

DUE DILIGENCE AND DECENT WORK. SPECIAL REFERENCE TO LABOUR LEGISLATION IN VALUE CHAINS

*TRABALHO DECENTE E DEVIDA DILIGÊNCIA. REFERÊNCIA ESPECIAL À LEGISLAÇÃO
LABORAL E CADEIAS DE VALOR*

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ABSTRACT: In recent decades, the agricultural world has changed, in this new context, international food companies are organized around a global production network. One of the main factors for the introduction of a more decentralized and flexible food and agricultural system was the wage gap between actors from the Global North and the Global South. This study analyzes the effectiveness of the action of control mechanisms in relation to the protection of workers' rights in multinational companies in Spain with special reference to the value chain of the agricultural sector. In particular, the working conditions of workers in food companies will be analyzed, analyzing the inequalities between the different groups of workers, paying special attention to immigrants and women, thus analyzing possible differences, contractual irregularities and salary gaps. Therefore, the article invites us to reflect on the need to implement new control mechanisms and regulatory instruments that intervene to correct the distortions in the agricultural labor market and the imbalances in the working conditions of these groups with the aim of contributing to a transformation of agricultural work through social strategies.

Keywords: Modern slavery. Vulnerable groups. Human rights and business. Labour law. Due diligence. Decent work.

RESUMO: Nas últimas décadas o mundo agrícola mudou, neste novo contexto, empresas internacionais de alimentos estão organizadas em torno de uma rede global de produção. Um dos principais fatores para a introdução de um sistema alimentar e agrícola mais descentralizado e flexível é a diferença salarial entre atores do Norte Global e do Sul Global. O estudo analisa a eficácia da ação dos mecanismos de controle em relação à proteção dos direitos dos trabalhadores em empresas multinacionais na Espanha, com especial referência à cadeia de valor do setor agrícola. Em particular, serão analisadas as condições de trabalho dos trabalhadores nas empresas alimentares, analisando as desigualdades entre os diferentes grupos de trabalhadores, dando especial atenção aos imigrantes e às mulheres, analisando assim possíveis divergências, irregularidades contratuais e disparidades salariais. Nesse aspecto, o artigo nos convida a refletir sobre a necessidade de implementar novos mecanismos de controle e instrumentos regulatórios, que intervenham para corrigir as distorções no mercado de trabalho agrícola e os desequilíbrios nas

condições de trabalho desses grupos com o objetivo de contribuir para uma transformação da economia agrícola e trabalhar através de estratégias sociais.

Palavras-chave: Escravidão moderna. Grupos vulneráveis. Direitos humanos e negócios. Direito do trabalho. Due diligence. Trabalho decente.

SUMMARY: Introduction. 1 Value chains and the Spanish agricultural sector. 2 International agrarian companies, organization of processes and concept of modern slavery. 3 Vulnerable groups and labor law. 4 Immigration, working conditions and agricultural work in Spain. 5 Women and the Spanish agricultural sector in value chains. Conclusions. References.

INTRODUCTION

If we attend to the term globalization and we link it to the concept of agriculture, we observe how the fruit we receive from the globalization of the agri-food system is, among other things, the emergence of new enclaves of intensive agriculture and the orientation of this towards international markets, we witness the technological advancement and innovations accompanied by the intense use of labor force. These factors, together with others that are analyzed throughout this article, have given rise to intense processes of labour and capital mobility. In this picture, we notice a majority use of salaried work and a wide labor flexibility that is accompanied by the discontinuity of the cultivation of the fields governed by the demand of the markets and that is reflected in the contractual models of the workers of the land, as well as in their working conditions.

Furthermore, we come to observe, together with all of the above, new forms of transnational regulation of production and work carried out by transnational companies and large distribution chains.

1 VALUE CHAINS AND THE SPANISH AGRICULTURAL SECTOR

While issues related to compliance and impact at the smallholder or worker level have often been discussed, there is now also a need to give importance to private standards and associated initiatives at the local level in agri-food value chains, as over the decades we see a proliferation of value chains in the agricultural sector while the governance implications in terms of how private standards affect public, private and non-governmental institutions at the national level have received less attention. .

