> accessed 7 August 2019.

main objective was to address the weaknesses of the First one and to propose new measures to be taken by public authorities and civil society to end modern slavery in the country.<sup>103</sup>

### 2.1.2 A “LISTA SUJA” (THE “DIRTY LIST”)

The “dirty list” was established by the MTE Decrees No. 1.234/2003 and 540/2004 with the objective to “name and shame” companies or persons who were caught exploiting workers in conditions analogous to slavery. In order to add any name to the list, the right to due process must be respected and, as a consequence, an administrative procedure must be opened. Therefore, names are only going to be added to the list after establishing that the employers were actually using slave labour.<sup>104</sup>

After having their names added to the list, the employers are monitored for two years and if, in the meantime, they do not commit the offence again and if they have complied with their legal duties, such as paying all fines and labour compensations, their names can be withdrawn from it.<sup>105</sup> The list is updated every semester and it is made public by the Ministry of Labour and Employment.<sup>106</sup>

The inclusion on the list leads to a financial penalty, which means that financial institutions cannot grant credit or other banking benefits to companies or persons who were caught using slave labour.<sup>107</sup>

As it is possible to imagine, not all businesses were happy with this action and in 2014 the Supreme Court of Brazil suspended the disclosure of the list because of a lawsuit in which it was argued that the list was unconstitutional.<sup>108</sup>

Nevertheless, even though the list started to be disclosed again, the new applicable Decree on the matter received a lot of criticism. The Ministry of Labour and Employment and the National Coordinator for the Eradication of Slave Labour said that what it is understood as modern slavery in the Decree No. 1.129/2017 is extremely outdated and that it diminishes the impact the list used to

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<sup>103</sup> Comissão Especial do Conselho de Defesa dos Direitos da Pessoa Humana da Secretaria Especial dos Direitos Humanos, ‘Segundo Plano Nacional para a Erradicação do Trabalho Escravo’ (2008) <<https://www.reporterbrasil.org.br/documentos/novoplanonacional.pdf>> accessed 7 August 2019.

<sup>104</sup> MTE Decree No. 540/2004, Article 2.

<sup>105</sup> Ibid., Article 4.

<sup>106</sup> Ministério do Trabalho e Emprego, ‘Lista Suja’ (2019) <[http://trabalho.gov.br/images/Documentos/SIT/CADASTRO\\_DE\\_EMPREGADORES\\_2019\\_7\\_29.pdf](http://trabalho.gov.br/images/Documentos/SIT/CADASTRO_DE_EMPREGADORES_2019_7_29.pdf)> accessed 7 August 2019.

<sup>107</sup> Resolução Federal No. 3876/2010.

<sup>108</sup> STF - ADI: 5209 DF, Relator: Min. CÁRMEN LÚCIA, Data de Julgamento: 23/12/2014, Data de Publicação: DJe-022 DIVULG 02/02/2015 PUBLIC 03/02/2015.



have.<sup>109</sup> An indicator of the credibility of these critics is how the numbers of employers listed on the *Lista Suja* dropped since then. For instance, in 2014 there were 609<sup>110</sup> names and in 2019 there are only 166 on it,<sup>111</sup> which does not necessarily mean that there are fewer businesses exploiting their workers.

### 2.1.3 THE PUBLIC MINISTRY OF LABOUR (MPT)

This Ministry has three procedural means of safeguarding fundamental rights: the Public Civil Action, the Civil Inquiry and the Term for the Adjustment of Conduct. The first one is a legal procedure that enables the Public Ministry or other institutions to hold someone responsible for violating diffuse, collective and individual interests.<sup>112</sup> In other words, these interests represent the will of those people who can be divided into groups, categories or social classes.<sup>113</sup> In cases related to slavery, the Public Civil Action is used to give voice to workers and to fight for their rights that are embedded in the Constitution.<sup>114</sup>

The Civil Inquiry was created to investigate a situation administratively in order to gather evidence to make sure that any legal procedure that may arise from it will have enough proof to support the case, such as Public Civil Actions.<sup>115</sup> When it comes to modern slavery, this investigation happens alongside with the GEFM's inspections. If the investigation concludes that the workers' rights were violated, the labour prosecutor can either file a Public Civil Action<sup>116</sup> or present to the employer the possibility of signing a Term for the Adjustment of Conduct.<sup>117</sup> This administrative document's aim is to repair and to compensate the damage suffered by the employee(s) and to adjust the employer's conduct with the law without a legal procedure.

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<sup>109</sup> Laís Lis, “Lista Suja” do Trabalho Escravo só será Divulgada Após Determinação de Ministro, prevê portaria (G1, 16 October 2017) <<https://g1.globo.com/economia/noticia/lista-suja-do-trabalho-escravo-so-sera-divulgada-apos-determinacao-de-ministro-preve-portaria.ghtml>> accessed 8 August 2019.

<sup>110</sup> Since the old lists were taken offline after the Supreme Court of Brazil's decision, this data was found in the Global Slavery Index website. Global Slavery Index, ‘Findings: Brazil’ (*Global Slavery Index*, 2018) <<https://www.globalslaveryindex.org/2018/findings/country-studies/brazil/>> accessed 8 August 2019.

<sup>111</sup> Ministério do Trabalho e Emprego, ‘Lista Suja’ (2019) <[http://trabalho.gov.br/images/Documentos/SIT/CADASTRO\\_DE\\_EMPREGADORES\\_2019\\_7\\_29.pdf](http://trabalho.gov.br/images/Documentos/SIT/CADASTRO_DE_EMPREGADORES_2019_7_29.pdf)> accessed 7 August 2019.

<sup>112</sup> Bill No. 7.347/1985, Article 1 (IV).

<sup>113</sup> Marcelo Abelha, *Ação civil pública e meio ambiente* (Forense Universitária 2004) p. 40.

<sup>114</sup> Constitution of the Federative Republic of Brazil, Articles 127 - 129.

<sup>115</sup> Bill No. 7.347/1985, Article 8, para. 1.

<sup>116</sup> Supplementary Law No. 75/1993, Article 83 (III).

<sup>117</sup> Bill No. 7.345/1985, Article 5, para. 6.

## 2.1.4 THE MINISTRY OF LABOUR AND EMPLOYMENT (MTE)

Apart from creating the GEFM, the Ministry of Labour and Employment has other duties too. If an individual is removed from a situation of enslavement this Ministry has to assist and reintegrate him/her into the job market. In this sense and according to the Decree No. 10.608/2002, those who were victims of slavery have the right to claim the unemployment insurance.<sup>118</sup>

Moreover, it has the function of sending the worker to the National Employment System (SINE) for the purpose of training the individual. This system helps people to find a job, and for slavery victims, the SINE's most important role is to reintegrate them into labour market by training them.<sup>119</sup>

When it comes to public policies, the MTE, the Ministry of Social Development, the Fight Against Hunger<sup>120</sup> and the Ministry of Education<sup>121</sup> established that this group of people shall have priority to access two different programs: the *Bolsa Família* and the *Brasil Alfabetizado*. The first program consists on giving financial advantages to families who have a per capita income of R\$120,00<sup>122</sup> or less and the second one is a program that provides literacy instruction to children, young people, adults and the elderly in order to empower and reintegrate them into society.<sup>123</sup>

## 2.2. UNITED KINGDOM

### 2.2.1 HOME OFFICE

This ministerial department has the duty to provide security for the country and its citizens and, as a consequence, it is one of the most important institutions that provides 'security and economic prosperity of the United Kingdom'.<sup>124</sup> But when it comes to modern slavery, the Home Office has to supervise the government response to this phenomenon as well as to manage the process of

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<sup>118</sup> Decree No. 10.608/2002, Article 2.

<sup>119</sup> Ibid., Article 2 (1); Fundo de Amparo ao Trabalhador, 'Sistema Nacional de Emprego - SINE' (*Ministério do Trabalho*, 24 June 2016) <<http://portalfat.mte.gov.br/programas-e-acoas-2/sistema-nacional-de-emprego-sine/>> accessed 8 August 2019.

<sup>120</sup> Brasilagro, 'Vítimas de Trabalho Escravo Receberão Benefícios Sociais' (*Brasilagro*, 18 December 2015) <<https://brasilagro.wordpress.com/2015/12/18/vitimas-de-trabalho-escravo-receberao-beneficios-sociais/>> accessed 8 August 2019.

