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# TOWARDS ERADICATION OF MODERN SLAVERY FROM GLOBAL SUPPLY CHAINS

Analysis of the effects of legal instruments on the timber supply  
chain between Brazil and United Kingdom

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## **ABSTRACT**

The object of this work is the analysis of the legal mechanisms concerning the eradication of modern slavery and their influence in global supply chain practices towards eradication of modern slavery, based on an investigation of the timber supply chain between Brazil and UK. The research was structured in three chapters, that started by the review of the current international legislation related to modern slavery and the domestic legislation in the UK and Brazil. Further, the concept of slavery was considered, in order to establish its peculiarities. After, the UNGPs were scrutinised and the importance of business responsibility to respect human rights was discussed. A special focus was given to the challenges presented by supply chains, highlighting the relevance of due diligence processes to identify human rights risks. The final chapter investigated the timber supply chain between Brazil and UK, underpinned by the examine of the current scenario of illegal logging in the Amazon forest that led to the reflection about the interaction between Brazilian suppliers and UK importers and the measures that can be implemented to change the current practices that use deforestation and slave work to harvest tropical timber.

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## LIST OF ABBREVIATIONS

<b>ACHR</b>	American Convention on Human Rights
<b>BHG</b>	Bellagio-Harvard Guidelines
<b>CDVDH/CB</b>	Centre for the Defence of Human Rights Carmen Bascarán (Centro de Defesa da Vida e dos Direitos Humanos Carmen Bascarán)
<b>CPT</b>	Pastoral Land Commission (Comissão Pastoral da Terra)
<b>CSR</b>	Corporate social responsibility
<b>ECHR</b>	European Convention on Human Rights
<b>ECtHR</b>	European Court of Human Rights
<b>GP</b>	Guiding principle
<b>GSI</b>	The Global Slavery Index
<b>IACHR</b>	Inter-American Court of Human Rights
<b>IACom</b>	Inter-American Commission on Human Rights
<b>ICCPR</b>	International Covenant on Civil and Political Rights
<b>ILO</b>	International Labour Organization
<b>MNE</b>	OECD Guideline for Multinational Enterprises
<b>MNE Declaration</b>	Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy
<b>MSAct</b>	Modern Slavery Act 2015
<b>OECD</b>	Organisation of Economic Cooperation and Development
<b>RtR</b>	The corporate responsibility to respect human rights: an interpretative guide
<b>SCon</b>	Slavery Convention of 1926
<b>SDGS</b>	Sustainable Development Goals
<b>SMSG</b>	Special Representative of the Secretary-General
<b>SUPCon</b>	Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery of 1956

<b>TTF</b>	Timber Trade Federation
<b>UDHR</b>	Universal Declaration of Human Rights
<b>UN</b>	United Nations
<b>UNGC</b>	United Nations Global Compact
<b>UNGPs</b>	United Nations Guiding Principles for Business and Human Rights

## TABLE OF CASES

Case n 12.066 (Report n 169/11 Admissibility) Inter-American Commission on Human Rights (03 November 2011)

*Hacienda Brasil Verde Workers v. Brazil* (Preliminary Objections, Merits, Reparations and Costs) Inter-American Court of Human Rights Series C No 318 (20 October 2016)

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Charter of Fundamental Rights of the European Union [2000] OJ C364/01

### TREATIES AND LEGISLATION FROM THE UNITED KINGDOM

Explanatory Notes to the Modern Slavery Act 2015

Modern Slavery Strategy 2014

Modern Slavery Act 2015

The Modern Slavery Act 2015 (Transparency in Supply Chains) Regulations 2015

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American Convention on Human Rights (adopted 22 November 1969, entered into force 18 July 1978) 1144 UNTS 123

Convention (No. 29) concerning forced or compulsory labour, as modified by the Final Articles Revision Convention, 1946 (adopted 28 June 1930, entered into force 1 May 1932) 39 UNTS 55

Convention (No. 105) concerning the abolition of forced labour (adopted 25 June 1957, entered into force 17 January 1959) 320 UNTS 291

Decreto-Lei no. 2848 (adopted 07 December 1940, entered into force 01 January 1942)

International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171

Lei imperial no. 3353 (adopted 13 May 1888)

Lei no. 10.803 (adopted 11 December 2003)

OECD Declaration on International Investment and Multinational Enterprises (adopted 21 June 1976)

Protocol to Convention (No. 29) concerning forced or compulsory labour, as modified by the Final Articles Revision Convention, 1946 (adopted 11 June 2014, entered into force 09 November 2016)

Slavery Convention (adopted 25 September 1926, entered into force 9 March 1927) 60 LNTS 253

Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (adopted 07 September 1956, entered into force 30 April 1957) 266 UNTS 3

Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (204th session) International Labour Office (5 edn, Geneva November 1977)

Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III) (UDHR)

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UNGA 'Transforming our world: the 2030 Agenda for Sustainable Development' (25 September 2015) 70th Session (2015) UN Doc A/Res/70/1

UNHRC 'Report of the Special Representative of the Secretary- General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie. Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework' (21 March 2011) UN Doc A/HRC/17/31

UNHRC 'Human rights and transnational corporations and other business enterprises' (06 July 2011) UN Doc A/HRC/RES/17/4

UNHRC 'Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises' (14 March 2013) UN Doc A/HRC/23/32

UNHRC 'Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John



Ruggie. Business and human rights: mapping international standards of responsibility and accountability for corporate acts' (19 February 2007) UN Doc A/HRC/4/35

## INTRODUCTION

The use of the human workforce and its exploitation has always been present in human history. The subjugation of the weaker by the stronger appears in the past millenniums as a clear pursuit of power.

For centuries, this submission was legally accepted and part of the society. Slavery was only completely legally abolished in the last century, with some countries, such as Mauritania, remaining with the acceptance of this heinous practice until 1981.

Even if the slavery *per se*, the one studied in the history books, the one connected with Ancient Empires and colonialism, the one lawfully underpinned, was abolished another phenomenon arises, the so called modern slavery. A product of inequality, poverty, hunger, desperation. A product of the modern capitalism, related to the exercise of the power of ownership over a free person.

The Global Slavery Index, published in 2016, estimates that 45.8 million people are victims of modern slavery around the globe.<sup>1</sup> It is important to emphasise that this is only an estimate, since it is difficult to be precise the number of workers submitted to these conditions worldwide. In fact, the numbers could be even higher.

Moreover, it is relevant to highlight that in 2014, the ILO adopted a Protocol to the Forced Labour Convention,<sup>2</sup> which highlights the concern around the increasing number of workers submitted to modern slavery in the private economy, underlining that certain sectors of the economy and groups of workers are particularly vulnerable, which indicates the importance of developing actions related to the responsibility of companies, especially those working transnationally and in complex global supply chains.

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<sup>1</sup> The Walk Free Foundation (an initiative of The Minderoo Foundation Pty Ltd ATF The Minderoo Foundation Trust), 'The Global Slavery Index 2016' <[www.globalslaveryindex.org](http://www.globalslaveryindex.org)> accessed 27 February 2018

<sup>2</sup> Protocol to Convention (No. 29) concerning forced or compulsory labour, as modified by the Final Articles Revision Convention, 1946 (adopted 11 June 2014, entered into force 09 November 2016)

Furthermore, since the adoption of the Guiding Principles on Business and Human Rights, endorsed by the Human Rights Council in 2011,<sup>3</sup> more discussions are arising related to the corporate responsibility to respect human rights. In this scenario mechanisms such as due diligence processes, risk assessments and corporate social responsibility instruments have an important role raising awareness about the companies duties towards the respect of human rights.

Therefore, the object of this thesis, based on an investigation of the timber supply chain between Brazil and UK, will be the analysis of the legal mechanisms concerning the eradication of modern slavery, especially the UK Modern Slavery Act, and their influence in global supply chain practices towards eradication of modern slavery.

It is relevant to indicate that the development of global supply chains, the growth of economic inequality, the lack of regulation and the pursuit for profit are circumstances that increased the exploitation of the workforce, especially in the lower tiers of global supply chains. Those reasons, between others that will be presented in the following lines, precisely clarify the pertinency of the discussion between promotion of labour standards and eradication of modern slavery.

Moreover, it must be mentioned that the research has been supported by the findings of a project developed within the Rights Lab of the University of Nottingham, which is discussing “The interaction of law and supply chain management in cross-judicial supply chains: Supply chain effectiveness of modern slavery legislation”. The project investigates where and how legal changes affect supply chain designs and practices at a supply chain level and how various legal mechanisms cause change (or not) in the supply chain, focusing on the UK-Brazil beef and timber supply chain.<sup>4</sup>

Thus, in order to investigate the proposed subject, it will be necessary to identify and analyse the existent instruments addressing the problem of modern slavery. By the examination of the current regulation, it will be possible to reflect about its

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<sup>3</sup> UNHRC ‘Human rights and transnational corporations and other business enterprises’ (06 July 2011) UN Doc A/HRC/RES/17/4

<sup>4</sup> More information about the group and the project, can be found at <<https://rightsandjustice.nottingham.ac.uk/items/show/39>>

effectiveness and the measures that could be taken to improve traceability, transparency and accountability of companies.

Additionally, to support the proposed analysis, the timber supply chain in the UK-Brazil will be examined, in order to analyse the compliance with the legislation and the impact of the Modern Slavery Act overseas.

Besides, the thesis will be structured in three chapters. The first chapter will deal with the definition of modern slavery, examining the international legal instruments related to it, focusing especially in the conventions of the United Nations and the International Labour Organisation. The chapter will also bring an analysis of the relevant domestic law in Brazil and United Kingdom, and examine the current definition of modern slavery based on the Bellagio-Harvard Guidelines.

The second chapter will focus on the United Nations Guiding Principles for Business and Human Rights, especially in its second pillar: the business responsibility to respect human rights. This chapter will discuss the importance of due diligence processes in order to assess risks of human rights abuses in business operations, and also present reflections about the higher vulnerability of operations in supply chains.

Based on the previous reviews, the final chapter will investigate the timber supply chain between Brazil and UK. It will analyse the current scenario of illegal timber logged from the Amazon forest and discuss the prospects that timber traded from Brazil to the UK are likely to come from illegal sources. In this sense, the final section will reflect about the impacts of the novel British legislation and the actions that could be taken to improve liability and enforce the legal instruments related to the elimination of modern slavery in global supply chains in order to answer the research problem of how the legal mechanisms can affect global supply chain practices towards eradication of modern slavery.

## CHAPTER ONE - SLAVES OF TODAY: UNDERSTANDING MODERN SLAVERY

This chapter will analyse the definition of modern slavery, based on international law, especially the legal standards established by the United Nations (UN) and the International Labour Organisation (ILO), and the domestic legislation of Brazil and United Kingdom, since those countries will be the focus of further discussions and of a case study related to the timber supply chain established between the both.

Another aim of this chapter is the acknowledgement of the main differences between the slavery in the colonialism and the so called modern slavery, examining if there is actually a permanency of the previous conditions or if there was a change in the key elements, and how this change affects the victims.

Finally, based on the investigations around the legislation and of the authors who deals with modern slavery - especially Kevin Bales<sup>5</sup>, the theoretical framework of this chapter - it will be possible to construct a definition that will be used in this thesis and applied in the discussions connected to global supply chains and their impacts on working conditions.

### 1.1 THE INTERNATIONAL LEGISLATION RELATED TO MODERN SLAVERY

In order to understand the definition of modern slavery the first step is the analysis of the international norms, which describes the sort of exploitation and demands the suppression of all forms of slavery.

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<sup>5</sup> Kevin Bales is Professor of Contemporary Slavery in the School of Politics & International Relations of the University of Nottingham. He was Co-Founder of the NGO Free the Slaves. His book 'Disposable People: New Slavery in the Global Economy', published in 1999, was nominated for the Pulitzer Prize. The documentary based on his work, which he co-wrote, 'Slavery: A Global Investigation, won the 2001 Peabody for Documentary and the 2002 Emmy Award for best documentary long-form and for research. He is also author of the books 'Blood and Earth: Modern Slavery, Ecocide, and the Secret to Saving the World', 'Ending Slavery: How We Free Today's Slave', 'Understanding Global Slavery', 'New Slavery: A Reference Handbook'. He is the lead Author of the Global Slavery Index.

The scope of the present analysis is based on documents of the UN and the ILO, with especial attention to the Slavery Convention of 1926 (SCon)<sup>6</sup>, to the Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery of 1956 (SUPCon)<sup>7</sup> and the Forced Labour Convention of 1930 (Convention no. 29).<sup>8</sup>

Primarily, it is important to emphasise that the Universal Declaration of Human Rights (UDHR),<sup>9</sup> in its article 4 establishes that 'no one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms'. Nevertheless, the declaration did not mention which practices could be described as slavery and if the intention was the abolishment of the lawfully slavery or if is also extended to the practices analogous to slavery.