The complexity presented by the global normalization of work forces, take us to pay special attention to these new forms of market and their consequences on the working conditions of various groups, with special attention to those groups of greater vulnerability. The great question that this transformation, which we have been witnessing, poses is whether these new formulas of global governance are able to represent an effective contribution to that construction of a Labour Law (SANGUINETI RAYMOND, 2020).

2 INTERNATIONAL AGRARIAN COMPANIES, ORGANIZATION OF PROCESSES AND CONCEPT OF MODERN SLAVERY

In the context of the organization and orchestration of global value chains in global factories by multinational companies that are highly adaptable to the market, continuous pressures and changes in the external environment have been observed and this is how we first find the definition of the concept of modern slavery.

The term modern slavery is defined in British legislation which introduced this term into the academic discourse on labor exploitation and unfree labor around 2007 (JOHNS, 2020). In

these dynamic scenarios, the configuration and implementation of activity in the factories is determined by how a multinational company, as a leading company, can obtain the greatest value from the geographically and organizationally dispersed production process. In other words, on the one hand, taking advantage of the location options for productive activities and the type of work that is subcontracted, and on the other hand, maximizing global efficiency and productivity based on the location of suppliers abroad.

These configuration adjustments benefit the leading firm, while inclusion in global value chains can lead to business upgrading and location development. (Mieres, 2017) However, the dynamic adaptation of the global supply network can lead inadvertently, or by default to unfavorable outcomes for suppliers. Leading companies have such significant power and influence over their suppliers that any additional value that is created through economic upgrading is likely to be appropriated by the leading company rather than the supplier. The provider is then caught between higher investment costs and lower margins. This strategic decoupling between lead company and supplier may be a factor that contributes to suppliers looking for strategies to reduce their operating costs, this can subsequently lead to forms of modern slavery (Davies, 2019).

But we must ask ourselves: What features of global value chains combine to create an environment in which modern slavery can evolve and take root? We see at this point three governance and configuration features that shape interactions across the network. These are the complexity, the appropriation arrangements, and the cascade of obligations. Based on these premises, we can deduce that there is a continuous practice of exploitation that can culminate in forms of modern slavery, and we argue that the degree to which forms of modern slavery become visible and recognizable depends on the combination of these three characteristics, which individually do not lead to it. Modern slavery then, is used today as an umbrella term to describe various forms of severe relational exploitation in the workplace, at home, and elsewhere.

Modern slavery includes a range of exploitative practices that are separately defined in British law, as is done directly in the Modern Slavery Act 2015. Beyond the immediate context of global factory and global value chains, the term has also been used to describe forced marriage and organ harvesting, and others have shown that labor practices associated with unskilled or low-skilled labor (Bales, 2018), so they also constitute modern slavery as these workers are forced to accept whatever employment they can find. Therefore, these practices often involve migrant workers, who often have a low level of awareness about their rights, a situation that can also be aggravated by not knowing the language of the host country or region, among other things. All of these factors increase the situation of vulnerability of this groups.

Despite the efforts of the Walk Free Foundation to empirically account for modern slavery through the Global Slavery Index, this remains difficult given the lack of a clear and ambiguous definition. Modern slavery is typically, but not only, found in activities that require less skills and are of lower value-adding quality. In fact, various opinions propose that modern slavery exists and persists within a certain industrial, socioeconomic, geographic, cultural sector and within a regulatory context. Contextual factors that could contribute to modern slavery include, but are not limited to, labour intensity within an industry, the legitimacy of a company or industry, persistent poverty and unemployment, geographic isolation, and, of course, the lack of law enforcement, entrenched inequalities based on local traditions and values on the one hand, and the general strength of government and the rule of law on the other.

Private government initiatives such as the Ethical Trading Initiative have attempted to provide a framework and guidance for participating businesses on how to operate within such an environment while supporting local workers. Taking into account the concept of merchandise chains, we will summarize the main characteristics of global merchandise networks, pointing out the appearance of the transnational company as the main novelty, which defines and constitutes the practically unlimited and cross-border mobility of productive factors. The novelty is found above all by looking at the structure of global merchandise chains in the fresh fruit and vegetable

subsector. We must link this aspect with the characteristics of the new agri-food globalization, which is leading to an enormous territorial expansion in Central and South America, Southeast Asia, Australia and New Zealand, African countries such as South Africa, and some European Mediterranean regions.