<sup>121</sup> Governo Federal, 'Escravo, nem pensar! Programa Brasil Alfabetizado' (*Governo Federal*, 2009) <<http://escravonempensar.org.br/biblioteca/escravo-nem-pensar-uma-abordagem-sobre-trabalho-escravo-contemporaneo-na-sala-de-aula-e-na-comunidade/>> accessed 8 August 2019.

<sup>122</sup> As of the 14th of August 2019 this amount is equal to 24.99 British Pounds according to OANDA. See <https://www1.oanda.com/currency/converter/>.

<sup>123</sup> Ministério da Educação, 'Programa Brasil Alfabetizado' (*Ministério da Educação*, 2003) <<http://portal.mec.gov.br/programa-brasil-alfabetizado>> accessed 8 August 2019.

<sup>124</sup> UK Government, 'Home Office' <<https://www.gov.uk/government/organisations/home-office%20>> accessed 10 August 2019.

identifying victims. In order to tackle the issue more efficiently, it presented the Modern Slavery Strategy in 2014 and it is responsible to fund and manage the National Referral Mechanism.<sup>125</sup>

## 2.2.2 THE MODERN SLAVERY STRATEGY

The objective of this strategy is to establish a comprehensive approach to address and to combat modern slavery.<sup>126</sup> In other words, it sets some actions that the government, some agencies and its partners in the UK must take to reduce the use of slave labour within its territory and to strengthen the UK's international response to it.<sup>127</sup> Its provisions are based on successful frameworks that fought serious and organised crimes and counter terrorism strategies, and it is composed by four elements known as the four P's: pursue, prevent, protect and prepare.<sup>128</sup> The first two P's were developed for reducing the threat of modern slavery and the other two for reducing the vulnerability of its victims, as it is going to be shown below.

The first component's goal is to prosecute and disrupt individuals and groups responsible for modern slavery. In order to achieve it, the National Crime Agency (NCA) is in charge of leading, supporting and coordinating the law enforcement response to the crime and the Gangmasters Licensing Authority (GLA) investigates labour exploitation in the UK apart from strengthening the Home Office's enforcement and intelligence capabilities.<sup>129</sup> The second element's focuses are on preventing people from becoming involved with modern slavery and on stopping people for continuing the crime. For fulfilling this purpose, the Strategy established that the penalties and operational successes were going to be publicized and that the government would engage with local groups to tackle 'at risk' communities and with the private sector to address criminals who assist in the crime of modern slavery.<sup>130</sup>

The Protect element strengthens the local authority response towards vulnerable groups, such as children, homeless people, victims of human trafficking from different countries, and it focuses on

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<sup>125</sup> National Audit Office, 'Reducing Modern Slavery' (*National Audit Office*, 15 November 2017) <<https://www.nao.org.uk/wp-content/uploads/2017/12/Reducing-Modern-Slavery.pdf>> accessed 10 August 2019, p. 5.

<sup>126</sup> UK Government, 'Modern Slavery Strategy' (*UK Government*, 29 November 2014) <<https://www.gov.uk/government/publications/modern-slavery-strategy>> accessed 10 August 2019.

<sup>127</sup> Ibid., paras. 1.1 and 1.6.

<sup>128</sup> Ibid., para. 1.7.

<sup>129</sup> Ibid., para. 1.9.

<sup>130</sup> Ibid., paras. 1.16 - 1.22.

raising awareness and resilience against this offence.<sup>131</sup> It also sets that it is important to detect potential victims and traffickers at the border and at airports, to 'increase public awareness of modern slavery and how to report it through the delivery of a national communications strategy' and to 'introduce a legal duty requiring all businesses above a certain size to disclose what actions they are taking to ensure that their business and supply chains are not tainted by modern slavery'.<sup>132</sup>

Finally, the last P acknowledges the importance of identifying and supporting the victims. As a consequence, it establishes that the Independent Anti-Slavery Commissioner has to work with the police and NGOs in order to fulfil this component.<sup>133</sup> Moreover, it sets that a special support is going to be given to children because of their vulnerability and it aims to support the reintegration of victims of modern slavery into the society.<sup>134</sup> Since compensation can be essential for the recovery of victims, it determines that a bespoke reparation and legal aid are going to be provided to help the people affected by this crime through court proceedings.<sup>135</sup> The final point of this element is that a 'statutory defence for victims who have been compelled to commit an offence as a direct consequence of their trafficking or slavery situation' is going to be introduced, which 'will include clear safeguards to ensure there is no possible legal loophole for serious criminals to escape justice'.<sup>136</sup>

### 2.2.3 THE NATIONAL REFERRAL MECHANISM (NRM)

The NRM is a framework that was first introduced in 2009 in order to fulfil the UK's obligations set in the Council of European Convention on Action against Trafficking in Human Beings<sup>137</sup> but since the implementation of the Modern Slavery Act it has also become a mechanism to fight other types of modern slavery.<sup>138</sup> This mechanism identifies and refers victims of modern slavery and human trafficking and ensures that they receive the appropriate support, which includes access to relevant

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<sup>131</sup> Ibid., paras. 1.23 - 1.26.

<sup>132</sup> Ibid., paras. 1.26 - 1.28.

<sup>133</sup> Ibid., para. 1.29.

<sup>134</sup> Ibid., paras. 1.32 and 1.33.

<sup>135</sup> Ibid., paras. 1.34 and 1.35.

<sup>136</sup> Ibid., para. 1.36.

<sup>137</sup> Modern Slavery Helpline, 'NRM Overview and Form' (*Modern Slavery Helpline*) <<https://www.modernslaveryhelpline.org/learn-more/frontline-professionals/nrm-overview-and-form>> accessed 12 August 2019.

<sup>138</sup> Home Office, 'Review of the National Referral Mechanism for victims of human trafficking' (*Home Office*, November 2014) <[https://www.antislaverycommissioner.co.uk/media/1062/review\\_of\\_the\\_national\\_referral\\_mechanism\\_for\\_victims\\_of\\_human\\_trafficking.pdf](https://www.antislaverycommissioner.co.uk/media/1062/review_of_the_national_referral_mechanism_for_victims_of_human_trafficking.pdf)> accessed 12 August 2019, para. 2.1.1.

legal advice, accommodation, protection and independent emotional and practical help for at least 45 days.<sup>139</sup>

For a case of a potential victim to be sent to the NRM, first it has to go through the First Responder Organisations. This agency is composed by police forces, UK Visas and Immigration (UKVI), Border Force, Immigration Enforcement, National Crime Agency (NCA), local authorities, Gangmasters and Labour Abuse Authority (GLAA), and some NGO's.<sup>140</sup> Their responsibilities include identifying potential victims of modern slavery and recognising the indicators of this crime; gathering information in order to understand what has happen to the victims; referring them to the NRM via the NRM form; and providing a point of contact for the Single Competent Authority to assist with the Reasonable and Conclusive Grounds decisions and requesting a reconsideration when a First Responder believes it is appropriate to do so.<sup>141</sup>

The victims who are referred to the NRM have to pass through the respective competent authorities. Firstly, every referral is going to be sent to the NCA but it will only make a decision on the cases related to a UK or European Economic Area (EEA) national since it has to forward the cases involving an EEA national 'who is subject to immigration control or a non-EEA national'<sup>142</sup> to the UKVI, which is the authority responsible for taking decisions in these cases.<sup>143</sup> Also, in the case that some authorities or NGOs mentioned above suspects that someone is a victim of modern slavery, they have to notify the Home Office by fulfilling the NRM form, which is also sent to the police. For an adult to receive the support mentioned above, they have to consent to be referred to this mechanism.<sup>144</sup>

### 3. COMPARING THE MODERN SLAVERY LEGISLATION OF BRAZIL AND THE UK

This chapter's aim is to take into consideration the legislative provision and case laws discussed above in order to make a comparative analysis in which its strengths and weaknesses are going to be

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<sup>139</sup> UK Government, 'Form National referral mechanism guidance: adult (England and Wales)' (*Home Office*, 24 May 2019) <https://www.gov.uk/government/publications/human-trafficking-victims-referral-and-assessment-forms/guidance-on-the-national-referral-mechanism-for-potential-adult-victims-of-modern-slavery-england-and-wales> accessed 12 August 2019.

<sup>140</sup> Ibid.

<sup>141</sup> Ibid.

<sup>142</sup> HM Government, 'Modern Slavery Strategy' (*HM Government*, November 2014) <[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/383764/Modern\\_Slavery\\_Strategy\\_FINAL\\_DEC2015.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/383764/Modern_Slavery_Strategy_FINAL_DEC2015.pdf)> accessed 10 August 2019, para. 2.3.