Moreover, another important document related to the suppression of slavery is the International Covenant on Civil and Political Rights (ICCPR).<sup>10</sup> Article 8 of the Covenant is about the prohibition of slavery, but different from the UDHR, it brings some more details, *verbis*:

Article 8

1. No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited.
2. No one shall be held in servitude.
3.
  - (a) No one shall be required to perform forced or compulsory labour;
  - (b) Paragraph 3 (a) shall not be held to preclude, in countries where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court;

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<sup>6</sup> Slavery Convention (adopted 25 September 1926, entered into force 9 March 1927) 60 LNTS 253

<sup>7</sup> Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (adopted 07 September 1956, entered into force 30 April 1957) 266 UNTS 3

<sup>8</sup> Convention (No. 29) concerning forced or compulsory labour, as modified by the Final Articles Revision Convention, 1946 (adopted 28 June 1930, entered into force 1 May 1932) 39 UNTS 55

<sup>9</sup> Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III) (UDHR) art 4

<sup>10</sup> International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171

(c) For the purpose of this paragraph the term "forced or compulsory labour" shall not include:

(i) Any work or service, not referred to in subparagraph (b), normally required of a person who is under detention in consequence of a lawful order of a court, or of a person during conditional release from such detention;

(ii) Any service of a military character and, in countries where conscientious objection is recognised, any national service required by law of conscientious objectors;

(iii) Any service exacted in cases of emergency or calamity threatening the life or well-being of the community;

(iv) Any work or service which forms part of normal civil obligations.

One other important document, especially because the UK legislation will be scrutinised, is the European Convention on Human Rights (ECHR) adopted in 1950 by the member states of the Council of Europe.<sup>11</sup> In the article 4, the ECHR prohibits slavery and servitude, as well as the execution of forced or compulsory labour. Relevant to mention that its item 3, bring exceptional cases when forced labour can be accepted, as in detentions, military service, emergency or calamity and civic obligations.

Unfortunately, the ECHR is also silent about the definition of the slavery<sup>12</sup> and most part of the decisions of the European Court of Human Rights (ECtHR) related to the subject, are based on the definitions of the Convention no. 29 of ILO and the SCon, as it is possible to check in the case of *Stummer v. Austria*<sup>13</sup>.

However, one interesting case, where the Court tried to go further in the interpretation, is the case of *Siliadin v. France*.<sup>14</sup> In the judgement, the ECtHR mentioned that forced or compulsory labour is connected to 'the idea of physical or mental constraint. What there has to be is work "exacted ... under the menace of any

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<sup>11</sup> Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR)

<sup>12</sup> It is important to highlight that the European Parliament, in the paper *Addressing contemporary forms of modern slavery in EU external police* mentions that the recommended definition of slavery is the one of the Bellagio-Harvard Guidelines, that will be discussed further in the topic 4 of this chapter. Directorate-General for External Policies of the Union, 'Addressing contemporary forms of slavery in EU external policy' (2013) EXPO/B/DROI/2012/20 <[http://www.europarl.europa.eu/RegData/etudes/note/join/2013/433703/EXPO-DROI\\_NT\(2013\)433703\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/note/join/2013/433703/EXPO-DROI_NT(2013)433703_EN.pdf)> accessed 20 March 2018

<sup>13</sup> *Stummer v. Austria* (2011) V ECHR 1

<sup>14</sup> *Siliadin v. France* (2005) VII ECHR 289

penalty” and also performed against the will of the person concerned, that is work for which he “has not offered himself voluntarily”.<sup>15</sup> On the other hand, when it comes to the definition of slavery, the court asserted that the SCon is connected to the classic definition of slavery, connected to the right of legal ownership. Notwithstanding, servitude 'means an obligation to provide one's services that is imposed by the use of coercion, and is to be linked with the concept of “slavery”'.<sup>16</sup>

Another case to be mentioned is *Rantsev v. Cyprus and Russia*, when the Court made clear that the Convention is 'an instrument for the protection of individual human beings'<sup>17</sup>, requiring that its provisions are interpreted in practical and effective ways, in order to 'promote internal consistency and harmony between its various provisions'.<sup>18</sup> The decision also emphasises that 'relevant rules and principles of international law applicable in relations between the Contracting Parties and the Convention should so far as possible be interpreted in harmony with other rules of international law of which it forms part'.<sup>19</sup> Further, in the analysis of the violation of article 4 the Court observes that contemporary forms of slavery are related to the exercise of any power attached to the right of ownership, and it is connected to the control of the victim's 'movement or physical environment, whether there was an element of psychological control, whether measures were taken to prevent or deter escape and whether there was control of sexuality and forced labour'.<sup>20</sup>

It is really important to point out a remarkable case that was the basis for this decision. The case of *Kunarac et. al*<sup>21</sup> judged by the International Criminal Tribunal for the former Yugoslavia. In the judgment the Trial Chamber mentioned that 'various

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<sup>15</sup> *Siliadin v. France* (n 14)

<sup>16</sup> *ibid* para 124

<sup>17</sup> *Rantsev v. Cyprus and Russia* (2010) I ECHR 65, para 275

<sup>18</sup> *ibid* para 274

<sup>19</sup> *ibid* para 274

<sup>20</sup> *ibid* para 280

<sup>21</sup> *Kunarac et. al.* (Judgement) ICTY-96-23 & 23/1 (22 February 2001)



international human rights treaties refers to slavery or related concepts without explicitly providing any definition<sup>22</sup> and established that to consider the existence of enslavement the *actus reus* is the exercise of any powers connected to the right of ownership of the victim and consider that the *mens rea* consists in the deliberate exercise of those powers,<sup>23</sup> and the Chamber goes further bringing a list of elements that indicates the existence of enslavement:

indications of enslavement include elements of control and ownership; the restriction or control of an individual's autonomy, freedom of choice or freedom of movement; and, often, the accruing of some gain to the perpetrator. The consent or free will of the victim is absent. It is often rendered impossible or irrelevant by, for example, the threat or use of force or other forms of coercion; the fear of violence, deception or false promises; the abuse of power; the victim's position of vulnerability; detention or captivity, psychological oppression or socio-economic conditions. Further indications of enslavement include exploitation; the exaction of forced or compulsory labour or service, often without remuneration and often, though not necessarily, involving physical hardship; sex; prostitution; and human trafficking.<sup>24</sup>

It is also relevant to mention that this judgment declare that enslavement is a crime against humanity, based on art. 5.c of the Statute of the International Criminal Tribunal for the Former Yugoslavia.

Still within the scope of the European legislation, the Charter of Fundamental Rights of the European Union<sup>25</sup> also establishes the prohibition of slavery and forced labour in its article 5. Nonetheless, the provisions of the Charter are only applied to Member States in the cases which they are implementing European Union law.<sup>26</sup>

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<sup>22</sup> *Kunarac et. al.* (n 21)

<sup>23</sup> *ibid* para 540

<sup>24</sup> *ibid* para 542

<sup>25</sup> Charter of Fundamental Rights of the European Union [2000] OJ C364/01

<sup>26</sup> *ibid* art 51

Furthermore, following the regional perspective, necessary to discuss the provisions of the American Convention on Human Rights (ACHR)<sup>27</sup>, that can be applied to Brazil. The ACHR established the prohibition of slavery and forced labour (art. 6), which doesn't admit derogations (art. 27). As with the ECHR, the ACHR is also silent about the definition of slavery. However, it is important to mention that, in 2016, the Inter-American Court of Human Rights (IACHR) overcame this breach during the judgement of a case related to slavery in Brazil.

On March of 2015, the Inter-American Commission on Human Rights (IACom) submitted the case *Fazenda Brasil Verde v. Brazil*, to the jurisdiction of the Court, based on the Report n 169/2011 of the Commission.<sup>28</sup> The IACom claimed that every year thousands of labourers were enticed to work in the farm Brasil Verde and when they arrived there they were subject to death treats and not allowed to leave the workplace, they were already with debts with the employer, they didn't receive payment and didn't have access to adequate house, food or health conditions. Moreover, the Commission declared that the situation was related to the inaction of the State, which was allegedly aware of the circumstances since 1989 and didn't adopt any measures to help the victims and prevent new cases. Also, the Commission claimed for the international responsibility of Brazil due to the disappearance of two teenagers that were supposedly working in the farm, which was reported to Brazilian authorities on December of 1988, and no measures were taken.

In the judgement the Court established that there are two main elements to define one situation as slavery: the situation *de jure* and *de facto* of the person and the exercise of one of the attributes of the right to ownership. The IACHR concluded that the exercise of ownership is connected to the following characteristics: restriction or control of the autonomy; loss or restriction of the freedom of movement of a person; benefits to the perpetrator; lack of consent of the victim or the impossibility or irrelevance of it due

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<sup>27</sup> American Convention on Human Rights (adopted 22 November 1969, entered into force 18 July 1978) 1144 UNTS 123

<sup>28</sup> Case n 12.066 (Report n 169/11 Admissibility) Inter-American Commission on Human Rights (03 November 2011)

to threat of the use of violence or other forms of coercion, fraud or false promises; use of physical or psychological violence; vulnerability of the victim; captivity; holding. And completed that it is a violation of the integrity, freedom and dignity of the victim.<sup>29</sup>

As it is possible to realise, the above mentioned documents provide a very broad and general prohibition of slavery, yet they are very important to establish the prohibition of slavery in the most important instruments of human rights. Nevertheless, it is necessary to examine from now on provisions that are specifically connected to the definition of slavery and its eradication.

The first document to be examined is the SCon, adopted in 1926 by the League of Nations.<sup>30</sup> The initial impression about the SCon is that it was focused on the suppression of slave trade and forms of slavery connected to the colonial period. In the preamble a lot of acts are mentioned in this regard.

Nevertheless, one really important point to be underlined is that the SCon established that 'it is necessary to prevent forced labour from developing into conditions analogous to slavery'. By that statement it is evident that the international community was aware that slavery was not a problem from the past, and it was necessary to work in order to suppress any development of conditions analogous to slavery.

Article 1 of the convention settles the definition of slavery and the slave trade, resolving 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'. The core point of this definition is the ownership. Someone must exercise powers related to ownership of another person.

Another item that must be highlighted is article 5, which requires the contracting parties to recognise the serious consequences of forced labour and take all measures to prevent it from advancing to conditions analogous to slavery. That is another

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<sup>29</sup> *Case of the Hacienda Brasil Verde Workers v. Brazil* (Preliminary Objections, Merits, Reparations and Costs) Inter-American Court of Human Rights Series C No 318 (20 October 2016), para 272-273

<sup>30</sup> Slavery Convention (n 2)

progressive requirement, since it identifies that the use of forced labour is closely connected to the practices of slavery, so it should be avoided.

Further, article 5(1) brings the exceptions related to the use of forced labour for public purposes, establishing that those cases should be exceptional and adequately remunerated, without the removal of the worker from the area of residence (art. 5.2), and the responsibility for the use of forced labour will rest with the central authorities (art. 5.3).

It is important to examine the SCon considering the historical context around its adoption. During the 1920s, there were still a lot of colonial powers and in some countries slavery was still lawful. It is clear that the main concern of the States parties was connected to the abolition of the slave trade. But even if the concept of slavery was still nearly related to the idea of colonial slavery and the ownership of a person by other, the Convention raised awareness about forced labour and its exploitation that could imply conditions analogous to slavery, what is a clear advance.

Moreover, a remarkable point for the discussions about modern slavery, was the adoption, in 1956, of the SUPCon.<sup>31</sup> This convention clarifies what practices can be considered similar to slavery.

Since the preamble it is clear that the essence of the Convention is the individual, whereas it mentions that 'freedom is the birthright of every human being' and emphasises the belief in 'the dignity and worth of the human person'.

The first section, is related to the definition of practices similar to slavery and it focus on debt bondage, serfdom, forced marriage and child labour. It is evident that just by this article the SUPCon is way ahead the SCon, considering that this one just mentioned slavery and determined that it could happen when someone exercises the ownership of another one. But the reality is that there are a range of different forms of submitting a person to situations analogous to slavery and that are not related to the ownership, but with the complete suppression of the personal will, that can happen for

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<sup>31</sup> Supplementary Convention (n 7)

economic reasons, by the use of force, by religion beliefs and any other situations. Therefore, to characterise modern slavery as connected to ownership is not adequate for the present situation. Regarding this consideration, Bales reflects that:<sup>32</sup>

In the past, slavery entailed one person legally owning another person, but modern slavery is different. Today slavery is illegal everywhere, and there is no more legal ownership of human beings. When people buy slaves today they don't ask for a receipt or ownership papers, but they do gain control - and they use violence to maintain this control.

Bales understands that nowadays the control is completely focused on the economic exploitation of the slave, without any responsibility for the slaveholders, since it is illegal if the victim gets ill or injured he will be just discarded. That is why he defines them as disposable.