The proliferation of these agro-industrial regions appears linked to a new international division of labor in the framework of the restructuring of the global economy. The result of this has been the configuration of a global fresh fruit and vegetable system in which numerous countries from different continents participate in a global network of production and consumption, and in which the developed countries are the main consumers, and the underdeveloped countries are the main producers. This division is also observed within the EU and for this reason it is very normal to hear on numerous occasions in different parts of Spain, the qualification of these as "the garden of Europe". At this point, it will be a matter of interest to take into account at all times the power relationships between the distribution network, production center, natural resources and labour forces, the latter characterized by the realization and implementation of the tasks with a higher degree of intensity.

Considering the global value chains and especially the food chains, the territory fulfills a strategic function that is used, so that those territories that are more productive or favorable to agricultural cultivation acquire a special complexion. There is a growing process of integration between the production, processing and marketing of fresh food, constituting a territorial conglomerate of numerous and different types of companies, including providers of means of production, vegetable processing, or food handling product among others characterized by a high spatial concentration, an intense connection between them based on proximity relationships, rootedness in their own social structures and with an institutional environment that ranges from political institutions to specialized research centers, passing through an important development of agrarian associationism.

In response to this whole situation, labor recruitment networks emerge to face the uncertainties of work, where there is a demand for punctual and itinerant work of agricultural workers destined for the most intensive manual activities of the production process, as is the case of the tasks of harvesting, planting, or handling of the product. We will attend at this point to the availability requirements around the changing nature of the market that is reflected in the labor and contractual conditions of these workers.

3 VULNERABLE GROUPS AND LABOR LAW

The focus of the UN and the ILO in agriculture is projected to achieve the objective of decent work in this sector. It is known that agriculture has been present throughout history as the main livelihood in society, and this transcends worldwide and on many occasions with the same characteristics of lack of protection, therefore, organizations such as the United Nations or the International Labour Organization have tried to cover these deficiencies based on innumerable development projects.

Accordingly, the main objective of these organizations is to find a balance of decent work in all the working areas, as well as ensure that the product is produced based on sustainable agriculture. Decent work is a term that has been around for many years, the ILO introduced this concept with the aim of providing protection to the workplace by making exhaustive analyzes from its scope of application in Social Welfare as well as in guaranteeing the rights and obligations of the system. The notion of decent work appears for the first time in 1999, and the ILO defines it as "productive work in conditions of freedom, equity, security and dignity, in which rights are protected and that has adequate remuneration and social protection, focusing on the four strategic objectives of the ILO: The promotion of labor fundamental principles and rights at work, the promotion of employment, social protection against situations of vulnerability and the promotion

of social dialogue.

However, a second notion appears that refers to "quality employment" above labor productivity, with the aim of achieve the same quality of employment while prioritizing the rights of workers. Having said this, what we are trying to highlight is the performance of the work with guaranteed minimums in order not only to protect Human Rights, but also to ensure the comfort and respect of the worker, a subject that becomes essential for the organization to function optimally.

The Food and Agriculture Organization of the United Nations (FAO) tries to implement the principles of sustainable agriculture for the achievement of the improvement of decent work, these seek to improve efficiency in the use of resources, support sustainability through direct activities that conserve, protect and improve natural resources, maintain the protection and improvement of rural livelihoods, promote equity and social welfare and strengthen the resilience of people through effective and fair mechanisms.

In order to make an observation about the regulation of the agricultural sector in the EU, we must refer to the Common Agricultural Policy (CAP) and its history; In 2018, not for the first time, a reform was presented that proposed the application of certain regulations in the CAP, resulting in the position of the Ministry of Agriculture, Fisheries and Food in the document "The Common Agricultural Policy Post 2020", within it, three general objectives are clarified that establish achieving an "intelligent, resilient and diversified agricultural sector, which guarantees food security, intensifies care for the environment and the climate and contributes to achieving the climate and environmental objectives of the EU" .