<sup>143</sup> Ibid.

<sup>144</sup> UK Government, 'Form National referral mechanism guidance: adult (England and Wales)' (*Home Office*, 24 May 2019) <https://www.gov.uk/government/publications/human-trafficking-victims-referral-and-assessment-forms/guidance-on-the-national-referral-mechanism-for-potential-adult-victims-of-modern-slavery-england-and-wales> accessed 12 August 2019.

highlighted. Furthermore, some recommendations are going to be made for the purpose of improving the actions taken by both governments.

### 3.1. MODERN SLAVERY LAW OF BRAZIL AND THE UK RECOMMENDATION

Even though Brazil and the UK have a long way to go to eradicate modern slavery, both countries have been praised by its initiatives to combat this phenomenon. In this sense, the Global Slavery Index has stated that these countries have 'begun to take some steps in this regard. However, countries such as Argentina and Japan have not 'formally enact laws, policies or practices aimed at stopping business and government sourcing goods and services produced by forced labour'.<sup>145</sup> Notwithstanding, the fact that none of the legislations have established a concrete definition of 'modern slavery' can be seen as a huge weakness since it creates legal loopholes in both countries. According to the former Special Rapporteur on contemporary forms of slavery, including its causes and consequences, Gulnara Shahinian, the Brazilian government should be commended for its programmes and policies that were put in place to fight slave labour.<sup>146</sup> Moreover, Gulnara Shahinian stated that 'there are many valuable initiatives in place to combat slavery, at the federal level and within states'.<sup>147</sup>

In the same vein, the UK has to be complimented for driving the international attention to modern slavery and human trafficking.<sup>148</sup> Also, the UK was recognized as one of the governments that have taken most actions to fight it and it was ranked by the 2018 Global Slavery Index (GSI) as the third country that has implemented more measures against the exploitation of workers and human trafficking.<sup>149</sup> Furthermore, the GSI established that the government successes included 'committing £150m of development aid to tackle trafficking, securing the endorsement of over 60 countries to a

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<sup>145</sup> Global Slavery Index, 'Executive Summary' (Global Slavery Index, 2018) <<https://www.globallslaveryindex.org/2018/findings/executive-summary/>> accessed 1 Septemebr 2019.

<sup>146</sup> UN Human Rights Council, *Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, Addendum : Mission to Brazil (17 to 28 May 2010)*, 30 August 2010, A/HRC/15/20/Add.4 <<https://www.refworld.org/docid/4c96ff682.html>> accessed 1 September 2019, para. 98.

<sup>147</sup> Ibid. para. 100.

<sup>148</sup> Global Slavery Index, 'Country Studies: United Kingdom' (Global Slavery, 2018) <<https://www.globallslaveryindex.org/2018/findings/country-studies/united-kingdom/>> accessed 1 September 2019.

<sup>149</sup> Ibid.

Call to Action to address modern slavery, and flagship legislation criminalising modern slavery and holding the private sector to account'.<sup>150</sup>

On the other hand, more recent comments in relation to some Brazilian's initiatives regarding the topic have not been so positive. The most recent Global Slavery Index Report (2018) has stated that

previously seen as a leader in the fight against slave labour, current trends and proposed legislative changes in Brazil have been condemned as steps backwards. Brazil's progressive and broad definition of slavery has been recently challenged by a government decree seeking to change and limit the definition. Under this narrowed definition, for workers to be considered working in "conditions analogous to slavery," employers must deny freedom of movement, and to be found guilty they must be caught directly in the act by two government officials. This disregards other exploitative practices and conditions such as working exhaustive work days and degrading and inhumane conditions or being paid only in food<sup>151</sup>

Moreover, this is not the only weakness the Brazilian legislation has. The lack of a clear definition of condition analogous to slavery creates a legal loophole when trying to enforce the law, especially if comparing it with situations involving irregular work. According to Regiane Cristina de Oliveira, in these cases there are often misunderstandings in relation to the difference between both offences what can be described as an obstacle for the victims to seek redress.<sup>152</sup> In addition, even if the government has taken many actions to combat modern slavery, the victims' access to justice has a tendency to rely mainly on 'NGOs and local Unions information',<sup>153</sup> what prevents the victims to get the remedy they are entitled to.

Even though the Brazilian legislation it is better than the UK legislation when it comes to civil compensation, given the fact that the first at least have a provision on the matter, it also has some shortcomings. The Brazilian courts have no criteria or guideline when awarding the compensation to

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<sup>150</sup> Ibid.

<sup>151</sup> Global Slavery Index, 'Country Studies: Brazil' (Global Slavery, 2018) <<https://www.globallslaveryindex.org/2018/findings/country-studies/brazil/>> accessed 1 September 2019.

<sup>152</sup> Regiane Cristina de Oliveira, 'Seeking Victims' Perspective on Remedy: The Case of Brasil Verde Farm's Workers' (2018) 14 DIREITO GV L REV 334, p. 357.

<sup>153</sup> Ibid.

the victim. In the Report released in 2010 the Special Rapporteur stated that 'the amount awarded for personal compensation [to victims of modern slavery] was at the discretion of the judge, and that some judges can award anything between R\$ 27 and R\$ 27,000'.<sup>154</sup>

Now, in relation to criminal prosecutions for the crime of submitting people to conditions analogous to slavery, the Brazilian justice has a long way to go. Despite the fact that the Brazilian Penal Code establishes that employers who commit this crime can be sent to jail, there are not many cases in which the offenders have served time, especially if compared to the number of workers who were found in conditions analogous to slavery. In 2017, 341 workers were found in conditions analogous to slavery<sup>155</sup> but only 72 procedures were initiated.<sup>156</sup> In the same vein, one year earlier 583 people were rescued<sup>157</sup> and 137 cases were brought to the penal court<sup>158</sup> and in 2015 1.010 workers were freed<sup>159</sup> but just 132 procedures were started.<sup>160</sup>

In terms of weaknesses, one of the biggest differences between both bodies of law is the fact that the MSA does not have a provision regarding civil compensation. However, this is not the only issue. Even though it was recognized that civil remedies are an important part when it comes to victims' protection, the Government stated that introducing a provision that grants the opportunity for the victims of modern slavery to seek civil compensation is unnecessary since the tort law already has civil remedies: '[this is an] unnecessary proposal to introduce a general civil remedy, stating that the

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<sup>154</sup> UN Human Rights Council, *Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, Addendum: Mission to Brazil (17 to 28 May 2010)*, 30 August 2010, A/HRC/15/20/Add.4 <<https://www.refworld.org/docid/4c96ff682.html>> accessed 1 September 2019, para. 61.

<sup>155</sup> Sindicato nacional dos Auditores Fiscais do Trabalho, 'Número de ações contra trabalho escravo cai 23,5% em 1 ano; total de resgatados é o menor desde 1998' (SINAIT, 17 January 2018) <<https://www.sinait.org.br/site/noticia-view/?id=15286/numero%20de%20acoes%20contra%20trabalho%20escravo%20cai%2023,5%20em%201%20ano%20total%20de%20resgatados%20e%20o%20menor%20desde%201998>> accessed 7 September 2019.

<sup>156</sup> Ministério da Economia, 'Dados da Inspeção do Trabalho revelam perfil dos resgatados' (Ministério da Economia, 5 February 2019) <<http://www.economia.gov.br/noticias/2019/02/dados-da-inspecao-do-trabalho-revelam-perfil-dos-resgatados>> accessed 7 September 2019.

<sup>157</sup> Sindicato nacional dos Auditores Fiscais do Trabalho, 'Número de ações contra trabalho escravo cai 23,5% em 1 ano; total de resgatados é o menor desde 1998' (SINAIT, 17 January 2018) <<https://www.sinait.org.br/site/noticia-view/?id=15286/numero%20de%20acoes%20contra%20trabalho%20escravo%20cai%2023,5%20em%201%20ano%20total%20de%20resgatados%20e%20o%20menor%20desde%201998>> accessed 7 September 2019.

<sup>158</sup> Ministério da Economia, 'Dados da Inspeção do Trabalho revelam perfil dos resgatados' (Ministério da Economia, 5 February 2019) <<http://www.economia.gov.br/noticias/2019/02/dados-da-inspecao-do-trabalho-revelam-perfil-dos-resgatados>> accessed 7 September 2019.