Debt bondage in the SUPCon is described in article 1(a) as:

the status or condition arising from a pledge by a debtor of his personal services or of those of a person under his control as security for a debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt or the length and nature of those services are not respectively limited and defined.

In another words, it refers to cases when the person commits his own services, or of someone under his control, to pay a debt. But it is relevant to underline that the conditions and the length of the payment are not limited or defined previously. In this sense, the victims normally work for their entire lives and the debt is passed even for their offspring.

Bales mentions that debt bondage is 'the most common form of slavery in the world'<sup>33</sup>, and stresses that even with the work of the victim there is no reduction in the original debt. Another important point is that faults can be punished and there is entire

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<sup>32</sup> Kevin Bales, *Disposable people: new slavery in the global economy* (University of California Press 1999) 5

<sup>33</sup> *ibid* 19

physical control of the worker. He underlines that this practice is very common in India.<sup>34</sup>

Moreover, the SUPCon also brings light to the definition of ‘serfdom’, that is similar to feudalism in Europe, since in those cases there is one tenant that is bound to live and work in somebody else’s land by law, custom or any other agreement. The serf needs to provide a service to the landowner and it is not possible to change the status.

Even if there are similarities with bondage, it is clear that these are two different forms of slavery. The serf is bonded by an obligation, a previous agreement. In the cases of bondage the bonded labourer normally is free, ask for a loan and put himself as a guarantee for the loan.

Another situation identified by the SUPCon is ‘forced marriage’. In article 1(c) the document establishes that this can happen when a woman is promised or given in marriage, without the possibility to refuse, and this marriage is based on a payment to their family or any other interested person. Also determines that it can happen if the husband or his relatives has the power to transfer the woman for a different person or in cases that the widow can be inherited by someone else.

The ILO estimates that in 2016, there were around 15.4 million people submitted to forced marriage. Of this number, 88% of the victims were women and girls. Another alarming number is that around 37% of the victims were under 18 years old when they were forced to get married, and of this number, 44% got married before they were 15 years old.<sup>35</sup>

Finally, the SUPCon also delineates the problem of child labour, which is defined as practices that exploit or use the labour of a person under 18 years old. In these cases the victim is handed by the parents or the guardian, with or without reward. The ILO’s

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<sup>34</sup> Bales (n 32) 20

<sup>35</sup> International Labour Office, *Global estimates of modern slavery: Forced labour and forced marriage* (Geneva 19 September 2017) 11

global estimate of forced labour points that, in 2016, 25% of the victims of modern slavery were children, which represents around 10 million persons.<sup>36</sup>

Even with those alarming numbers, it is relevant to point out that the ILO considers that the causes of modern slavery are only forced labour and forced marriage, as explained in the report *Global Estimates of Modern Slavery*.<sup>37</sup> If the ILO endorsed a broader definition, as it occurs with Brazilian law, the numbers would probably be devastating.

Nevertheless, even if article 1 of the SUPCon brings relevant changes, the *caput* must be carefully analysed. It establishes that States parties of the Convention must take all the measures to eradicate slavery, even legislative measures, 'progressively and as soon as possible'. This expression implies that States can develop programatic norms to deal with modern slavery and also signifies that these norms will be implemented according to the political and economical convenience of government. This is an evident obstacle in the effective abolishment of practices similar to slavery, since States can abstain from eradicating the issues based on the fact that it is not yet possible. Besides, considering that the measures can be progressively implemented an immediate implementation cannot be claimed.

At the same time that article 1 was progressive, it was not able to be effective. The establishment of a programatic norm gives the States parties the possibility of postponing the regulation and increases the chance of impunity.

This Convention is extremely important for the definition of modern slavery, and to raise awareness in the international community about the practices that can be characterised as similar to slavery. However, the document has the same restrictions that a lot of instruments related to economic, social and cultural rights also face, connected to the idea that those rights are not immediately applied, but are connected with progressive measures, that will normally be related to a favourable political scenario. And this idea is completely obsolete.

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<sup>36</sup> International Labour Office (n 35) 18

<sup>37</sup> *ibid* 17

The submission of a person to a situation analogous to slavery is a violation of the dignity of the victim, of the most fundamental rights, of their humanity. The abolishment of slavery and total eradication of these heinous practices should be immediately implemented, not progressive or whenever it is possible. It should be between the top priorities of a government, afterwards if a person is kept as a slave he or she will never be able to fully exercise their rights.

Advancing with the analysis of the international legislation related to modern slavery, it is necessary to examine the ILO Conventions. The ILO describes forced labour according to the Convention no. 29 of 1930, definition that was reaffirmed by the Protocol of 2014.<sup>38</sup> Article 2(1) of the Convention outlines: 'For the purposes of this Convention the term forced or compulsory labour shall mean 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'.

From the definition above it is possible to identify three core elements. The existence of “work or service”, which includes all kinds of work, regardless if it is formal or informal. Must also exist the “menace of any penalty”, so the worker must be threatened to continuous in the relation otherwise he will be punished. Finally, it is a kind of work to which the “person has not offered himself voluntarily”. This is connected to the free consent to accept the job and also the freedom to leave the job at any time that the worker wants.

It is relevant to mention that, different from SUPCon, the article 1 establishes that the member states agree to 'suppress the use of forced or compulsory labour in all its forms within the shortest possible period'. The Convention didn't use the term immediately, but the expression "shortest possible period" is stronger and sounds more immediate than "progressively and as soon as possible".

Moreover, article 1(2), mentions that forced labour during the transitional period, previous to the suppression, can only be used for public purposes and as an exceptional

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<sup>38</sup> Convention n 29 (n 8)



measure.<sup>39</sup> This is complemented by article 4, which declares that the Government authority cannot allow the use of forced labour for the benefit of private individuals or companies, and the member States are responsible for the complete eradication of the existing cases. Besides, article 10 declares that the use of this kind of labour as a tax or for the execution of public works must be progressively abolished.

The document asserts that in the cases which the use of forced labour is necessary, it will only be imposed to male adults, with the age between 18 and 45 years old (art. 11), and it will be for no longer than sixty days, within a period of twelve months (art. 12).

This Convention is evidently different from the other documents previously analysed, not just because it brings the definition of forced labour, with elements that can identify the relation, but especially because it describes limits for the use of compulsory labour. The ILO is not just looking for the eradication, but also for the regulation of this practice in countries where there are still use of it.

Moreover, this Convention was complemented by the Convention no. 105 of ILO for the Abolition of Forced Labour.<sup>40</sup> In article 1, the Convention determines that the States Member will take measures to suppress forced labour in the following situations:

- (a) as a means of political coercion or education or as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system;
- (b) as a method of mobilising and using labour for purposes of economic development;
- (c) as a means of labour discipline;
- (d) as a punishment for having participated in strikes;
- (e) as a means of racial, social, national or religious discrimination.

The mentioned Convention tries to give limits to the use of forced labour by state authorities, since it focus on the use of it as coercion, punishment or discipline. It is also

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<sup>39</sup> Relevant to mention that there are some exceptions for the cases of forced labour, according to article 2(2): compulsory military service, civic obligations, consequence of a conviction, cases of emergency or minor communal services.

<sup>40</sup> Convention (No. 105) concerning the abolition of forced labour (adopted 25 June 1957, entered into force 17 January 1959) 320 UNTS 291

important to underline the item “e” which clearly tries to avoid the use of forced labour on the basis of any kind of discrimination.

Also, it demands that member States 'take effective measures to secure the immediate and complete abolition of forced or compulsory labour' (art. 2). The ILO is not talking anymore of a transitional period, or progressive measures, or at a possible time. This document declares that States are compromising themselves to suppress the mentioned practices immediately.

Unfortunately, it is a limited provision, since is just applied for the exhaustive role of article 1, but it still is a clear advance in comparison with the other documents.

Finally, in 2014 was adopted a Protocol for the Convention no. 29.<sup>41</sup> The preamble of this document is very interesting, because justify the adoption by assuming that the Convention no. 29 and 105 are vital for the eradication of forced labour, but there are gaps in their implementation that demands additional measures. Another point to be highlighted, and that is the core of the Protocol, is the assertion related to the high number of labourers submitted to forced labour in the private economy, emphasising that certain sectors of the economy are particularly vulnerable and certain categories of workers are exposed to a higher risk of becoming victims, especially migrants.

The Protocol initially focus on the implementation of measures for prevention and elimination, demanding inclusive the development of national policies and plans of action to eradicate forced labour. Also, article 2 brings a role of measures that must be taken in order to prevent the practice, that are mostly based on education and information, but also focus on the implementation of due diligence. So different of the other Conventions, the Protocol is not focused just on the States practices and the measures that can be adopted for the States, but target the importance of raising awareness between employers and working with the private sector.

Further, the Protocol clear declares the urgency of effective access to remedy, asserting that effective measures must be taken to identify, release, protect, recovery and

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<sup>41</sup> Protocol to Convention (No. 29) concerning forced or compulsory labour, as modified by the Final Articles Revision Convention, 1946 (adopted 11 June 2014, entered into force 09 November 2016)

rehabilitate the victims and implement assistance and support (art. 3), as well as providing access to appropriate and effective remedies, like compensation (art. 4).

Since this study will focus primarily in the situation of Brazil and United Kingdom, necessary to highlight that the both countries ratified the SCon, SUPCon, Conventions no. 29 and 105, but just the UK ratified the Protocol to Convention no. 29.

Moreover, it is extremely relevant for the analysis of these documents, understand the historical context that they are part. The Convention no. 29, is from the begin of the 20th Century, there were still colonial powers, and even if the main goal was the suppression of forced labour, it wouldn't be realistic by that time. On the other hand, the Convention no. 105, from the 1950s, reflects a period notable for the decline of the influence of the imperialist countries, it was a moment that gave the possibility to limit the control and domination of the State. Finally, when it comes to the Protocol, it reflects the raising concerns of the present day, related to the increasing inequality and poverty, and the exploitation of vulnerable not predominantly by the State anymore, but by big corporations. It reflects a time in history which the centre of power is not the State, but transnational corporations.

Another point that must be mentioned is that the UN established in 2015 the 2030 Agenda for Sustainable Development, creating 17 goals and 169 targets. The SDGS seek to 'realise the human rights of all and to achieve gender equality and the empowerment of all women and girls'. They should be understand as integrated and indivisible, balancing the economic, social and environmental dimensions of sustainable development.<sup>42</sup>

The SDG no. 8 is focus on the promotion of 'sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all' and its target no. 8.7 asserts that States must act immediately and in effective ways to 'eradicate forced labour, end modern slavery and human trafficking and secure the prohibition and

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<sup>42</sup> UNGA 'Transforming our world: the 2030 Agenda for Sustainable Development' (25 September 2015) 70th Session (2015) UN Doc A/Res/70/1

elimination of the worst forms of child labour, including recruitment and use of child soldiers, and by 2025 end child labour in all its forms.<sup>43</sup>

It is a very optimistic goal, especially with the number already mentioned here. Yet, it is clear that the eradication of modern slavery in all its forms is one of the main concerns of the international community.

Finally, based on the findings of the Global Slavery Index (GSI), it is important to register that the governments taken least actions to eradicate modern slavery are: North Korea, Iran, Eritrea, Equatorial Guinea, Hong Kong, Central African Republic, Papua New Guinea, Guinea, the Democratic Republic of the Congo and South Sudan. It is also important to highlight that the countries with the largest estimated numbers of people subjected to modern slavery are: India, China, Pakistan, Bangladesh, Uzbekistan, North Korea, Russia, Nigeria, the Democratic Republic of the Congo, and Indonesia.<sup>44</sup>

## 1.2 THE BRITISH LEGISLATION RELATED TO MODERN SLAVERY

After many years of profitable trade across the Atlantic, the British Empire abolished slave trade in 1807<sup>45</sup>. It was the end of ‘the traffic that had taken more than three million captive Africans onto British ships’.<sup>46</sup>

Hochschild mentions that the majority of British slaves were in West Indies, but the fact that the British Empire decided to abolish slavery had an impact all over the

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<sup>43</sup> UNGA (n 42) 19-20

<sup>44</sup> The report emphasises that in these countries there are government complicity, low levels of political will, or high levels of conflict and political instability. It is also relevant to highlight that in the index there was no data of the following countries: Afghanistan, Iraq, Libya, Somalia, Syria and Yemen. The Walk Free Foundation (an initiative of The Minderoo Foundation Pty Ltd ATF The Minderoo Foundation Trust), ‘The Global Slavery Index 2016’ <[www.globalslaveryindex.org](http://www.globalslaveryindex.org)> accessed 27 February 2018

<sup>45</sup> Slave Trade Act 1807

<sup>46</sup> Adam Hochschild, *Bury the chains: the British struggle to abolish slavery* (Pan Books 2006) 307

world, since ‘their liberation raised hopes beyond the British Empire, for so much of the rest of the world’s population was still in slavery, forced labour, or serfdom.’<sup>47</sup>

However, while slave trade was abolished by the UK in the early 19th Century, there are still alarming numbers in the country related to modern slavery, with an estimate of around 10 to 13,000 potential victims in 2013.<sup>48</sup> As it is highlighted by Craig, 'slavery never really disappeared but remained as a potentially significant policy and political issue both outside the UK and its links to goods and services consumed within the UK, and, more latterly, within the UK itself.'<sup>49</sup>

Haynes, on the other hand, presents a list of potential fails of the UK in addressing slavery, which he understood that are related to:

the lack of basic awareness about modern slavery on the part of a number of competent national authorities in the United Kingdom, including the police, social services, and immigration officials; inadequacies in the delivery of training to said personnel; the improper treatment of child victims, which has resulted in many children going missing or re-trafficked; ineffective systems for identifying victims, particularly, victims of internal acts of modern slavery; systemic difficulties involved in prosecuting modern slavery, and the corresponding challenge of wrongfully prosecuting victims, thereby resulting in their secondary victimization; as well as inadequate support and assistance for numerous victims of modern slavery.<sup>50</sup>

To cope with it in November 2014, the UK Government published the Modern Slavery Strategy based on four core components: pursue, prevent, protect and prepare.