These objectives are subdivided into nine specific points that support the general objectives that must be achieved, and among them we can highlight a primary objective and one that is closely related to this work, which is to "contribute to effective gender equality and strengthen the role of women in rural areas". In order to achieve this last measure, the support of the European Parliament is essential, since what is intended is to ensure that the role of women is established equitably in all areas of the sector, and as a consequence, a higher level of activity in the field that contributes to the succession of future generations.

4 IMMIGRATION, WORKING CONDITIONS AND AGRICULTURAL WORK IN SPAIN

Considering the work in the field and the value chains and attending to their distribution, we find the need to pay special attention to the singularities of the workforce, the type of their contracts and the differences in terms of the regularization of the situation and wage gaps based on, among other reasons, gender, and the nationality of the worker.

Therefore, it is necessary to carry out an analysis of the working and employment conditions and of the common guidelines and lines of action in intensive agriculture, we must then attend to the legislative framework on the one hand and to the business strategy on the other and combine the result of these two factors together, considering how these can be the cause of unstable employment or precarious working conditions to which some groups of workers in the sector are subjected. It will be important to observe at this point, the achievement of these factors in the weakening of collective bargaining, which will be a barrier to the emergence of new forms of regulation and control mechanisms.

For all of the above, we encounter very heterogeneous contractual situations for workers in this sector while we find a common line within them that will be the eventual nature of the contractual relationships, this characteristic, as it cannot be otherwise, leads to high levels of instability in the employment of workers in the sector who come to sign several temporary contracts throughout a single year, coming to work between 6 and 10 months a year, depending on the geographical area and thanks to the chain of reference contracts to different campaigns. The problem becomes more acute when we attend to submerged or informal work. According to a

survey carried out in 2000 of 204 agricultural workers in one of the most important enclaves of intensive agriculture in Europe, 83.1% of immigrant workers in an irregular situation worked without a contract and just the 24.8% of those were in a regular situation.

Another common pattern observable in working conditions in these enclaves is the outsourcing of the management of labor relations by companies. Employers resort more and more frequently to the figure of the intermediary, being this a temporary work company or a contractor. The main function of these intermediaries is to coordinate supply and demand in the labor market by offering itinerant labor at low cost. The company pays a lump sum for the work of a certain number of workers during a certain period of time and in a specific field. Thus, no legal relationship is established with the worker, but it is established with the intermediary, who is responsible for the legal situation of the workers.

The ILO's Decent Work Program aims to assess the realities of work at a global level and seeks to promote its realization by urging national and supranational institutions to include in their agenda objectives such as creating work, guaranteeing workers' rights, extending social protection and promoting social dialogue.

In addition, six facets of decent work are established, which are: job opportunities, work in conditions of freedom, productive work, equity at work, job security and dignity. These six facets are specified in eleven categories with the aim of measuring decent work: Employment opportunities, inadmissible work, remuneration, working hours, stability and security of employment, reconciliation of work and family life, fair treatment at work, health, safety and hygiene at work, social protection, and social dialogue (Anker, 2003)

In addition, the health of workers is subject to significant risks in these enclaves, in this sense it should be noted that physical and psychological conditions are nothing more than "the visible end of a succession of events that describe a painful environment for certain individuals" (Castellanos Ortega, 2009) Agricultural workers usually see how their work days are intensified and prolonged in response to periods of intense activity while their tasks are characterized by the repetition of monotonous movements, generally accompanied by the repetition of postures that intensify the risk of suffering injuries.

We cannot forget that to these conditions is added the difficulties encountered in most of the tasks carried out in the agricultural field, such as outdoor work where extreme temperatures must be endured, the other side of the coin is characterized by work centers with excessive humidity and poorly ventilated spaces. It is important to notice that these conditions also intensify the chances of suffering diseases derived from this intensive agriculture and that should be qualified as occupational diseases and occupational accidents, depending on the cases. In addition to these aspects, it is worth highlighting others such as the temporary nature of contracts, the informalization of labor relations and the growing rupture of the direct link between workers and employers as causes that make collective bargaining difficult, to which is added the number of workers in an irregular situation that we find in the sector, a condition that makes them even more vulnerable.