<sup>159</sup> Agência Brasil, 'Brasil resgata mais de mil pessoas de trabalho escravo em 2015: A maioria das vítimas foi localizada em áreas urbanas no país' (Agência Brasil, 28 January 2016) <<http://agenciabrasil.ebc.com.br/direitos-humanos/noticia/2016-01/brasil-resgata-mais-de-mil-trabalhadores-de-condicoes-analogas>> accessed 7 September 2019.

<sup>160</sup> Época Negócios, 'Justiça iniciou 72 ações penais por trabalho escravo em 2017: Atualmente, há 13 ações em andamento contra casos de escravidão no Rio' (Época Negócios, 29 January 2018) <<https://epocanegocios.globo.com/Brasil/noticia/2018/01/justica-iniciou-72-acoes-penais-por-trabalho-escravo-em-2017.html>> accessed 7 September 2019.



existing civil remedies in tort would be sufficient for victims of modern slavery'.<sup>161</sup> The government received a lot of criticism after this statement since the existing civil remedies in tort 'do not fit the same circumstances as modern slavery'.<sup>162</sup>

In relation to criminal prosecutions, the UK is being criticized for not doing a good job when it comes to the enactment of criminal offences that are related to modern slavery. The government is believed to be weak when implementing the MSA when addressing the exploitation of workers within the UK, which breaches Article 4 of the European Convention and raises questions regarding the government's commitment to tackle modern slavery.<sup>163</sup> For instance, the number of cases brought to justice are not at all compatible to the numbers a government committed to eradicating slavery should have - in 2016 less than 65 people were prosecuted under the Modern Slavery Act 2015 and in 2017 only 130 lawsuits were filed.<sup>164</sup>

As a result, it is possible to conclude that both countries must be praised for enacting laws that criminalize modern slavery but they both should be implementing it better. As it was mentioned by Virginia Mantouvalou, 'severe labour exploitation is a grave wrong that causes serious harm to others, and the machinery of criminal law can be a tool that communicates that such conduct is unacceptable'.<sup>165</sup> It can be said that criminal law can help sending a powerful message that the exploitation of workers is not tolerated, and this can prevent people from engaging in criminalized activities.<sup>166</sup>

However, the criminalization of the conduct is not enough to eradicate modern slavery. Together with laws that criminalize the act there must be provisions of civil remedies for the victims, otherwise they would not receive the support they are entitled to.<sup>167</sup> Access to compensation for those who were subjected to modern slavery is extremely important because it can 'empower them economically, support their societal reintegration, minimise their vulnerability to being re-trafficked and provide them

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<sup>161</sup> Virginia Mantouvalou, 'The UK Modern Slavery Act 2015 Three Years On' (2018) *The Modern Law Review* C 81 (6) MLR 1017 – 1045, p. 1033 - 1034.

<sup>162</sup> *Ibid.*

<sup>163</sup> *Ibid.*, p. 1030; Andrew Simester and Warren. Brookbanks, *Principles of Criminal Law* (Wellington: Thompson Reuters, 4th ed, 2012) p. 783.

<sup>164</sup> UK Government, '2018 UK Annual Report on Modern Slavery' (UK Government, October 2018) <[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/749346/2018\\_UK\\_Annual\\_Report\\_on\\_Modern\\_Slavery.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/749346/2018_UK_Annual_Report_on_Modern_Slavery.pdf)> accessed 7 September 2019, p. 2.

<sup>165</sup> Virginia Mantouvalou, 'The UK Modern Slavery Act 2015 Three Years On' (2018) *The Modern Law Review* C 81 (6) MLR 1017 – 1045, p. 1019.

<sup>166</sup> *Ibid.*

<sup>167</sup> *Ibid.*

with a sense of justice'.<sup>168</sup> In other words, for a government to be able to show its commitment to fighting modern slavery it must have a 'criminal legislation focusing on individual perpetrators [and it] must be accompanied by robust protection and enforcement of workers' rights, including suitable civil remedies that will empower those whose rights are violated.'<sup>169</sup>

The exemplary initiatives taken by both governments can be in jeopardy if they do not start to take the criminalization of employers who have used slave labour more seriously. The impunity that the offenders enjoy should end and effective actions shall be taken, such as enforcing criminal penalties. It is imperative that both legislations have a clear understanding of what modern slavery encompasses in order to address the legal loopholes that the lack of a definition causes.

The Brazilian government must review and change its new law in order to be able to support modern slavery victims and to hold perpetrators accountable for the violations they have committed. It has to broaden its understanding of modern slavery and make employers see that they shall face criminal penalties. In regards to the civil compensation, it has to establish a criteria or guideline for the court to award them in such a way that it is going to redress the victim's suffering and to empower them.

The UK should recognize in its legislation the right that modern slavery victims have to a proper civil compensation. Moreover, it should avoid having the same problem as Brazil by defining a criterion for it before finalizing this change.

### **3.2. HUMAN TRAFFICKING**

Even if international law is believed to have a hidden agenda when it comes to human trafficking, not all domestic legislations are following the same path. According to Cathryn Costello, international law's main objective when fighting human trafficking is not to tackle modern slavery but to control immigration.<sup>170</sup> Moreover, she has stated that the definition of human trafficking in the Palermo Protocol has a 'strong immigration-control ethos', particularly if read together with other international

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<sup>168</sup> Ainhoa Barrenechea, 'Access to Compensation for Victims of Human Trafficking' (Focus on Labour Exploitation Working Paper, 2016) <<https://www.labourexploitation.org/publications/flex-working-paper-access-compensation-victims-human-trafficking>> accessed 6 September 2019, p. 3.

<sup>169</sup> Virginia Mantouvalou, 'The UK Modern Slavery Act 2015 Three Years On' (2018) *The Modern Law Review* C 81 (6) MLR 1017 – 1045, p. 1036.

<sup>170</sup> Cathryn Costello, 'Migrants and Forced Labour: A Labour Law Response' in A. Bogg, C. Costello, A. C. L. Davies and J. Prassl (eds), *The Autonomy of Labour Law* (Oxford: Hart, 2015) 189, 198-199.

instruments.<sup>171</sup> Similarly, Anderson and Andrijasevic argue that this Protocol's goal is to encourage the cooperation between different nations to fight organized crimes and not to protect those who were victims of this offence.<sup>172</sup> In this sense, after analysing both legislations, it is possible to say that the Brazilian law can be considered more advantageous for victims of human trafficking as it is going to be seen below.

Article 7 of the Brazilian Law No. 13.334/2016 entitles foreign trafficking victims to have a permanent visa status which can also be extended to their families. Moreover, the victim of human trafficking does not need to cooperate with any administrative or judicial procedures or police investigations in order to get a visa that allows them to stay in the country permanently.<sup>173</sup> Also, the Brazilian government

provided repatriation assistance for Brazilian nationals subjected to trafficking abroad, as well as for foreign nationals who were subjected to trafficking in Brazil who wished to return to their country of origin. NGOs and international organizations reported 24 victims received repatriation assistance in coordination with the government during the reporting period.<sup>174</sup>

On the other hand, the same cannot be said about the English law. In the UK the victims of human trafficking are not automatically entitled to the right to remain in its territory. This can be exemplified by the data gathered between 2014 and 2016: out of 2.563 identified victims of human trafficking, only 384 were granted discretionary leave to stay in the UK.<sup>175</sup> Along the same lines, Virginia Mantoulavou states that

there is no formal appeal process for the reasonable or conclusive grounds decisions. Individuals can appeal informally or challenge the decision by

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<sup>171</sup> Ibid., p. 206.

<sup>172</sup> B. Anderson and R. Andrijasevic, 'Sex, Slaves and Citizens: The Politics of Anti-Trafficking' (2008) 40 Soundings p. 139.

<sup>173</sup> Law No. 13.334/2016, Article 7.