Prosecuting and disrupting individuals and groups responsible for modern slavery (Pursue); preventing people from engaging in modern slavery crime (Prevent); strengthening safeguards against modern slavery by protecting vulnerable people from exploitation and increasing awareness and resilience against this crime (Protect); and

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<sup>47</sup> Hochschild (n 46) 357

<sup>48</sup> Modern Slavery Strategy 2014, 5

<sup>49</sup> Gary Craig, ‘The UK’s Modern Slavery Legislation: An early assessment of progress’ (2017) 5(2) Social Inclusion 16, 16

<sup>50</sup> Jason Haynes, ‘The Modern Slavery Act (2015): A legislative commentary’ (2016) 37(1) Statute Law Review 33, 36

reducing the harm caused by modern slavery through improved victim identification and enhanced support and protection (Prepare).<sup>51</sup>

In this sense, the idea is that, under pursue, it will be possible to strengthen the accountability of the perpetrators and, together with prevention, will reduce the threat to potential victims. On the other hand, protection is connected to safeguarding people that find themselves at risk, increasing the awareness related to the problem, which works with prepare, that is connected to a proactive identification and recognition of the victims, providing them with adequate support. Those components are focused on reducing the vulnerability of potential victims.

The strategy also describes the requirement of legislation with the aim to 'consolidate, simplify and improve the existing criminal offences relating to modern slavery into a single Act that is easier for law enforcement and prosecutors to understand and use effectively'.<sup>52</sup> In this regard, on March 26th, 2015, the UK's Modern Slavery Act received Royal Assent.<sup>53</sup>

The act is divided in seven parts, concerning to offences, prevention orders, protection of victims, transparency in supply chains, between others. It is a very comprehensive legislation, and stands out the concern with global supply chains, highlighting that this is completely consistent with the challenges of the 21st century. Nevertheless, as it is discussed by Craig, 'despite growing awareness of the much wider scope of modern slavery, most of the Bill still remained focused on the issue of human trafficking'.<sup>54</sup>

The part 1 of the MSAct begins by targeting the existence of an offence in the cases that one person held another in slavery, servitude or require from the victim the perform of forced or compulsory labor. It is important to mention that the MSAct didn't

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<sup>51</sup> Modern Slavery Strategy 2014, 9

<sup>52</sup> *ibid* 11

<sup>53</sup> Modern Slavery Act 2015

<sup>54</sup> Craig (n 49) 20

bring a definition of slavery, servitude or forced labour, instead it mentions that those expressions shall be interpreted according with article 4 of ECHR.<sup>55</sup>

For the existence of the offence the British Act demands that the perpetrator, must know that the imposed circumstances can be qualified as slavery, servitude or forced labour, and emphasises that circumstances can be related to personal circumstances of the victim (child, mental or physical illness) or connected to the kind of work required, emphasising that even if there is consent of the victim, doesn't prevent the existence of the offence.

It is relevant to mention that the MSAAct also deals with human trafficking, and section 2 focus on the definition of this cases, complemented by section 3 that target the the meaning of exploitation in cases of trafficking, asserting that it can happen in cases related to slavery, servitude and forced labour, sexual exploitation, removal of organs, securing services by force or threat, and securing services from children or vulnerable persons.

Another interesting point, is established in section 8 with respect to the possibility of implement reparation orders. In this case the court can impose a reparation to the victim if the perpetrator is convicted for slavery or trafficking offence. Section 9 complement it establishing that the reparation order requires that the perpetrator pay compensation to the victim for any harm resulting from slavery or human trafficking, and the amount will be based on what the court consider as appropriate considering the circumstances of the case.

It is important to emphasise that part 1 focuses on criminal offences. On the other hand, part 2 introduces civil orders that are addressed to individuals that are convicted for slavery or trafficking offences or those that are involved with these crimes, but weren't found convicted for criminal offences. This section is very interesting because it focus on prevention and combat impunity. As highlighted by Haynes, one of the core objectives of the MSAAct is prevention, reached by a range of different actions, which

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<sup>55</sup> As discussed in the previous topic, the art. 4 of ECHR doesn't bring a definition of slavery, and it must be interpreted with the international legislation that also deals with the subject.

are related to the examine of slavery and trafficking risk and prevention orders to maritime enforcement.<sup>56</sup>

The commentaries of this section establish that 'the rationale for creating these orders is to enable law enforcement bodies and the courts to take tougher action against those involved in trafficking, and to protect individuals from the harm caused by slavery or trafficking by preventing future offending'.<sup>57</sup> The pursue of prevention is essential in cases of slavery. If there are no measures implemented to challenge the circumstances of the victims, the vulnerability will remain, and they will be part of the slavery cycle again. Unfortunately, most part of the legislation just target the criminal offence, without focus on measures that can actually change the current situation, as appear in the prevention orders and risk orders, as in sections 17,18 and 25.

However, it is important to notice that prevention and risk orders are an important addition to the MSAAct and have a potential underpin law enforcement, as they gave the possibility to courts to 'respond flexibly to the quickly evolving dynamics of slavery and human trafficking. Additionally, these orders ensure that prohibitions and requirements can be tailored to address the specific risk posed by an individual.'<sup>58</sup>

Another important measure is provided by part 4, which determines the establishment of an Independent Anti-Slavery Commissioner, which will be an independent office holder selected by the Secretary of State (section 40). The work of the Commissioner will be connected to encourage good practices in order to prevent, detect, investigate and prosecute slavery and human trafficking offences, as well as the identification of victims. The Commissioner will also be responsible for making reports to the responsible authorities, making recommendations to any public authority about its functions, undertaking or supporting researches, providing information, education or training, consulting public authorities, voluntary organisations and third persons; co-operating with or working jointly with public authorities, voluntary organisations and

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<sup>56</sup> Haynes (n 50) 41-42

<sup>57</sup> Explanatory Notes to the Modern Slavery Act 2015, para 69

<sup>58</sup> Haynes (n 50) 43



other persons, in the United Kingdom or internationally (Section 41.3).

Finally, part 6 is a real advance and specifically relevant to the case study in this thesis, however it poses the biggest challenge for implementation. This part deals with transparency in supply chains. The section 54.1 declares that commercial organisations 'must prepare a slavery and human trafficking statement for each financial year of the organisation'. This statement will include the measures that the organisation has implemented to eradicate slavery in its business, including in the supply chains, and will include information related to the organisational structure of the company, the implemented policies, due diligence processes, risk assessment related to slavery and human trafficking, between others. This statement must be published in the website of the company.

Nevertheless, even if this part brings an advance, it doesn't bring measures to be taken in cases of companies that still have slavery in their business. The only thing that the MSAct demands is the statement and transparency. Even in item 11, that explores the enforcement, the focus is merely in the publishing of the statement by the company.

Haynes brings a strong criticism to this section, arguing that it gives the possibility to companies operating in the UK 'which do not wish to report on the conditions of work in their non-UK subsidiaries are afforded the 'perfect cover', to the extent that they are able to overlook the exploitation that might be occurring in their overseas subsidiaries' supply chains.'<sup>59</sup> The same issue is discussed by Craig, who believes that

the Clause, though welcome in terms of raising the profile of 'hidden' slavery within the goods and services found within the British economy, is, as most commentators have observed, very weak, with no formal legal sanctions other than civil proceedings involving injunctions in the High Court, unlikely to impact significantly on profitability. The government's view is that naming and shaming with its impact on companies' reputations might be adequate to persuade companies to take effective action, a view not widely shared<sup>60</sup>

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<sup>59</sup> Haynes (n 50) 54

<sup>60</sup> Craig (n 49) 22

And it is relevant to mention that there are no government mechanisms to monitor the compliance with the clause and this is only applied for private companies, not to the public sector. Thus, even if the MSAct demands the statement, if there is no monitoring system it is very unlikely that the companies will comply with it. It is clear that the MSAct is extremely comprehensive and advanced, but there are still possibilities to go beyond and to improve the current regulation and practices.

### 1.3 THE BRAZILIAN LEGISLATION RELATED TO MODERN SLAVERY

In order to start an analysis of the slavery legislation in Brazil, it is necessary to mention that the slavery in the country was introduced by the Portuguese in the 16th century and it is undoubtedly the birth of the problems that perpetuates until the present.

The intention of the Portuguese with the new colony was the exploitation of the natural resources and for that slavery was the most efficient alternative, since the amount of available land made impossible to implement wage labour and also there weren't enough workers willing to migrate.<sup>61</sup>

The first attempt of enslavement in Brazil was with the indigenous people. But the workload that the Portuguese wanted to implement in the colony, especially in the sugar industry, was completely incompatible with the indigenous culture. As Fausto reflects, the colonisers were trying to impose a hard, regular and compulsory work, and the indigenous was totally unaware of the idea of continuity and productivity, because their culture was based on subsistence.<sup>62</sup>

Since the Portuguese were unable to subjugate the indigenous people, they started to intensify the traffic of people from Africa, since they were already trafficking them since the previous century and using their workforce in the colonies in the islands of the

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<sup>61</sup> Boris Fausto, *História do Brasil* (2nd edn, Editora da Universidade de São Paulo 1995) 48

<sup>62</sup> *ibid* 49

Atlantic. Fausto mentions that the estimative is that between 1550 and 1855 more than 4 million slaves were trafficked to Brazil.<sup>63</sup>

The slavery in Brazil was only abolished on May 13th, 1888.<sup>64</sup> But the biggest problem is that, even if slavery was formally abolished, all the social and economical impacts that were created by the almost 400 years of a slavery society are still present, in Brazil. As will be discussed in the following lines, the criminal code brings a very progressive regulation, but the problem is related to the roots of Brazilian society, it is the result of the huge inequality that is present all over the country.

The current Brazilian criminal code, adopted in 1940, brought the prohibition of the submission of a person to conditions analogous to slavery.<sup>65</sup> Nevertheless, even considering a criminal offence, the original definition didn't explain what the lawmaker considered as conditions analogous to slavery when creating the norm.

The explanatory statement of the Criminal Code mentions that this criminal offence was inspired by the crime of *plagium* of the Roman Empire. The roman *plagium* prohibited the suppression of the *status libertatis* of a free person, but many Brazilian authors question this comparison, arguing that the protected legal interest of the Romans is different than what is protected by the Brazilian law. They argue that the Romans were not concerned with the freedom of the victim, but with the right of domain that one person could lose over the victim in this case, since it was a punishment of the slavery of a free man or the traffic of someone else's slave.<sup>66</sup>

In 2003, the Brazilian Criminal Code was modified and the criminal type related to the prohibition of modern slavery, was significantly changed.<sup>67</sup> From 2003, article 149 established that to reduce someone to a condition analogous to slavery could

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<sup>63</sup> Fausto (n 61) 51

<sup>64</sup> *Lei imperial no. 3353* (adopted 13 May 1888)

<sup>65</sup> Decreto-Lei no. 2848 (adopted 07 December 1940, entered into force 01 January 1942)

<sup>66</sup> About this debate Cezar Roberto Bitencourt, *Tratado de direito penal 2: parte especial: dos crimes contra a pessoa* (10th edn, Saraiva 2010) 424-425

<sup>67</sup> Lei no. 10.803 (adopted 11 December 2003)

happen in cases of forced labour or submission to a exhaustive journey, or submitting the worker to degrading conditions or to restrictions in his or her freedom because of a debt. It can also happen in cases which the worker is forced to stay in the workplace because he doesn't have access to transport or there is extensive surveillance or his documents and personal objects are taken.<sup>68</sup>

Forced labour can be identified with the Convention no. 29 and 105 of the ILO. As it was already explained, these cases require compulsory labour of the victim without considering the victims personal will.