A series of incidents that occurred in 2019 evidenced the deplorable conditions of immigrants with seasonal agricultural jobs in Spanish territory, "their lives are in danger" was one of the declarations from the UN special rapporteur on Human Rights referring to the people who currently grow strawberries in Spain and who live in slums or marginal neighborhoods close to agricultural fields. The special rapporteurs are part of what is known as the Special Procedures of the Human Rights Council, which is the largest body of independent experts in the UN Human Rights system, with this we referred to the name given to the Council's independent investigative and monitoring mechanisms that deal with specific country situations or thematic issues in all parts of the world referring to states part of the United Nations. The Special Procedures experts work on a voluntary basis; they are not UN staff and do not receive a salary for their work. They are independent of any government or organization and serve in their individual capacity.

Was also declared by the UN special rapporteur that immediate action needed to be taken to solve a widespread humanitarian problem, literally warning that “the conditions in which seasonal migrant workers living and working in Spain are unfortunate and can lead to death, referring to the people who currently grow strawberries in Spain and who live in shantytowns or marginal neighborhoods near agricultural fields” . (ONU, 2020)

The UN reporter’s report, highlighted the need to accentuate the control mechanisms in relation to the regularization of the working conditions of migrant workers in the Spanish countryside in order to guarantee decent life conditions and work.

The expert recalled that less than a month ago the authorities had been urged to guarantee migrant workers conditions adjusted to international labor and human rights standards, including access to adequate health care. However, a month later a worsening of their situation was observed, which deteriorated alarmingly with the arrival of the COVID-19 pandemic. In this context, Spain hired Moroccan seasonal workers during the coronavirus pandemic to collect the strawberry, who despite being considered essential workers, neither the Government nor the companies took measures to protect them from COVID19.

Added to the above, among other cases, is the case of migrant women from Morocco, around 3000 women who travel each year to the Spanish city of Huelva during the annual strawberry harvest, where they often work above the legal limit of working hours and are paid below the minimum wage This fact has been also denounced by another the UN special rapporteur on extreme poverty and human rights, Olivier De Schutter, who also stated that the Spanish authorities are responsible for guaranteeing migrant workers working conditions that are within the international legal framework. including the right to adequate healthcare.

The exhaustive study on the responsibility of the employer cannot, however, be determined by the ineffectiveness of the State authorities in the application of national legislation or in the application of international standards of Human Rights, but the responsibility also should fall unequivocally on those abusing their position, violating the fundamental rights of nationals or non-nationals, causing situations that are close to slavery and that put the lives of the most vulnerable in danger. At this point it is crucial to pay attention to the importance of control mechanisms in occupational risk prevention and possible discrimination in the protection of various groups of workers. Added to this are the salary gaps that we find, whether by paying attention to Spanish workers compared to immigrants, especially if we look at the cases of these with an irregular situation who will be hired using the underground economy, or the gender salary gap that It becomes especially visible in the agri-food sector and is intensified if the characteristics of being woman and migrant converge in the same person.

5 WOMEN AND THE SPANISH AGRICULTURAL SECTOR IN VALUE CHAINS

Among the especially sensitive groups at work we consider minors, people with functional diversity, the elderly, those who are exposed to certain occupational risks or women who are breastfeeding or pregnant, among others. However, and parallel to this, the situation suffered by women due to gender inequality imposed in society for centuries should not be ignored.

Regardless of the sector to which they belong, it has been shown that "the levels of female activity and employment are below those of men, the unemployment rate of women is much higher than that of men" (DOMÍNGUEZ, 2006) Another relevant aspect for this study is the social differences within the group itself, previously, a woman who worked in the countryside did not have the same opportunities as a woman in the city, since with the country woman was associated the combination of productive and reproductive activities in the home space. As time goes and with it arrived the improvement of technologies, women who work in rural areas have been forced to modify these behaviors to adapt to the reforms suffered in the agricultural sector.