<sup>174</sup> United States Department of State, '2018 Trafficking in Persons Report - Brazil' (28 June 2018) <<https://www.refworld.org/docid/5b3e0b93a.html>> accessed 7 September 2019

<sup>175</sup> Patrick Burland, 'Smoke But No Fire: How Not to Read UK Government Trafficking Statistics' (Open Democracy, 28 April 2017) <<https://www.opendemocracy.net/beyondslavery/patrickburland/smoke-but-no-fire-how-not-to-read-uk-government-trafficking-statistics>> accessed 5 September 2019.

judicial review. At present, while any reconsideration request or judicial review of a negative decision is ongoing, victims lose access to support. This makes it likely that they may disappear before knowing the outcome of the challenge.<sup>176</sup>

As a consequence, this situation can re-victimize those people who are victims of human trafficking. In this sense, if deported, these individuals are prone to be re-trafficked because they were forced to be in an extremely vulnerable position again.<sup>177</sup> Hence, many people, such as the migrant domestic workers, become susceptible to exploitation since they rather stay with employers who violate the law than risk deportation.<sup>178</sup> This situation shows that the government does not have the desire to tackle structural problems that give rise to vulnerabilities in the job market, especially when it comes to issues foreign people face.<sup>179</sup>

Regardless of the fact that the Brazilian law can be more protective toward foreign trafficking victims, it is not bulletproof. Long-term and specialized shelters are rare in Brazil and as a consequence many victims are placed in shelters for victims of domestic violence or for migrant assistance.<sup>180</sup> It also does not take into consideration the special needs of each person, for instance, there is no 'specialized services for male or transgender sex trafficking victims [and] specialized shelters for child sex trafficking victims [are] lacking'.<sup>181</sup> This situation and the lack of consistency when addressing the issue also put the victims in a position that makes them vulnerable to re-trafficking, especially because of the lack of access to assistance and employment options.<sup>182</sup> Another flaw that the Brazilian system has is the lack of transparency when it comes to disclosing information about how

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<sup>176</sup> Virginia Mantouvalou, 'The UK Modern Slavery Act 2015 Three Years On' (2018) *The Modern Law Review* C 81 (6) MLR 1017 – 1045, p. 1029.

<sup>177</sup> Virginia Mantouvalou, 'The UK Modern Slavery Act 2015 Three Years On' (2018) *The Modern Law Review* C 81 (6) MLR 1017 – 1045, p. 1027; Coalition of NGOs, 'Supporting Adult Survivors of Slavery to Facilitate Recovery and Reintegration and Prevent Re-Exploitation' (Coalition of NGOs' Report, March 2017) <<http://www.humantraffickingfoundation.org/sites/default/files/Long%20term%20survivor%20support%20needs%20March%2017%202.pdf>> accessed 5 September 2019.

<sup>178</sup> *Ibid.*, p. 1031 - 1032.

<sup>179</sup> *Ibid.*

<sup>180</sup> United States Department of State, '2018 Trafficking in Persons Report - Brazil' (28 June 2018) <<https://www.refworld.org/docid/5b3e0b93a.html>> accessed 7 September 2019.

<sup>181</sup> *Ibid.*

<sup>182</sup> *Ibid.*

many victims received any kind of help or protection from the government or from governments' programs.<sup>183</sup>

Since the strengths and weaknesses of the Brazilian legislation and the government's initiatives were analysed when it comes to human trafficking, one must also recognize the effort made by the English government. In the past couple of years, the measures to prevent human trafficking have increased in the UK as the government has improved its governance framework, and it had said that it would 'build up information on the causes and types of trafficking'.<sup>184</sup> Therefore studies are being conducted to understand the causes of human trafficking and different actors are being taken into consideration.<sup>185</sup> Furthermore, another example of good practice within the UK territory is the high number of 'interventions, including training and awareness-raising [...] at regional and national levels'.<sup>186</sup>

Last but not least, one of the main differences between both legal systems is that in the Brazilian legislation there is not a single law that addresses human trafficking alongside with other forms of modern slavery like the MSA. If there was, some structural changes on the matter could have been made more easily and it would be more in tune with the needs of the victims of other types of modern slavery.

All in all, some points must be highlighted. First, there is no denying that 'victims of severe exploitation will be extremely reluctant to contact the authorities, if they have no guaranteed right to remain in the country after they have been conclusively identified as victims.'<sup>187</sup> Also, the lack of data and information about trafficking victims can prove to be a problem when trying to understand the issue at hand, when developing initiatives, frameworks to tackle it, and when providing the necessary services.<sup>188</sup> Coordination between local authorities, agencies, and bodies responsible for combatting human trafficking is essential for the system to function.<sup>189</sup>

As a result, the English law should take the Brazilian example to when it comes to its immigration control and the effect that its policies might have on human trafficking victims. The UK should not use

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<sup>183</sup> Ibid.

<sup>184</sup> The Anti-Trafficking Monitoring Group, 'Before the Harm is Done: Examining the UK's response to the prevention of trafficking' (ATMG, September 2018) <<https://www.antislavery.org/wp-content/uploads/2018/09/Before-the-Harm-is-Done-report.pdf>> accessed 7 September 2019, p. 33.

<sup>185</sup> Ibid.

<sup>186</sup> Ibid.

<sup>187</sup> Virginia Mantouvalou, 'The UK Modern Slavery Act 2015 Three Years On' (2018) *The Modern Law Review* C 81 (6) MLR 1017 – 1045, p. 1028.

<sup>188</sup> The Anti-Trafficking Monitoring Group, 'Before the Harm is Done: Examining the UK's response to the prevention of trafficking' (ATMG, September 2018) <<https://www.antislavery.org/wp-content/uploads/2018/09/Before-the-Harm-is-Done-report.pdf>> accessed 7 September 2019, p. 33.

<sup>189</sup> Ibid.; Eduardo Soares, 'Training Related to Combating Human Trafficking: Brazil' (Library of Congress, February 2016) <<https://www.loc.gov/law/help/human-trafficking/brazil.php>> accessed 1 September 2019.

it as an excuse to avoid having foreign people in its territory and it should provide a strong support for the victims so they will not have to be re-trafficked.

The Brazilian government must revisit its support programs in order to provide the help the victims need. Moreover, whilst doing it, it should also establish a plan on how to help these victims to avoid the lack of consistency in their treatment, like the UK government did.

Finally, both countries could benefit from having more data about trafficked people and by improving the coordination between different authorities throughout the territory and from other countries too.

### **3.3. IDENTIFYING AND RESCUING VICTIMS OF MODERN SLAVERY**

According to the Digital Observatory of Slavery Labour in Brazil,<sup>190</sup> almost 53.000 people were rescued from situations in which they subjected to conditions analogous to slavery between 2003 and 2017.<sup>191</sup> These people were working in places where there has been a huge economic development in a short amount of time and most of them were working in the agricultural sector.<sup>192</sup>

However, there has been a large drop in the number of rescued workers in the past decade. From 6 thousand people rescued in 2007 and 5 thousand people in 2008 to 3.7 thousand in 2009 and 2.5 thousand from 2010 to 2013; in 2014 1.4 thousand victims of modern slavery were released and in 2015 only 1.2 thousand people received help;<sup>193</sup> but the smallest number of rescues until now was in 2017 when just 645 workers were freed.<sup>194</sup> This is a result of the reduction of 70% of the resources available for the GEFM and to the Ministry of Labour to invest in in situ inspections with the aim of aiding workers subjected to modern slavery.<sup>195</sup> On the bright side, in September 2017 the Ministry of Labour's budget was improved and, as a consequence, the GEFM's work has had better results since

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<sup>190</sup> Observatório Digital do Trabalho Escravo no Brasil.

<sup>191</sup> Global Slavery Index, 'Country Studies: Brazil' (Global Slavery, 2018) <<https://www.globalslaveryindex.org/2018/findings/country-studies/brazil/>> accessed 1 September 2019.

<sup>192</sup> Ibid.

<sup>193</sup> Gilson Camargo, 'Número de trabalhadores escravizados quase triplicou em 2018' (Extrema Classe, 8 February 2019) <<https://www.extraclasse.org.br/geral/2019/02/numero-de-trabalhadores-escravizados-quase-triplicou-em-2018/>> accessed 8 September 2019.

<sup>194</sup> Ibid.

<sup>195</sup> Ibid.; Global Slavery Index, 'Country Studies: Brazil' (Global Slavery, 2018) <<https://www.globalslaveryindex.org/2018/findings/country-studies/brazil/>> accessed 1 September 2019.

then:<sup>196</sup> in 2018 the GEFM found 1,723 people working in conditions analogous to slavery and out of those people 1,113 were rescued.<sup>197</sup>

Now, it is important to consider how the lives of these workers are after being rescued for the purpose of assessing if the government is doing its job properly. For the purpose of analysing it, the perspectives and opinions of the victims of the *Fazenda Brasil Verde* case are going to be taken into consideration. Regiane Cristina de Oliveira noted that even after the Inter-American Court of Human Rights' decision and after 15 years of the rescue, the victims 'are still living in fear of death, represented by what seems to be an "insuperable" lack of security (social, economic and physical) brought by the ghosts of all the unresolved issues of the period they were under the slave system.'<sup>198</sup> Consequently, it shows that the Brazilian government has a lot of problems when it comes to the support of slavery victims after their rescue.