Exhaustive journey is connected to situations which the labourer is forced to work in intensive hours. One point that is necessary to emphasise in this case is that the legislation is not considering as analogous to slavery the work developed in extra hours, that are remunerated and not usual. To understand this offence the analysis is not of how many working hours were developed, but in which conditions those hours were developed. Brito Filho argues that regardless of the period of the working day, it is so intense that it can cause exhaustion and harm the health of the worker, and in some cases is even fatal.<sup>69</sup> Those cases are mostly connected with situations where the worker is paid based on production and can work so hard to receive a decent amount of money that it can cause his death from exhaustion.

Another situation that can lead to conditions analogous to slavery is expose the worker to degrading conditions. This kind of offence is questioned because the legislation didn't bring any definition of what are degrading conditions.

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<sup>68</sup> Art. 149. Reduzir alguém a condição análoga à de escravo, quer submetendo-o a trabalhos forçados ou a jornada exaustiva, quer sujeitando-o a condições degradantes de trabalho, quer restringindo, por qualquer meio, sua locomoção em razão de dívida contraída com o empregador ou preposto:

Pena - reclusão, de dois a oito anos, e multa, além da pena correspondente à violência.

§ 1º Nas mesmas penas incorre quem:

I - cerceia o uso de qualquer meio de transporte por parte do trabalhador, com o fim de retê-lo no local de trabalho;

II - mantém vigilância ostensiva no local de trabalho ou se apodera de documentos ou objetos pessoais do trabalhador, com o fim de retê-lo no local de trabalho.

§ 2º A pena é aumentada de metade, se o crime é cometido:

I - contra criança ou adolescente;

II - por motivo de preconceito de raça, cor, etnia, religião ou origem.

<sup>69</sup> José Cláudio Monteiro de Brito Filho, *Trabalho escravo: caracterização jurídica* (LTr 2014) 72

Degrading conditions must be understood as conditions that can violate the dignity of the worker. It applies to cases where the worker has no access to minimum conditions of health and safety, they normally don't have access to potable water, adequate housing, food, sanitary conditions. Those are subhuman conditions that degrades the human value of the worker, because he is treated like a mere thing and exposed to a extremely unhealthy environment.

It is clear that the concept of degrading conditions is very broad and is subject to an accurate analysis of the labour inspector and the judge. But there is no shadow of a doubt that this is the kind of offence that is most recurrent in Brazilian reality. The scenario of extremely inequality and poverty in some areas of Brazil, makes possible that perpetrators can submit the workers to heinous conditions. It is not surprising when the workers are found sharing the water with the cattle, sleeping without any protection in the middle of the forest or sharing the corral with the animals, deprived of any dignity and receiving worst treatment than the cattle that they are responsible for.

Finally, the restriction of movement because of a debt can be identified with bonded labour. In Brazil this is also called the truck system. This method started during the 1970s with the growth of the rubber industry, but nowadays is still present especially in the North and Center-West of Brazil. It normally happens when the worker has to develop his activities in places of difficult access, normally geographically isolated, and to survive there he depends on the goods provided by the employer. And connected to that, normally the labourers are charged for the journey (from their hometowns to the workplace), for the work tools and everything that they need to develop the job. The prices are normally extremely higher than the reality and the result is that the debt just increases without possibility of payment.<sup>70</sup>

Besides, the government created the “dirty list” that is a register of perpetrators, individuals or companies, that are considered responsible for the use of slavery. The list must be updated every six months for the Ministry of Labour and creates commercial

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<sup>70</sup> For more information about modern slavery in Brazil, in Portuguese: Marina Dorileo Barros, *Trabalho escravo contemporâneo: os impactos no meio ambiente do trabalho* (Multifoco 2017)

and credit restrictions for who is in the list, which is a very important tool to combat especially the big perpetrators.

Even if the law in Brazil brings different characters for the definition of slavery, that are closely connected to the local reality, and there are tools implemented in order to eradicate this practice, the biggest problem faced in the country is the impunity. A considerable number of the perpetrators are big farmers, with political influence, that can easily remain unpunished. As reported by *The Guardian*, more than one in every ten high-ranking politicians, including the current President, received money from companies related to modern slavery (and there are cases where the companies are owned by the politicians).<sup>71</sup>

#### 1.4 A DEFINITION FOR "MODERN SLAVERY"

As discussed in the previous topics, the legislation related to the eradication of modern slavery has not been very effective to establish a definition of this practice. The word slavery is present in a lot of international and national documents, but explanations of what can be understood as slavery are still far from ideal.

When it comes to forced labour, one of the forms to submit a person to modern slavery, by the analysis of Convention no. 29 of ILO, it is possible to figure out what can be understood as forced labour, since it is necessary: working relation; threat of punishment; perform the work involuntarily. It is clear that there are core elements that can help identify forced labour.

In this sense, the big question is: what is modern slavery? What kind of actions can be perceived as the submission of another person as situation analogous to slavery? As mentioned, the legislation referred to does not provide a full answer. The courts are

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<sup>71</sup> Anna Sophie Gross, 'One in 10 senior politicians in Brazil funded by companies 'linked to slavery' (The Guardian, 16 February 2018) <[www.theguardian.com/global-development/2018/feb/16/one-in-10-senior-politicians-in-brazil-funded-by-companies-linked-to-slavery](http://www.theguardian.com/global-development/2018/feb/16/one-in-10-senior-politicians-in-brazil-funded-by-companies-linked-to-slavery)> accessed 10 March 2018

trying to find this answers. But there a lot of academics engaged in the pursuit of this definition.

Before analysing the opinion of experts in the field, it is necessary to reflect about the main differences between the so called modern slavery and the lawful slavery. Bales summarises some of the major distinctions:<sup>72</sup>

<i>Old Slavery</i>	<i>New Slavery</i>
Legal ownership asserted	Legal ownership avoided
High purchase cost	Very low purchase cost
Low profits	Very high profits
Shortage of potential slaves	Surplus of potential slaves
Long-term relationship	Short-term relationship
Slaves maintained	Slaves disposable
Ethnic differences important	Ethnic differences not important

By the examine of this distinction, it is possible to outline some important elements. First of all, there is no legal ownership. Today's modern slavery is an illegal practice, that challenges legal regimes all over the world. Connected to this point, the cost to buy a slave is very low, because there is, on offer, vulnerable people willing to do whatever it is required to survive. As Bales emphasises the modern slaves are not owned, but completely controlled, and used as disposable tools for big profits.<sup>73</sup> Further, another element connected to this is that slaves today give very high profits, since their cost is low and the production is high. The value of a slave lies in his sweat and in the volume of products, to achieve that they are 'often forced to sleep next to their looms or brick kilns; some are even chained to their work tables. All their waking hours may be turned into working hours'.<sup>74</sup>

Another extremely important characteristic is related to the length of the relationship, since in colonial slavery a slave would normally stay with his master until his death and breeding was an important part of the business. Today, since there are a considerable crowd of potential slaves and the slaveholders want to maintain their costs

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<sup>72</sup> Bales (n 32) 15

<sup>73</sup> *ibid* 4

<sup>74</sup> *ibid* 9

as low as possible, a slave is just used for a short period, if they get injured or ill they are just discarded. And considering that the victims of modern slavery normally perform high risk kinds of jobs, and in a lot of cases illegal, it is evident that they will not be able to stay for a long time.

Finally, the most important point to consider is that slavery today is not necessarily connected to race, gender or religion, but it is normally a result of poverty and vulnerability. Slavery today is a consequence of inequality. Slaves 'constitute a vast workforce supporting the global economy'.<sup>75</sup>

Based on this perspective, two elements are extremely important: violence and vulnerability. Violence to hold a person as slave and vulnerability to be enough exposed and desperate to become a victim.

The definition of Bales is that a 'slave would be a person held by violence or the threat of violence for economic exploitation'.<sup>76</sup> He underlines that there are three key-elements to find out if a person is a slave. The first would be the complete control of the victim by another person, with the use of psychological or physical violence. The second would be the submission to hard labour without proper or no payment. And finally, the last criteria is economic exploitation.<sup>77</sup>

Cullen understands that modern slavery is a *de facto* slavery and argues that 'these situations of exercise of the powers attaching to the right of ownership the imposition of de facto restrictions on the capacity of victims to access legal remedies'.<sup>78</sup> She also mentions that the case-law normally deals with the idea of disability connecting it with the destruction of juridical personality, but she reflects that this a formal way that tends to restrict the comprehension of slavery.

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<sup>75</sup> Bales (n 32) 22

<sup>76</sup> *ibid* 280

<sup>77</sup> Kevin Bales and Ron Soodalter, *The slave next door: human trafficking and slavery in America today* (University of California Press 2010) 30

<sup>78</sup> Holly Cullen, 'Contemporary international legal norms on slavery: problems of judicial interpretation and application' in Jean Allain (ed), *The legal understanding of slavery* (Oxford University Press 2012) 304, 318



The same reasoning is adopted by Hickey, who debates that the identification of slavery is connected with a relationship of control between persons, arguing that slavery 'occurs where one person controls another as he would control a thing possessed; or to put it more shortly, that slavery entails control of a person tantamount to possession'.<sup>79</sup> Hickey declares that the rhetoric of ownership must be used to examine the factual circumstances.

The GSI 2016, considered as slavery 'situations of exploitation that a person cannot refuse or leave because of threats, violence, coercion, abuse of power or deception, with treatment akin to a farm animal'.<sup>80</sup>

In 2012 a group of experts, members of the Research Network on the Legal Parameters of Slavery, adopted a document called "The Bellagio-Harvard Guidelines on the Legal Parameters of Slavery" (BHG).<sup>81</sup> Aware of the lack of clarification surrounding the definition of slavery in international law they created a guideline with recommendations regarding the definition of slavery.

The first guideline establishes that the definition of slavery must be the one of article 1(1) of the SCon, which is when one person exercises the right of ownership over another one. However, the second one is really important it brings light to what can be understood as ownership, determining that:

Guideline 2—The Exercise of the Powers Attaching to the Right of Ownership

In cases of slavery, the exercise of "the powers attaching to the right of ownership" should be understood as constituting control over a person in such a way as to significantly deprive that person of his or her individual liberty, with the intent of exploitation through the use, management, profit, transfer or disposal of that person. Usually this exercise will be supported by and obtained through means such as violent force, deception and/or coercion.

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<sup>79</sup> Robin Hickey, 'Seeking to understand the definition of slavery' in Jean Allain (ed), *The legal understanding of slavery* (Oxford University Press 2012) 220, 238

<sup>80</sup> Walk Free Foundation (n 44) 14

<sup>81</sup> The Bellagio-Harvard Guidelines on the Legal Parameters of Slavery (2012) 14(2) Global Dialogue 15 <search-proquest-com.ezproxy.nottingham.ac.uk/docview/1035287279?accountid=8018> accessed 11 March 2018

The guideline 2 is extremely relevant, whereas the definition of the SCon is currently accepted, but still the meaning of powers attached to the right of ownership is questioned and normally demands the good sense of the judge. The creation of standards was extremely necessary.

It is important to underline that the BHG settles that the powers of ownership are connected with the exercise of control over the victim with the intention of exploitation, normally supported by the use of violence. Those are the core elements of the concept.

The BHG follows explaining that control means the possession of the victim (Guid. 3), describing that this possession can be physical, but can also happens in other forms, as in cases of retention of documents, restrictions on access to state authorities, forced marriage. The goal is to exercise control in a way that can deprive the slave of their individual liberty.

It is important to mention that the guideline mentioned above can be related with the art. 5 of the ECHR, which establish that everyone has the right to liberty and security, and the only way that a person can be deprived of these rights is in case of a lawful detention, with all its guarantees.

Moreover, it is fundamental to understand that the possession is so intense, that the slaveholder can dispose of the victim as if it was a thing owned. Guid. 4 describes actions that can be characterised as the exercise of ownership: buying, selling or transferring a person; using a person; managing the use of a person; profiting from the use of a person; transferring the person to an heir or successor; disposal mistreatment or neglect of a person.

At the first look, the impression is that the above mentioned situations are obvious cases of slavery, but the reality in legal systems is not that simple, so clarification and the exemplification role are indispensable to support the activity of state authorities when applying the law.

Moreover, Guid. 5 express that when analysing a case that can be considered as slavery the particular circumstances must be analysed, not only the formal elements of

the relationship must be verified, but also the substance to determine whether has been the exercise of the powers of ownership.

The following guideline declares that there is a positive obligation of States to end the situations where the powers of ownership are exercised over a person and this obligation is connected with the States obligation with regard to the prohibition of slavery in its domestic law in addition to regional and international instruments.

It is relevant to mention that Guid. 8 and 9, discuss forced labour and the practices similar to slavery. The BHG elucidates that those cases can only be understood as slavery when the exercise of the right of ownership can be recognised and it is possible to realise the control over a person tantamount to possession.