Another of the relevant points that is worth to highlight comes from the study carried out on the visibility of women in agri-food policies at the University of the Basque Country (MONTOTO, 2020), which reveals that more than 70% of the foods world level are produced by women, however, the recognition of these tasks is not usually given in the field, so we can say that this reason could be another one that will help us justify the consideration of women within vulnerable groups.

In relation to the previous point, it is important to notice in agriculture, immigrant workers have played an extraordinary role due to the lack of autochthonous workers, and to the cost savings that it can entail for the employer due to their vulnerability due to their special situation of need. In this sense, it will be much more profitable for the contractor to hire immigrants who do not have a work permit or registration with social security, thus favoring illegal hiring, and this is why we must also refer to female immigration

Various studies focused on the invisibility and visibility of immigrant women in agriculture reveal the difference between Spanish and foreign salaried women, Spanish women are usually made invisible by their retirement from family care and, as we mentioned earlier, their interventions are conceived in the work of the land as a support, while foreign women have it even worse, since they directly go unnoticed by the macro figures of agricultural employment. The most common thing is that the majority of immigrant women work seasonally, being recruited in origin, this can be proved and found attending to the statistical data referring to foreign agricultural contracts concluded in Spain.

Studies on this matter dated on 2006 shown that 81.8% of the contracts in Huelva (city in Spain) were carried out by foreigners, while 63.2% of that same percentage belonged to foreign women, so much so that on the 17th of December 2018 the 73rd session of the United Nations General Assembly held in New York adopted the United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas (UNDROP)

The Food and Agriculture Organization of the United Nations proposes in one of its projects several guidelines to follow to achieve the development of sustainable agriculture, in which objectives such as tenure, among others, stand out as a consequence of this situation and other many an international movement founded in 1993 called "Vía Campesina" arises, this initiative tries to promote equality among farmers around the world in addition to establishing their own agricultural policies in compliance with sustainable development and food security. This proposal for change has had an effect throughout the world, currently having 182 organizations in 81 different countries. However, this organization continues to promote the defense of the most vulnerable groups in this sector, through different modes of action, from demonstrations to solidarity campaigns to achieve its objectives, although it is rare to hear of it within Spanish territory.

In addition to this, within the national scope, through the figure of union action, it is about promoting positive action and the different anti-discrimination clauses through collective agreements or laws such as the Equality Law, (in Spanish: Ley Orgánica 3/2007, de 22 de marzo, para la igualdad efectiva de mujeres y hombres) therefore, companies must comply with an equitable proportion of contracting with the aim of balancing the percentages of contracts and guaranteeing equal opportunities. We not ignore, the importance and progress International Framework Agreements, also known as "Global Framework Agreements" mean and which represent a negotiated instrument between the multinationals companies and the Global Union Federation in order to establish a relationship between the parties and to guarantee that companies respect the same standards in all the countries in which they operate.

CONCLUSIONS

In the light of the above considerations, the importance of regulation and reinforcement

of control mechanisms in relation to the employment generated by multinationals cannot be doubted, referring especially to value chains, and more specifically, to companies related to agriculture and food responsible for the agri-food process. It is therefore necessary to study with special interest its regulation and legal gaps, taking into account the social, national and international reality, and work on the regulation of working conditions for all, paying special attention to the most vulnerable groups such as, immigrants, women or minors among others.

The problem is accentuated by the irregular situation of some immigrants combined with the abuse of power by some employers who act in violation of the rules taking part of an underground economy that denies protection and fundamental rights to some categories of workers who remain relegated to the shadows, in this sense, not only exhaustive regulation of the situation is necessary, but also reinforced control mechanisms that intervene to correct these distortions in the agricultural labor market and the imbalances in the working conditions of these groups with the aim of contribute to a transformation of agricultural work through social strategies. It is also important to promote awareness to put an end to the degradation in which these people live.

All of the above will not be possible without urgent and coordinated action by local administrations, agricultural employers and business circles. From these points, the need to implement new prevention, control and sanction instruments emerges, at the same time that it will be important to redefine the limits of responsibility in this area, extending it to all levels of the chain, regardless of who the offender is, which must be articulated through a new binding regulation and an exhaustive study of the improvement of control mechanisms.

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