On top of that, the government's actions shows that the rescue of modern slavery victims is not a priority since it believes that cutting off the funds for it is not a problem. Moreover, this situation and the fact that the workers do not feel safe after being rescued shows that the Brazilian government has a lot of challenges when it comes to upholding human rights. In this regard, one can assume that there is a 'lack of practice [of] several human rights, starting [with] the right to life and right to security, [and it] jeopardizes the worker's dignity even after the rescue.'<sup>199</sup>

Contrary to the situation in Brazil, the number of referrals to the NRM of potential victims of modern slavery has grown considerably since 2009, according to the Report *Reducing Modern Slavery*.<sup>200</sup> The Report shows that in 2012, 818 people were referred to the NRM; in 2013 there were 1.299 potential victims recognized by the first responders; in 2014 it increased to 1.669; there were 2.284 and 2.527 adults referrals in 2015 and 2016 respectively; and the highest number of referred potential victims was in 2017, with 2.890.<sup>201</sup> Even if the Home Office does not know why the number of referrals have raised, the fact is that more victims are prone to receive help from the government. This rise in the number of referrals might be because of the 'increased awareness, impact of its strategy,

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<sup>196</sup> Gilson Camargo, 'Número de trabalhadores escravizados quase triplicou em 2018' (Extrema Classe, 8 February 2019) <<https://www.extraclasse.org.br/geral/2019/02/numero-de-trabalhadores-escravizados-quase-triplicou-em-2018/>> accessed 8 September 2019.

<sup>197</sup> Ibid.

<sup>198</sup> Regiane Cristina de Oliveira, 'Seeking Victims' Perspective on Remedy: The Case of Brasil Verde Farm's Workers' (2018) 14 DIREITO GV L REV 334, p. 354.

<sup>199</sup> Ibid.

<sup>200</sup> National Audit Office, 'Reducing Modern Slavery' (*National Audit Office*, 15 November 2017) <<https://www.nao.org.uk/wp-content/uploads/2017/12/Reducing-Modern-Slavery.pdf>> accessed 10 August 2019, para. 2.6.

<sup>201</sup> Ibid., Figure 8, p. 30.

and how much was driven by increased prevalence of the crime. It is likely that a proportion of the increase is driven by increased awareness as a result of the government's strategy'.<sup>202</sup>

Furthermore, another discrepancy between both countries is that whereas the Brazilian government is withdrawing funds from the institutions that combat modern slavery, the UK Home Secretary stated that more money was going to be invested to improve the country's response to modern slavery:

£8.5 million of funding for the Police Transformation Fund to help law enforcement agencies to tackle modern slavery. The funding, allocated until 2018-19, is to be used to improve the country's enforcement response to modern slavery by providing better intelligence and analysis to enable a better understanding of the crime, and an improved operational response throughout the investigative process.<sup>203</sup>

On the other hand, the UK also has some problems when it comes to rescuing and identifying victims of modern slavery. For instance, only 6% of the victims receive a conclusive ground decision under the time established by the MSA and the average time the authorities took to reach a conclusive decision was 134 days in 2016.<sup>204</sup> And even though the Home Office acknowledges that the NRM process is inefficient, which puts potential victims in a vulnerable position, but it has not implemented any changes to strengthen it.<sup>205</sup>

Also, one can presume that the victims of modern slavery might receive an inadequate assistance whilst living in the safe houses. This is due to the fact there is no care standard or a firm inspection regime in providing support for potential victims,<sup>206</sup> which makes it more difficult for the Salvation Army to deliver 'the victim care element of the NRM process'.<sup>207</sup> In addition, the reason why many potential victims do not seek help from the authorities might be because of the low number of convictions under the MSA.<sup>208</sup> They can see this data as a proof that the government is not committed enough to eradicating slave labour since there are not many offender who are convicted for violating the law. But the initiative and the flexibility the UK and its courts are showing demonstrate that victims

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<sup>202</sup> Ibid., para 2.6.

<sup>203</sup> Ibid., para. 4.4.

<sup>204</sup> Ibid., para. 2.12.

<sup>205</sup> Ibid., paras. 2.13 - 2.14.

<sup>206</sup> Ibid., paras. 3.14 and 3.16.

<sup>207</sup> Ibid., para. 3.3

<sup>208</sup> Ibid., para. 4.8.



can actually rely on the system. For example, the Birmingham Crown Court convicted a British nurse for human trafficking because it was found that she subjected Nigerian women to voodoo rituals before trafficking them for sex to other European countries.<sup>209</sup>

In conclusion, the UK should simplify the bureaucracies to help the potential victims of modern slavery, especially because when they are referred to the NRM they have already been identified by the first responders. In this sense, the English system could take the Brazilian rescuing system as an example and use it to improve the victims' care within the UK territory.

By contrast, it is imperative that the Brazilian government starts to take this issue more seriously and it must recognize that it cannot withdraw funds from the programs and institutions whose aim is to save people from conditions analogous to slavery. Even though the cuts of funds have stopped, it would be a fortunate initiative if the Brazilian government started investing money in these programs and institutions, like the British government did.

It is important to stress that even if both countries have taken some actions that could be used by other countries to improve their policies regarding modern slavery, it is also clear that both Brazil and the UK can make some changes in order to strengthen their systems. A better and stronger framework that regulates the victims' care should be implemented, a follow up procedure should be developed to track who the victims are doing after being identified and rescued, and a mechanism to promote and guarantee the victims' safety after their rescue should be launched.

### **3.4. THE SPECIAL MOBILE INSPECTION GROUP AND THE NATIONAL REFERRAL MECHANISM**

One of the main differences between the Special Mobile Inspection Group and the National Referral Mechanism is that the first identifies, recognizes and rescues people subjected to conditions analogous to slavery<sup>210</sup> whereas the latter only identifies potential victims of modern slavery and

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<sup>209</sup> National Crime Agency, 'National Crime Agency Annual Report and Accounts 2018-19' (House of Commons, 22 July 2019) <<https://nationalcrimeagency.gov.uk/who-we-are/publications/329-nca-annual-report-accounts-2018-19/file>> accessed 9 September 2019, p. 17.

<sup>210</sup> Vera Olímpia Gonçalves, 'Dados do Grupo Especial de Fiscalização Móvel' (Estudos Avançados, 14 [38], 2000), p. 74.

ensures that they will receive good care.<sup>211</sup> Moreover, the Brazilian group was created 14 years before the NRM, which could indicate that the Brazilian government recognized the importance of finding and freeing victims of slavery before the English government did.

In addition, the number of people who benefited from these mechanisms is completely different. Even though more than 23 thousand individuals were referred to the NRM from 2013 to 2018 less than one third of them received a positive conclusive decision.<sup>212</sup> Simply put, the odds are not in favour of those people who have been referred to the NRM. Moreover, another contradictory data is that even if the number of referrals has increased throughout the years, in 2018 the number of positive conclusive decisions has decreased and it is one of the lowest ever.<sup>213</sup> Regarding the conclusive grounds decision, another issue the NRM has is that the victims are abandoned after receiving it:

those who have been positively identified as victims get two weeks of Government-funded support and accommodation; those with a negative decision, 48 hours. It is not a surprise therefore that there is evidence that some individuals disappear after that period, and are re-trafficked. Having nowhere to go, they return to the traffickers, and then go through the NRM 'again and again'.<sup>214</sup>

Also, the NRM process is very slow and it tends to take more than 90 days for the institution to make most decisions.<sup>215</sup>

Notwithstanding, the results of the Brazilian inspection group are more effective in the sense that the victims are actually rescued by it,<sup>216</sup> in other words they do not depend on a bureaucratic decision to

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<sup>211</sup> National Crime Agency, 'National Crime Agency Annual Report and Accounts 2018-19' (House of Commons, 22 July 2019) <<https://nationalcrimeagency.gov.uk/who-we-are/publications/329-nca-annual-report-accounts-2018-19/file>> accessed 9 September 2019, paras. 2.1 and 2.2.

<sup>212</sup> National Crime Agency, 'National Referral Mechanism Statistics - End of Year Summary 2018' (NCA, 20 March 2019) <<https://nationalcrimeagency.gov.uk/who-we-are/publications/282-national-referral-mechanism-statistics-end-of-year-summary-2018/file>> accessed 9 September 2019, p. 5

<sup>213</sup> Ibid.