The BHG brought light to the discussions connected to the definition of slavery, establishing clear characteristics and elements to the concept of ownership. Unfortunately that is not a binding document, but at least in this thesis that is the definition that will be adopted to discuss modern slavery, cases where it is possible to distinguish the control with the intention of exploitation. That is the slavery of the present.

Finally, it is necessary to point out that modern slavery 'is a contemporary manifestation of human relations, driven by economic avarice and legitimised by racism. After the global arms and drugs trades, modern slavery is estimated now to be the third largest illicit trade in the world, valued at at least \$32 billion per year'.<sup>82</sup>

It is explicit that modern slavery is closely connected with the global economy and private actors. The role of transnational corporations in this regard is increasing every day. In this sense, the following chapters will discuss the relation of global supply chains with modern slavery and the business responsibility to respect human rights.

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<sup>82</sup> Craig (n 49) 17

## CHAPTER TWO - THE RELATION OF HUMAN RIGHTS AND BUSINESSES: AN ANALYSIS OF THE BUSINESS RESPONSIBILITY TO RESPECT HUMAN RIGHTS

As discussed in the previous chapter, the so called modern slavery is a phenomenon closely connected with the economic vulnerability of the victims. There is a large portion of people desperate to work, in order to survive and provide for the family, and willing to accept any kind of job.

At this point it is clear that nowadays the private sector exerts an important influence over the perpetuation of slavery. As mentioned in the former pages, the exploitation of slaves today differ from the colonial period. In the present slaves are considered cheap workforce and disposable, different than the investment that was required during the colonial period. People are hired to perform the most heinous and degrading activities, underpinning the world economy and supplying the most diverse markets.

Therefore, it is fundamental to discuss the role of businesses in the prevention and eradication of this kind of exploitation and abuses. This is not a new debate within the UN, but is in vogue, especially after the endorsement of the United Nations Guiding Principles for Business and Human Rights (UNGPs) in 2011.<sup>83</sup> This chapter will focus in the analysis of the UNGPs and the impact of the principles for businesses, States and communities.

### 2.1 THE UNITED NATIONS GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS<sup>84</sup>

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<sup>83</sup> UNHRC 'Human rights and transnational corporations and other business enterprises' (06 July 2011) UN Doc A/HRC/RES/17/4

<sup>84</sup> This topic was inspired by the second essay presented in the EMA program related to the question 'Responsibility beyond the nation-state: provide a review of the legal and political feasibility of an international legally binding instrument on transnational corporations and other business enterprises and human rights' and by an essay presented for the module Business and Human Rights at the University of Nottingham.

As mentioned above, the relation between business and human rights is not a new debate for the international community. However, it is important to point out that the concept that businesses can have human rights responsibilities in the host countries, regardless of legal requirements, is rather new and not totally accepted.<sup>85</sup>

The UN has been trying to approve a document related to the regulation of transnational corporations activities since the 1970s. Ruggie points out that the first attempt was 'initiated by developing countries as part of a broader regulatory program with redistributive aims known as the New International Economic Order'.<sup>86</sup> The project, however, was formally abandoned in 1992.

Moreover, in the 1970s there were some other important actions aiming to regulate corporate activities. One of them was launched in 1976 by the Organisation of Economic Cooperation and Development (OECD), with the Declaration and Decisions on International Investment and Multinational Enterprises.<sup>87</sup> The Declaration had six sections and the first of them was related to the establishment of a Guideline for Multinational Enterprises (MNE), that must be observed for all the adhering governments.

In the preface, the OECD MNE affirm that the guidelines are recommendations, designed to guarantee that the businesses operations are consistent with government policies, in order to 'strengthen the basis of mutual confidence between enterprises and the societies in which they operate, to help improve the foreign investment climate and to enhance the contribution to sustainable development made by multinational

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<sup>85</sup> John Gerard Ruggie, *Just Business: multinational corporations and human rights* (W.W. Norton & Company, Inc. 2013) xxv

<sup>86</sup> John Gerard Ruggie, 'Business and Human Rights: The evolving international agenda' in Corporate Social Responsibility Initiative, Working Paper n. 31 (John F. Kennedy School of Government 2007) 819, 2

<sup>87</sup> Organisation of Economic Cooperation and Development, *OECD Declaration on International Investment and Multinational Enterprises* (adopted 21 June 1976) <[www.oecd.org/daf/inv/investment-policy/oecddeclarationoninternationalinvestmentandmultinationalenterprises.htm](http://www.oecd.org/daf/inv/investment-policy/oecddeclarationoninternationalinvestmentandmultinationalenterprises.htm)> accessed 16 April 2018

enterprises.<sup>88</sup> The OECD MNE is based on principles and standards, consistent with the established law and international standards. It is underpinned in voluntary provisions, however the 2011 version settled that the countries which adhere the MNE are supposed to implement them, based on a binding commitment in consonance with the decision of the OECD Council on the OECD MNE.

The guidelines recommendations are focused on human rights, employment and industrial relations, environment, combating bribery, bribe solicitation and extortion, and also in consumer interests, science and technology, competition and taxation. The policy brief of the guidelines highlights that recommendations 'express the shared values of governments of countries that are the source of most of the world's direct investment flows and home to most multinational enterprises.'<sup>89</sup> Another interesting point is the idea that the guidelines bring internationally agreed standards with the aim to achieve confidence and predictability between States and businesses.

The last version of the OECD MNE is from 2011, and is already influenced by the endorsement of the UNGPs as cleared stated in art. 36, of section IV, related to human rights, mentioning that the chapter in line with the "Protect, Respect, Remedy" framework and the UNGPs.

It is important to reflect that the guidelines mention clearly that enterprises should respect human rights in the countries that they operate, avoid infringing these rights and address impacts that they are involved (Section IV, para 1). Also they mention that it must happen in all cases, observing a minimum standard. One of the basis for this minimum standard is the 1998 International Labour Organisation Declaration on Fundamental Principles and Rights at Work (Section IV, art. 39).

Moreover, it is established in Section V, para 1(c) and (d), that the enterprise is responsible for contributing with the abolition of child labour and eradication of all

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<sup>88</sup> Organisation of Economic Cooperation and Development, *OECD Guidelines for Multinational Enterprises* (1976, 2011 edn) <[www.oecd.org/daf/inv/mne/48004323.pdf](http://www.oecd.org/daf/inv/mne/48004323.pdf)> accessed 16 April 2018

<sup>89</sup> Organisation of Economic Cooperation and Development, *Policy Brief: The OECD Guidelines for Multinational Enterprises* (June 2001) 2 <<http://www.oecd.org/investment/mne/1903291.pdf>> accessed 16 April 2018

forms of forced or compulsory labour within its operations. The guidelines even emphasise the important role of multinational enterprises to end those practices (Section V, art 52).

It is necessary to ponder that the OECD MNE talks about the important role of the enterprises, in order to respect human rights and eradicate slavery in all its operations. If the guidelines were followed, the impact in supply chains would be extremely relevant, since the enterprises couldn't be exempt of the responsibility for the existence of sweatshops and the use of forced labour by the suppliers. However, as it will be discussed further, the responsibility within the supply chains remains a big challenge.

Furthermore, another important document that worth mentioning, is the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (MNE Declaration), adopted by the ILO in 1977. The MNE Declaration is inspired by the ILO Conventions and Recommendations and it offers 'guidelines to multinational enterprises, governments, and employers' and workers' organisations in such areas as employment, training, conditions of work and life, and industrial relations.'<sup>90</sup> The aim of the MNE Declaration is to promote positive contributions of multinational enterprises towards economic and social progress, minimising the risks of their operations and promoting decent work. The last version of the MNE Declaration is in consonance with the UNGPs and the 2030 Agenda for Sustainable Development.

Needless to say that the MNE Declaration also mentions that enterprises should employ effective and immediate measures to prohibit and eliminate forced or compulsory labour of its operations (para 25).

During the 1990s, there was a growth of corporate social responsibility (CSR) initiatives, and one of the most prominent was the creation of the UN Global Compact (UNGC) in 2000, that was 'a call to companies everywhere to align their operations and

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<sup>90</sup> International Labour Office (204th session) Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (5 edn, Geneva November 1977) V

strategies with ten universally accepted principles'.<sup>91</sup> The UNGC is a CSR initiative related to the promotion of human rights, labour standards, environment protection and, since 2004, fight against corruption. Its work is based in ten principles divided within the four mentioned areas, concerned with implementing and developing responsible and sustainable corporate practices.

The idea developed by the UNGC is that companies must of business responsibly and then go after tools to develop social challenge, underpinned by business innovation and cooperation, underlining that 'conducting responsible business operations in all areas of the world and taking action to advance peace is in everyone's interest, including business.'<sup>92</sup>

In the 2017 progress report assessed that the UNGC nowadays is the largest CSR initiative in the world, with a network of composed by more than 9,500 companies, 3,000 non-business signatories spread over 160 countries, and 76 local networks.<sup>93</sup>

However, as Ruggie highlights, CSR initiatives have several limitations: 'most do not address the role that governments must play in bridging governance gaps; they tend to be weak in terms of accountability provisions and remedy for harm; and by definition they involve only companies that voluntarily adopt such measures, in a form and at a pace of their own choosing.'<sup>94</sup>

As it was mentioned before, when reviewing the OECD MNE and the MNE Declaration, these instruments are extremely comprehensive and advance, and if they were observed good practices could be implemented by companies and impact in their supplier, leading to an eradication of the use of slavery. Thus, the voluntary aspect limits these instruments and, as will be discussed in the third chapter, the reality is that in a

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<sup>91</sup> United Nations Global Compact, *2017 United Nations Global Compact Progress Report: business solutions to sustainable development* (2017) 14 <[www.unglobalcompact.org/docs/publications/UN%20Impact%20Brochure\\_Concept-FINAL.pdf](http://www.unglobalcompact.org/docs/publications/UN%20Impact%20Brochure_Concept-FINAL.pdf)> accessed 20 April 2018

<sup>92</sup> United Nations Global Compact, *Advancing the Sustainable Development Goals by Supporting Peace: How Business Can Contribute* (2015) 7 <[www.unglobalcompact.org/docs/issues\\_doc/Peace\\_and\\_Business/AdvancingSDGsPeace.pdf](http://www.unglobalcompact.org/docs/issues_doc/Peace_and_Business/AdvancingSDGsPeace.pdf)> accessed 20 April 2018

<sup>93</sup> UNGC Progress Report (n 91) 14

<sup>94</sup> Ruggie, *Just business* (n 85) xxvii



weak government scenario the enterprises are still profiting of the use of slavery work, as it is happened with the timber logged from Amazon forest. There are several voluntary initiatives focused on compliance of the multinational enterprises, but they still are not able to guarantee that the enterprises will actually monitor their suppliers and track the goods that they are trading.

A different point of view is expressed by Knox, for whom the compliance with international legal standards is weak. In his view voluntary approaches can change corporate's behaviour, therefore instead of focusing on the fact that standards are legal it is necessary to 'focus on making corporate codes and other non-legal standards, such as the Global Compact, more effective, thereby causing the changes in corporate conduct that purportedly binding legal standards should, but often do not, produce'.<sup>95</sup>

Within the UN, in 1998 the UN Sub-Commission on the Promotion and Protection of Human Rights conceived a working group on Business and Human Rights responsible to give advises and submit proposals related to the activities of transnational corporations. In 2003, the group presented the 'Draft norms on the responsibilities of transnational corporations and other business enterprises with regard to human rights'. Ruggie described the draft norms as an attempt 'to impose on companies, directly under international law, the same range of human rights duties that States have accepted for themselves under treaties they have ratified: "to promote, secure the fulfilment of, respect, ensure respect of and protect human rights"'.<sup>96</sup>

Ruggie emphasises that 'the norms triggered a deeply divisive debate between human rights advocacy organisations and the business community. Advocates were fervently in favour [...] business vehemently opposed'<sup>97</sup>, since while the human rights

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<sup>95</sup> John H. Knox, 'The Ruggie Rules: Applying Human Rights Law to corporations' in Radu Mares (ed.), *The UN Guiding Principles on Business and Human Rights: Foundations and Implementation* (Koninklijke Brill NV. 2012) 51, 61

<sup>96</sup> UNHRC 'Report of the Special Representative of the Secretary- General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie. Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework ' (21 March 2011) UN Doc A/HRC/17/31, para 2

<sup>97</sup> Ruggie, *Just business* (n 85) xvii

groups believed that it was good idea to extend binding obligations to business, businesses representatives understood that the norms would transfer obligations from the States to the private sector.

The document was approved by the Sub-Commission, but it wasn't accepted by the Commission on Human Rights. It is important to point out that the working group was trying to create a legal binding document in order to apply human rights law and create direct duties to companies.