<sup>214</sup> Virginia Mantouvalou, 'The UK Modern Slavery Act 2015 Three Years On' (2018) *The Modern Law Review* C 81 (6) MLR 1017 – 1045, p. 1027; Human Trafficking Foundation, 'Day 46 – Is there life after the safe house for survivors of modern slavery?' (Human Trafficking Foundation Report October 2016) <<http://www.humantraffickingfoundation.org/sites/default/files/Human%20Trafficking%20Foundation%20Report%202016%20Day%2046.PDF>> accessed 3 September 2019.

<sup>215</sup> National Audit Office, 'Reducing Modern Slavery' (*National Audit Office*, 15 November 2017) <<https://www.nao.org.uk/wp-content/uploads/2017/12/Reducing-Modern-Slavery.pdf>> accessed 10 August 2019, para. 16.

have their rights protected. As a consequence, from 1995 until 2015 the special group has held 1.928 operations in 4.302 commercial enterprises, which have led to the rescue of more than 50 thousand victims of modern slavery.<sup>217</sup>

When it comes to their structure, there is no denying that both of them have some problems. In the Brazilian case the lack of organization has put some GEFM operations at risk.<sup>218</sup> Some operations have been affected because of a bureaucratic change on how the group should buy the plane tickets to go to the places which were supposed to be inspected.<sup>219</sup> In addition, as it was discussed above, the GEFM work can be compromised by other situations, such as the changes in the legislation, such as the one that made it harder for a perpetrator to be charged with the offence of submitting someone to conditions analogous to slavery and how it limited the concept of modern slavery<sup>220</sup> and the reduction in resources available for the GEFM.<sup>221</sup>

Even though the NRM has flaws, the government at least recognized them and announced a package of reforms to address them. The changes included 'extending the length of time confirmed victims have access to 'move on' support, such as accommodation and counselling; [the creation of a] single, expert unit will be created within the Home Office to make decisions on all cases referred through the NRM by frontline staff'<sup>222</sup> and the alignment of financial support allowances for trafficking victims and their dependents.<sup>223</sup> The UK has taken the initiative to improve the NRM but the same cannot be said about the Brazilian government since as of today, there is no statement saying that it was planning on addressing the structural shortcomings of the GEFM.

To improve the effectiveness of the GEFM, the Brazilian government should first recognize the group's shortcomings and re-evaluate its structure and its system in order to avoid further problems with future operations. On the other hand, the UK review the system that awards the conclusive

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<sup>216</sup> Secretaria de Inspeção do Trabalho, 'Statistics and information Dashboard of Labor Inspection in Brazil' (Secretaria de Inspeção do Trabalho, 7 August 2019) <<https://sit.trabalho.gov.br/radar/>> accessed 7 August 2019.

<sup>217</sup> Regiane Cristina de Oliveira, 'Seeking Victims' Perspective on Remedy: The Case of Brasil Verde Farm's Workers' (2018) 14 DIREITO GV L REV 334, p. 336.

<sup>218</sup> Graziella Curti, 'Combate ao Trabalho Escravo Fica Sob Ameaça por Falta de Estrutura' (SINTRACOOPTDF, 31 July 2018) <<http://sintracoopdf.com.br/2018/07/31/combate-ao-trabalho-escravo-fica-sob-ameaca-por-falta-de-estrutura/>> accessed 9 September 2019.

<sup>219</sup> Ibid.

<sup>220</sup> Decree No. 1.129/2017.

<sup>221</sup> Global Slavery Index, 'Country Studies: Brazil' (Global Slavery, 2018) <<https://www.globallslaveryindex.org/2018/findings/country-studies/brazil/>> accessed 1 September 2019.

<sup>222</sup> Home Office, 'Modern slavery victims to receive longer period of support' (Government of the United Kingdom, 26 October 2017) <<https://www.gov.uk/government/news/modern-slavery-victims-to-receive-longer-period-of-support>> accessed 2 September 2019.

<sup>223</sup> Global Slavery Index, 'Country Studies: United Kingdom' (Global Slavery, 2018) <<https://www.globallslaveryindex.org/2018/findings/country-studies/united-kingdom/>> accessed 1 September 2019.

grounds decision and it must implement a procedure to ensure that the victims are not going to be abandoned after getting the decision.

### 3.5. BUSINESS AND HUMAN RIGHTS

In regards to the relation of business and human rights, it is important to note that none of the laws analysed throughout this paper contains specific rules that allow the judicial system to hold businesses accountable for using slave labour or for buying from other companies that use slave labour.

However, the private sector in Brazil has taken action to fight modern slavery, especially since 2005 as a result of the creation of the National Pact for the Eradication of Slave Labour.<sup>224</sup> According to the ILO, 'signatory companies have voluntarily agreed to promote decent work practices and cut commercial ties with those businesses on the "Dirty List" that use forced labour in their supply chains.'<sup>225</sup> These actions show that in the past couple of years, initiatives that praise Corporate Social Responsibility have grown a lot and one of their focuses is the eradication modern slavery.<sup>226</sup> Moreover, the fact that the Dirty List has the power to block financing opportunities for those businesses who are added to it, and that it puts pressure on the companies to comply with the law, proves to be an important mechanism in the fight against modern slavery in Brazil.<sup>227</sup>

Nevertheless, the Dirty List has proven to have a limited efficiency. The lawsuit that was filed in order to declare the list unconstitutional affected its efficiency, given the fact that in the court decision it was established that the list could be issued again but under new rules.<sup>228</sup> As it was discussed before, this

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<sup>224</sup> International Labour Organization, 'What Is the Pact for the Eradication of Slave Labour?' (ILO, 7 November 2017) <[http://www.ilo.org/wcmsp5/groups/public/-dgreports/-ilo-washington/documents/genericdocument/wcms\\_189835.pdf](http://www.ilo.org/wcmsp5/groups/public/-dgreports/-ilo-washington/documents/genericdocument/wcms_189835.pdf)> Accessed 2 September 2019.

<sup>225</sup> International Labour Organization, 'What Is the Pact for the Eradication of Slave Labour?' (ILO, 7 November 2017) <[http://www.ilo.org/wcmsp5/groups/public/-dgreports/-ilo-washington/documents/genericdocument/wcms\\_189835.pdf](http://www.ilo.org/wcmsp5/groups/public/-dgreports/-ilo-washington/documents/genericdocument/wcms_189835.pdf)> Accessed 2 September 2019; Annie Kelly, 'Brazil's 'dirty list' names and shames companies involved in slave labour: Companies spend two years on the list, unable to secure credit, and have to prove they're cleaning up their supply chains' (The Guardian, 24 July 2013) <<https://www.theguardian.com/sustainable-business/brazil-dirty-list-names-shames-slave-labour>> accessed 2 September 2019.

<sup>226</sup> Global Slavery Index, 'Country Studies: Brazil' (Global Slavery, 2018) <<https://www.globalslaveryindex.org/2018/findings/country-studies/brazil/>> accessed 1 September 2019.

<sup>227</sup> Ashley Feasley, 'Deploying Disclosure Laws to Eliminate Forced Labour: Supply Chain Transparency Efforts of Brazil and the United States of America,' *Anti-Trafficking Review, Special Issue: Forced Labour and Human Trafficking*, no. 5 <[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2732885](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2732885)> accessed 9 September 2019, p. 1.

<sup>228</sup> STF - ADI: 5209 DF, Relator: Min. CÁRMEN LÚCIA, Data de Julgamento: 23/12/2014, Data de Publicação: DJe-022 DIVULG 02/02/2015 PUBLIC 03/02/2015.

has been received with a lot of criticism since the utility of the list can now be questioned.<sup>229</sup> In addition, another downside of the Dirty List is that 'despite [the fact that] some companies' names can be displaced in the Dirty List, the national instrument to name and shame enterprises that were found with slave workers, companies do not have to publicly recognize their violation.'<sup>230</sup>

One can say that the MSA is more developed in relation to businesses and modern slavery. The MSA established in its chapter 2, Article 71(1) that the government could not sign any contracts with companies that were involved with modern slavery and it required that some companies must produce a slavery and human trafficking statement. However, it does not set any penalties for the companies who choose not to disclose this information.<sup>231</sup>

As a consequence, some positive changes can also be seen as a result of the MSA. For instance 'the Business and Human Rights Resource Centre analysed 27 company statements produced by FTSE 100 companies under the MSA, and found that the Act is driving some change, with certain companies, such as Marks & Spencer and SAB Miller, demonstrating rigorous action'.<sup>232</sup>

Overall, it is clear that the UK highlighted the importance of fighting modern slavery within the private sector but the government has no control whatsoever of the companies who are complying with the MSA. For example, the Home Office cannot monitor the businesses' compliance properly since the government does not have a database with the names of the companies with an annual turnover of over £36 million, and these are the businesses which must report about the actions they are taking to combat modern slavery.<sup>233</sup> Moreover, the law is quite protective of the companies because it allows them to be very vague and to provide information that is not useful to fight the problem at all.<sup>234</sup> In this

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<sup>229</sup> André Campos, 'From moral responsibility to legal liability? Modern day slavery conditions in the global garment supply chain and the need to strengthen regulatory frameworks: The case of Inditex-Zara in Brazil' (Repórter Brasil, May 2015) <<https://reporterbrasil.org.br/wp-content/uploads/2016/08/From-moral-responsibility-to-legal-liability.pdf>> accessed 9 September 2019.

<sup>230</sup> Regiane Cristina de Oliveira, 'Seeking Victims' Perspective on Remedy: The Case of Brasil Verde Farm's Workers' (2018) 14 *Direito GV Rev* 334 p. 358.

<sup>231</sup> Virginia Mantouvalou, 'The UK Modern Slavery Act 2015 Three Years On' (2018) *The Modern Law Review* C 81 (6) MLR 1017 – 1045, p. 1039.

<sup>232</sup> Business and Human Rights Resource Centre, 'FTSE 100 at the Starting Line: An Analysis of Company Statements Under the UK Modern Slavery Act' (Business and Human Rights Resource Centre, January 2017) <<https://www.business-humanrights.org/sites/default/files/documents/FTSE%20100%20Modern%20Slavery%20Act.pdf>> accessed 6 September 2019.

<sup>233</sup> Global Slavery Index, 'Country Studies: United Kingdom' (Global Slavery, 2018) <<https://www.globalslaveryindex.org/2018/findings/country-studies/united-kingdom/>> accessed 1 September 2019; Virginia Mantouvalou, 'The UK Modern Slavery Act 2015 Three Years On' (2018) *The Modern Law Review* C 81 (6) MLR 1017 – 1045, p. 1041.

<sup>234</sup> Business and Human Rights Center, 'First Year of FTSE 100 Reports under the UK Modern Slavery Act: Towards Elimination?' (Business and Human Rights Center, 15 November 2017) <<https://www.business-humanrights.org/sites/default/files/FTSE%20100%20Report%20FINAL%20%28002%291Dec2017.pdf>> accessed 2 September 2019, p. 2; Ergon Associates, 'Modern slavery statements: One year on' (Ergon

sense, Virginia Mantouvalou stated that 'often [the companies] simply make general statements, rather than providing a detailed explanation of their processes for risk Assessments. Some reports specifically state that they only examine their operations in the UK, excluding franchisees or operations overseas'.<sup>235</sup>

In other words, the MSA allows the companies to self-regulate themselves and it 'has been criticised for simply protecting businesses from reputational damage and for limiting their liability, and has been shown through empirical research to be ineffective unless combined with strong public institutions and Laws'.<sup>236</sup>

Given the fact that the conduct of companies have a huge interference with human rights, especially since businesses activities have an impact on rights such as freedom of expression, freedom of association and the prohibition of discrimination,<sup>237</sup> it is imperative that countries recognize their responsibility to respect them.<sup>238</sup> As a consequence, they should set out what they expect from companies within their territories and how they want them to act in order to for them to 'respect human rights throughout their operations'.<sup>239</sup>

As a consequence, they must

- (a) Enforce laws that are aimed at, or have the effect of, requiring business enterprises to respect human rights, and periodically to assess the adequacy of such laws and address any gaps;
- (b) Ensure that other laws and policies governing the creation and ongoing operation of business enterprises, such as corporate law, do not constrain but enable business respect for human rights;
- (c) Provide effective guidance to business enterprises on how to

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Associates, 16 November 2017) <[http://ergonassociates.net/wp-content/uploads/2016/03/MSA\\_One\\_year\\_on\\_April\\_2017.pdf?x74739](http://ergonassociates.net/wp-content/uploads/2016/03/MSA_One_year_on_April_2017.pdf?x74739)> accessed 2 September 2019, p. 1

<sup>235</sup> Virginia Mantouvalou, 'The UK Modern Slavery Act 2015 Three Years On' (2018) *The Modern Law Review* C 81 (6) MLR 1017 – 1045, p. 1042.

<sup>236</sup> Ibid. p. 1040.

<sup>237</sup> UN Human Rights Council, *Protect, respect and remedy : a framework for business and human rights : report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises*, John Ruggie, 7 April 2008, A/HRC/8/5 <<https://www.refworld.org/docid/484d2d5f2.html>> accessed 10 September 2019, Principle 12.

<sup>238</sup> UN Human Rights Council, *Protect, respect and remedy : a framework for business and human rights : report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises*, John Ruggie, 7 April 2008, A/HRC/8/5 <<https://www.refworld.org/docid/484d2d5f2.html>> accessed 10 September 2019, Principle 12.

<sup>239</sup> Ibid., Principle 2.

respect human rights throughout their operations;

(d) Encourage, and where appropriate require, business enterprises to communicate how they address their human rights impacts.<sup>240</sup>

In contrast, businesses have the responsibility to respect human rights,<sup>241</sup> and they must recognize that they must take action in order to tackle modern slavery within their activities.

Even though the MSA mentions that some businesses have an obligation to report about their efforts to eradicate slave labour, neither legislation has a hard law on the matter, what weakens the fight against modern slavery. Therefore, one of the main things that both countries should do is to create a legal provision that enables victims to hold companies accountable for their actions to when it comes to submitting people to conditions analogous to slavery, both under the criminal law and civil law.

The conduct of companies have a huge interference with human rights, especially since businesses activities have an impact on rights such as freedom of expression, freedom of association and the prohibition of discrimination.<sup>242</sup> This would be a way of restoring the worker's dignity, empowering them, and for redressing their suffering.

#### 4. CONCLUSION

All things considered, one can say that modern slavery is an extremely complex contemporary problem that must be tackled by the governments and private sector. It can also be inferred that the implementation of a hard law that addresses the issues is very much needed.

Unfortunately, if these changes would not be made, the workers who are subjected to slave labour are still going to be invisible for the society and will still be 'working in a system that operate[s] in the shadow of the State's negligence and companies' greed'.<sup>243</sup> Businesses expect the State to fail to fulfil its duties to protect human rights in order to be able to use slave labour.

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<sup>240</sup> Ibid., Principle 3.

<sup>241</sup> UN Human Rights Council, *Protect, respect and remedy : a framework for business and human rights : report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises*, John Ruggie, 7 April 2008, A/HRC/8/5 <<https://www.refworld.org/docid/484d2d5f2.html>> accessed 10 September 2019, Principle 12.

<sup>242</sup> UN Human Rights Council, *Protect, respect and remedy : a framework for business and human rights : report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises*, John Ruggie, 7 April 2008, A/HRC/8/5 <<https://www.refworld.org/docid/484d2d5f2.html>> accessed 10 September 2019, Principle 12.

<sup>243</sup> Regiane Cristina de Oliveira, 'Seeking Victims' Perspective on Remedy: The Case of Brasil Verde Farm's Workers' (2018) 14 *Direito GV Rev* 334 p. 354.

The workers, as human beings, have their right to dignity and they must not be a victim of any kind of exploitation and obviously the legislations we have in place now are not enough to strengthen the fight against modern slavery in all its forms.

The laws analysed in this dissertation lack efficacy when identifying, rescuing, caring and protecting those who have been victims of slave labour and they fail to address their structural weaknesses, even those which have been recognized by the government. Moreover, one of their biggest problems is the lack and inefficiency of criminal prosecutions and the lack of a framework or the absence of civil compensation at all.

Furthermore, the victims do not have any space to speak and to be heard. Therefore, there is no way that the public policies and the government initiatives are going to tackle the issues the workers have been facing. In this sense, it would be important to create a mechanism in which the victims or potential victims can make suggestions, complaints, and compliments.

For the governments to prove they are devoted to fight modern slavery, they must start taking this issue seriously by changing the structure of some institutions and frameworks, and it is essential for them to start properly supporting the victims of this offence.

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