Some of the states representatives acknowledged that the debate related to business and human rights should continue and it was requested for the UN Secretary-General to assign a special representative, with the duty to examine the international standards and policies related to business and human rights.

In 2005 John Ruggie was appointed as Special Representative of the Secretary-General (SRSG) on the issue of human rights and transnational corporations and other business enterprises. He stayed in the mandate until 2011.

Examining the period that Ruggie spent as SRSG, it is possible to analyse three different phases of his work. The first two years was focused on identifying and clarifying the existent standards and practices. After this period, in 2007, his mandate was renewed and he was invited to submit recommendations. During this second phase, Ruggie analysed that 'there were many initiatives, public and private, which touched on business and human rights. But none had reached sufficient scale to truly move markets; [...] One major reason has been the lack of an authoritative focal point'.<sup>98</sup> In 2008, as a result of the second phase, Ruggie presented the "Protect, Respect and Remedy" Framework. To finish his work as SRSG Ruggie was asked to operationalise the framework, providing concrete and practical recommendations for the implementation of the "Protect, Respect and Remedy" framework. Therefore, he presented the UNGPs in 2011, which 'outline steps for States to foster business respect for human rights; provide a blueprint for companies to manage the risk of having an adverse impact on

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<sup>98</sup> UNHRC A/HRC/17/31 (n 96) para 5

human rights; and offer a set of benchmarks for stakeholders to assess business respect for human rights.<sup>99</sup>

The UNGPs was unanimously endorsed<sup>100</sup> by the UN Human Rights Council in June 16th, 2011, by the resolution A/HRC/Res 17/4.<sup>101</sup> As Davis emphasises, the UNGPs must be comprehended as 'the authoritative global reference point on business and human rights'<sup>102</sup>, since before them there was lack of clarity and comprehension about the role of states regulating businesses and the businesses own responsibilities.<sup>103</sup>

McPhail and Adams ponder that the UNGPs 'are part of a new regime of global governance that displaces traditional conceptions of state power as the exclusive form of public power. They represent a challenge to established conventions and codes that have structured meaningful discourse on human rights, the state and corporate responsibility.'<sup>104</sup>

It is relevant to mention that after the endorsement of the UNGPs, there was a convergence in the international level, when other documents have been revised to add provisions related to the UNGPs (as the above mentioned OECD Guidelines). Ruggie points out that 'in a relatively short period of time the global business and human rights

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<sup>99</sup> United Nations Office of the High Commissioner of Human Rights, *The corporate responsibility to respect human rights: an interpretative guide* (2012) 2 <[www.ohchr.org/Documents/Publications/HR.PUB.12.2\\_En.pdf](http://www.ohchr.org/Documents/Publications/HR.PUB.12.2_En.pdf)> accessed 10 May 2018

<sup>100</sup> It is relevant to emphasise that this was the first time which the UN Human Rights Council (or its predecessor, the Commission) endorsed a document that wasn't negotiated by governments, as it is mentioned by Ruggie, *Just business* (n 85) xx

<sup>101</sup> UNHRC A/HRC/RES/17/4 (n 83)

<sup>102</sup> Rachel Davis, 'The UN Guiding Principles on Business and Human Rights and Conflict-Affected Areas: State Obligations and Business Responsibilities' (2012) 94 *International Review of the Red Cross* 961, 962

<sup>103</sup> 'Interview with John G. Ruggie: Berthold Beitz Professor in Human Rights and International Affairs, Harvard Kennedy School, Former Special Representative of the United Nations Secretary-General for Business and Human Rights.' (2012) 94 *International Review of the Red Cross* 891, 892

<sup>104</sup> Ken McPhail and Carol A Adams, 'Corporate respect for human rights: meaning, scope, and the shifting order of discourse' (2016) 29(4) *Accounting, Auditing & Accountability Journal* 650, 659 <[www-emeraldinsight-com.ezproxy.nottingham.ac.uk/doi/full/10.1108/AAAJ-09-2015-2241](http://www.emeraldinsight-com.ezproxy.nottingham.ac.uk/doi/full/10.1108/AAAJ-09-2015-2241)> accessed 22 May 2018

agenda shifted from a highly polarised and stalemated debate to a significant convergence.<sup>105</sup>

Despite, it is important to analyse that different from the Draft Norms, that tried to establish a binding instrument applicable to businesses, the UNGPs doesn't create a new legal framework, instead it must be seen as an interpretative guide, based in the interpretation and clarification of the existent framework. As mentioned by Ruggie, the contribution of the UNGPs is not based on the creation of new international law 'but in elaborating the implications of existing standards and practices for States and businesses; integrating them within a single, logically coherent and comprehensive template; and identifying where the current regime falls short and how it should be improved.'<sup>106</sup>

McPhail and Adams have an interesting reflection about this point, stressing that the UNGPs are 'globally accepted “social norms” above state-based legal systems as a basis for corporate behaviour. This premise challenges the established supremacy of states in determining the laws that shall apply to its citizens and their legitimacy to do so.'<sup>107</sup> Nowadays, there is no discussion against the duty of States to protect against abuse of business enterprises, but the discussion should focus on how States should engage with various stakeholders in order to fulfil this duty.<sup>108</sup>

The UNGPs are composed by 31 principles, divided between the three pillars: State duty to protect human rights, the corporate responsibility to respect human rights and access to remedy. There are foundational principles and operational principles. As mentioned by the general principles, the UNGPs are based in the existence of the following obligations:

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<sup>105</sup> Ruggie, *Just business* (n 85) xxi

<sup>106</sup> UNHRC A/HRC/17/31 (n 96) para 14

<sup>107</sup> McPhail and Adams (n 104) 658

<sup>108</sup> UNHRC 'Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises' (14 March 2013) UN Doc A/HRC/23/32, para 19

- (a) States' existing obligations to respect, protect and fulfil human rights and fundamental freedoms;
- (b) The role of business enterprises as specialized organs of society performing specialized functions, required to comply with all applicable laws and to respect human rights;
- (c) The need for rights and obligations to be matched to appropriate and effective remedies when breached.<sup>109</sup>

From principle 1 to 10, the focus is in the States duty to protect, principles 11 to 24 are about business responsibility to respect, and from 25 until 31 the access to remedy. It is relevant to mention that each principle is followed by a brief commentary which explains better the concept that underpins the principle and how it can be operationalised.

It is relevant to mention the activity of the working group on the issue of human rights and transnational corporations and other business enterprises, which is following the impact of the UNGPs. In the Report A/HRC/23/32, they explained that in 2012 they received around 40 submissions about situations attention related to business activities. The working group highlighted that the majority of communications was related to business operating in the regions of Asia-Pacific, Latin America and Caribbean, and they were mostly linked with the mining, energy and financial sectors. Most part of the claims concerned the rights to life, health, food, water, work and adequate housing.<sup>110</sup>

As the scope of this work is mostly related to the business responsibility to respect human rights, the next section will focus on this pillar. However, it is necessary to highlight that the UNGPs is an interconnected system and all the pillars must work together.

## 2.2 THE CORPORATE RESPONSIBILITY TO RESPECT HUMAN RIGHTS AND THE DEVELOPMENT OF DUE DILIGENCE PROCESSES

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<sup>109</sup> UNHRC A/HRC/17/31 (n 96) 6

<sup>110</sup> UNHRC A/HRC/23/32 (n 108) para 13

The second pillar of the UNGPs is focused on the role of corporations. It rests in the assumption that it is necessary ‘an independent corporate responsibility to respect human rights, which means that business enterprises should act with due diligence to avoid infringing on the rights of others’.<sup>111</sup>

In order to analyse it, a good starting point is McPhail and Adams reflection that the business responsibility to respect ‘radically shifts the discourse away from its traditional focus on the sovereign state to a polycentric focus on the state and the corporation’, reflecting the ‘perceived inability of state-based legal systems alone to realise rights (or deliver justice) within a globalised economic context.’<sup>112</sup>

Ruggie, in one of his reports to the Human Rights Council, mentioned that the position of corporations at the international level is increasing and they already have rights and duties recognised under international law, as it is possible to infer from bilateral investment treaties and duties related to liability in cases of environmental impact.<sup>113</sup>

It is clear that the State structure is not enough to solve the current abuses and violations of human rights current in practice. That’s why it is extremely necessary to develop awareness between businesses and engage with them, especially considering that the position of the business community wasn’t always in favour of the respect of human rights. As Ruggie highlights, the business approach was generally focused on the compliance with national law, of host countries, and ‘the adoption of voluntary measures and promotion of best practices by business, arguing that the market then would drive the process of change.’<sup>114</sup>

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<sup>111</sup> Ruggie, *Just business* (n 85) xxi

<sup>112</sup> McPhail and Adams (n 104) 657-658

<sup>113</sup> UNHRC ‘Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie. *Business and human rights: mapping international standards of responsibility and accountability for corporate acts*’ (19 February 2007) UN Doc A/HRC/4/35, para 20

<sup>114</sup> Ruggie, *Just business* (n 85) xxii

However, the UNGPs changed this perspective and the responsibility to respect arise as a 'concern that corporations should do no harm and that positive attempts to promote rights should not be offset against rights violations.'<sup>115</sup> McPhail and Adams even reflect that in some countries businesses play a role that was traditionally associated with the State's obligations, bearing a responsibility 'that extends far beyond the political economy of the corporation as it has been traditionally construed.'<sup>116</sup>

After this reflections, it is necessary to analyse the 14 principles that compose the second pillar of the UNGPs. The foundational principles start by establishing that businesses should respect human rights and this means that they should avoid infringing human rights and also address human rights impacts that can be related to their activities (GP 11), pointing out that this responsibility is connected with internationally recognised human rights (GP12).

It is relevant to emphasise that the traditional view of human rights law is that corporates do not have direct obligations towards human rights, since these obligations would be from the State and the businesses would be responsible under domestic law. But, as Ruggie clarifies, this traditional view must be seen in relation to the law application, but the social expectations connected to business activities are increasingly invoking international standards to impact in business activities.<sup>117</sup>

As it is emphasised in "the corporate responsibility to respect human rights: an interpretative guide" (RtR), the responsibility to respect is not limited by national law, 'it exists over and above legal compliance, constituting a global standard of expected conduct applicable to all businesses in all situations. It therefore also exists independently of an enterprise's own commitment to human rights.'<sup>118</sup> This final point must be stressed, that the responsibility is not connected to the enterprise commitments,

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<sup>115</sup> McPhail and Adams (n 104) 658

<sup>116</sup> *ibid* 662

<sup>117</sup> Ruggie, *The evolving international agenda* (n 86) 19

<sup>118</sup> OHCHR (n 99) 13-14

but to a global standard of responsibility that is applied for all business enterprises, of all sizes and operating everywhere.

In this sense, it is necessary to keep in mind that businesses activities can impact the full exercise of human rights and, especially, can infringe human rights, and it is applied for all the range of human rights, including the eradication of slavery. That's why it is necessary that businesses act in a way that assure respect for human rights within its own operation and try to minimise the risks and harm related to its activities.

Another important point, is related to the involvement of enterprises in adverse human rights impacts. Businesses not necessarily need to impact human rights with their own activities, the impact can be also caused when it contributes to another entity or even when it maintains relation with an entity that is impacting human rights. Therefore, businesses not only should avoid infringing human rights directly, but also abstain of complicity.

If there is an impact, the measures adopted in case of an actual impact would be related to the remediation of the harm, and in case of a potential impact it is relevant to work with prevention and mitigation, in order to cause the less harm as possible when it is not possible to prevent it from happening.

However, in order to avoid impact and respect human rights, the implementation of policy commitments, due diligence processes and processes related to remediation of adverse impacts are extremely important, as highlighted by the GP 15, since the responsibility to respect must not be seen as a passive responsibility, requiring effective action, after all 'it is relatively easy for an enterprise to say that it respects human rights [...] But to make that claim with legitimacy, an enterprise needs to know and be able to show that it is indeed respecting human rights in practice.'<sup>119</sup>

The policy commitment is described by GP 16 as a commitment approved by the most senior level of the enterprise; informed by relevant expertise; stipulating the expectations of personnel, business partners, products, services, related to human rights; must be publicly available and communicated to all the personnel and the business

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<sup>119</sup> OHCHR (n 99) 23



partners, as well as to other relevant parties; and must be reflected in the business operational policies and procedures. Consequently, the policy commitment will be a public statement establishing the enterprise commitment to respect human rights.

About this GP, the RtR stresses that the policy commitment will guide the relation of the enterprise with its business partners or any other parties related to its operations, emphasising that the policy commitment can increase the leverage to respect human rights and promote the inclusion of clauses connected to the respect of human rights and in contracts. However, it also points that without a strong policy commitment, the respect for human rights can be assumed as negotiable and eventually sidelined, increasing the risks of involvement in human rights abuses.<sup>120</sup>

A remarkable point brought by the UNGPs is related to due diligence processes, which are extremely important for the development of business responsibility to respect. First of all it is necessary to understand that due diligence is based on prudence. When it comes to human rights, due diligence must be seen as 'an ongoing management process that a reasonable and prudent enterprise needs to undertake, in the light of its circumstances (including sector, operating context, size and similar factors) to meet its responsibility to respect human rights.'<sup>121</sup>

The GP 17 asserts that human rights due diligence is indispensable to identify, prevent, mitigate and account for the ways that businesses address human rights impacts. They should assess actual and potential impacts caused by businesses or linked to its activities, differing according to the size of the business, severity of impacts, as well as the nature and context of the business activities. It is an ongoing process, due to the fact that risks and the context can change.

In the commentary related to this principle, it's emphasised that due diligence processes should start as soon as possible when an enterprise is developing new

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<sup>120</sup> OHCHR (n 99) 27

<sup>121</sup> *ibid* 6

activities or business relations, since the risks can be mitigated when structuring contracts.<sup>122</sup>

About the mentioned risks, pertinent to stress that it is human rights risks and they must be defined as the corporation potential of causing adverse human rights impacts, which happens 'when an action removes or reduces the ability of an individual to enjoy his or her human rights, the assessment of human rights risk not only requires analysing potential harm, but also makes necessary a normative judgment whether such harm qualifies as a human rights violation.'<sup>123</sup>

A due diligence process is a way that business can assess the risks and find relevant knowledge in order to address them. It is a process that can lead to a better understanding of the risks from the viewpoint of the affected populations, as the RtR explains is a way of developing a relation between the business and the people that its activities can impact.<sup>124</sup>

McPhail and Adams observe that the risk assessment must be 'open, transparent and representative mechanism of accountability rather than an assessment of the human rights risk to corporate profitability.'<sup>125</sup>

Pertinent to add that the risks are not only for the people, but also for the enterprise, that can have its operations and image affected by involvement with human rights abuse. The commitment of an enterprise with appropriate human rights due diligence can help the enterprise to overcome the risks of legal procedures against them, since they will be able to show that they took all reasonable measures in order to refrain from involving with human rights abuse, nevertheless the implement of a due diligence

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<sup>122</sup> UNHCR A/HRC/17/31 (n 96) 16

<sup>123</sup> Björn Fasterling, "Human Rights Due Diligence as Risk Management: Social Risk Versus Human Rights Risk" (2017) 2 Business and Human Rights Journal 225, 231 <[www.cambridge-org.ezproxy.nottingham.ac.uk/core/journals/business-and-human-rights-journal/article/human-rights-due-diligence-as-risk-management-social-risk-versus-human-rights-risk/ED9F732D580800917A4FF5997A4991BB](http://www.cambridge-org.ezproxy.nottingham.ac.uk/core/journals/business-and-human-rights-journal/article/human-rights-due-diligence-as-risk-management-social-risk-versus-human-rights-risk/ED9F732D580800917A4FF5997A4991BB)> accessed 28 May 2018

<sup>124</sup> OHCHR (n 99) 33

<sup>125</sup> McPhail and Adams (n 104) 666

process per se is not a guarantee that the enterprise will not be liable or complicity with human rights abuse.<sup>126</sup>

However, when assessing human rights impacts they cannot be analysed based on financial costs, because this would be unacceptable under the UNGPs system. As Fasterling highlights the UNGPs 'do not allow human rights to be weighed up against an economic interest for a business. According to UNGP 19, economic interests are only taken into account the more remote a corporation's links to human rights violations become.'<sup>127</sup>

When assessing human rights impacts it is necessary to consider not just the severity of the risk, but also the probability. As it is mentioned by GP 24, in cases that it is necessary prioritise the response to actual and potential human rights abuse, a first step will be acting in the most severe impacts or in those where the wait can lead to an irremediable damage. The severity of the impact will be measured based on the scale, scope and irremediable character.

An important point to keep in mind is that the corporations must cause or contribute with human rights violations by its own activities, or by its business relations. In the latter, it is pertinent to stress that the businesses are not required to analyse all the human rights records of all its business relations, but they must assess eventual risks in cases that those entities can perform human rights abuses acting in connection with the corporation operations, products or services.<sup>128</sup> If it is not possible to implement due diligence processes in all the business relations, the enterprise must identify general areas with heightened risks for human rights and prioritise them.

However, the risks related to a business relationship, or its supply chains, are more complex than when the risks are just within the business operation, since in this cases there is less control by the enterprise of the impact that may occur.<sup>129</sup>

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<sup>126</sup> UNHCR A/HRC/17/31 (n 96) 17

<sup>127</sup> Fasterling (n 123) 243

<sup>128</sup> OHCHR (n 99) 41

<sup>129</sup> *ibid* 48

The RtR brings an interesting explanation about the existence of leverage between the enterprise and its business partners, and how the enterprise can deal with them, in cases of human rights risks:<sup>130</sup>

	<b>Have leverage</b>	<b>Lack leverage</b>
<b>Crucial business relationship</b>	<p><b>A.</b></p> <ul style="list-style-type: none"> <li>➤ Mitigate the risk that the abuse continues/recurs</li> <li>➤ If unsuccessful</li> </ul>	<p><b>B.</b></p> <ul style="list-style-type: none"> <li>➤ Seek to increase leverage</li> <li>➤ If successful, seek to mitigate risk that the abuse continues/recurs</li> <li>➤ If unsuccessful, consider ending the relationship;** or demonstrate efforts made to mitigate abuse, recognizing possible consequences of remaining</li> </ul>
<b>Non-crucial business relationship</b>	<p><b>C.</b></p> <ul style="list-style-type: none"> <li>➤ Try to mitigate the risk that the abuse continues/recurs</li> <li>➤ If unsuccessful, take steps to end the relationship*</li> </ul>	<p><b>D.</b></p> <ul style="list-style-type: none"> <li>➤ Assess reasonable options for increasing leverage to mitigate the risk that the abuse continues/recurs</li> <li>➤ If impossible or unsuccessful, consider ending the relationship*</li> </ul>

It is evident that the relation between the enterprises is of extremely importance to define the measures to be taken, and also the degree of leverage that the business has towards its partner, since the leverage can be used to mitigate impacts along its business relationships. As it is possible to analyse in the table above, if the business relation is crucial, that is if it provides an essential product to the business, the idea is mitigate the risks and increase the leverage. However, in cases involving non-crucial business, even if there is leverage, the business must consider ending the relationship.

About this point, Davis reflects that in order to achieve an appropriate response the leverage must be considered, as well as how compelling the business relationship is to the enterprise, the severity of the impact and the implications for human rights related

<sup>130</sup> OHCHR (n 99) 50

to an eventual termination of the business relation, emphasising that 'this approach does not presume that the solution is simply to terminate a relationship; indeed, in many cases such a move can produce additional adverse human rights consequences of its own.'<sup>131</sup>

One important aspect to consider in this case is that if an enterprise has leverage over its business relationships, it will be able to influence their behaviour, so it is a way of preventing human rights abuses within its relations and, as a consequence, persuade for the eradication of slavery in its business relationships. Instead of finishing the business relationship, it is necessary to reflect on the positive measures that could be achieved.

An additional point is related to being able to communicate how the enterprise is addressing human rights impacts, in order to be accountable for that, as established by GP 21. It is a way that the business can indicate that the responsibility to respect human rights is exercised.

However, the GP doesn't impose that the enterprise should disclose all the information related to human rights impact, just acknowledge that the enterprise must be able to do so. Thus, if there are risks of severe human rights impact, the GP settles that the business must report formally on the way that those risks will be addressed, considering that 'the higher public interest dictates a need for more formal and regular public reporting to account for the systems the enterprise has in place to mitigate those risks and to address any harm that may occur.'<sup>132</sup>

Relevant to emphasise that if an actual or potential harm is identified the potential victims must be communicated directly and as soon as possible, and the company should also mention how the impact will be addressed.<sup>133</sup>

GP 22 addresses remediation measures, determining that if an enterprise identifies impacts, that were caused by its activities or that it contributed to happen, they should provide or cooperate with a remediation process. As it is highlighted by the RtR, the fact

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<sup>131</sup> Davis (n 102) 975

<sup>132</sup> OHCHR (n 99) 58

<sup>133</sup> *ibid* 60

that an enterprise establish a system that enables remediation, means that the business is aware that despite its attempts to prevent impacts, they can occur and it is necessary to have a system that will guarantee that the respect for human rights is restored.<sup>134</sup>

Remedies can take different forms and must be effective and appropriate to the situation. In order to achieve the remediation of the adverse impact, the company can rely on judicial or non-judicial remedies and in this process the opinion of the affected group must be considered.

An important system that must be implemented by an enterprise in order to achieve effective remediation is an operational-level grievance mechanism, accessible by individuals or communities. A grievance mechanism will not just reflect in the remediation of impacts, but also will collaborate with the human rights due diligence process by 'identifying adverse human rights impact in a timely manner and in tracking the effectiveness of responses to impact raised through the mechanism'<sup>135</sup>, after all they will make possible for the affected community to present their concerns to the enterprise in cases of actual or potential harm, making it easier to identify and address eventual impacts.

In the third pillar, GP 31 defines criteria for a grievance mechanism be effective: legitimate, accessible, predictable, equitable, transparent, rights-compatible, a source of continuous learning based on engagement and dialogue. Those criteria are inter-related and must be carried out to achieve an adequate working of the mechanism.

Finally, GP 23 bring a remarkable statement that all business enterprises must respect internationally recognised human rights everywhere they operate, honouring this statement even when they face conflict requirements, and treating any risk of contributing with gross human rights violations as a legal compliance concern. It is important to mention that if the enterprise is operating in a State with a weak structure, that has a low standard of respect for human rights, or even when there is a lack of national law protecting human rights, the companies must make sure to respect

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<sup>134</sup> OHCHR (n 99) 63

<sup>135</sup> *ibid* 68

international standards, regardless of national law, and don't benefit from the insufficient domestic protection.

This is extremely important as a starting point for the debate of next section, because the company has the responsibility to respect human rights all over its supply chain, not just the parent company needs to comply, but they need to monitor the suppliers. As it was mentioned in previous lines, there is a responsibility over the business own operations, but also in their business relations, what is a bigger challenge and, as will be discussed, poses higher risks for human rights violations, including the use of slavery.

### 2.3 GLOBAL SUPPLY CHAINS AND THE HIGHER RISKS FOR HUMAN RIGHTS VIOLATIONS

This section will focus in the definition of global supply chains and the identification of the most relevant concerns related to human rights risks and compliance in those kind of business structure.

As discussed before, the human rights impacts in business relations are a bigger challenge for an enterprise, since they are more difficult to recognise and to prevent. On the other hand, the international community is every day more concerned about this global structures that can affect a number of different countries and communities. As it was possible to analyse in the first chapter the MSAAct in its section 54 deals especially with supply chains and the need for transparency, in order to eradicate the use of slavery work.

Before analyse the risks involving global supply chains, it is relevant to mention what can be understood as a global supply chain. The Ethical Trading Initiative Norway explains that 'supply chain consists of all parties involved in the provision of services and the manufacturing of goods, from raw material to finished product, including packaging and transportation', emphasising that 'in many industries, some of the more serious human rights violations occur further upstream in the supply chain, particularly

in labour-intensive industries such as textile production, consumer electronics, horticulture and mining', that's the reason why it is necessary to include all the suppliers in a due diligence process.<sup>136</sup>

In this sense a supply chain covers all the range of suppliers that participates in the production of a product or service. However, considering that multinational corporations operates globally and have suppliers in a lot of different countries and different levels of connection with the parent company, it is extremely hard to establish the responsibility. Ruggie points out that 'legally, the parent company and each subsidiary are construed as a "separate legal personality', [...] the parent company is generally not liable for wrongs committed by a subsidiary, even where it is the sole shareholder, unless the subsidiary is under such close day-to-day operational control by the parent that it can be seen as being its mere agent.'<sup>137</sup>

The fact that the subsidiary has a separate legal personality of the parent company makes extremely hard to regulate multinational corporations activities and to investigate whether the parent company can be responsible, heightening the difficult for the victims to obtain adequate remedy.

As it was accentuated by the report of the working group on the issue of human rights and transnational corporations, one of the major challenges to examine human rights impacts is to uncertainty related to how far is necessary to analyse a supply chain to understand the impact.<sup>138</sup> An important point to consider is that supply chains highly fragmented are less transparent and will be more likely to hide human rights impacts.

Thus the RtR stresses that even if it's hard to trace all the business relationships of a company, because of its complexity or due to the high number of business relationships, it is not possible to reduce the responsibility to respect human rights, emphasising that 'not knowing about human rights abuses linked to its operations,

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<sup>136</sup> Ethical Trading Initiative Norway, *A guide to human rights due diligence in global supply chains* (2013) 7 <<http://etiskhandel.no/Artikler/10078.html>> accessed 25 May 2018

<sup>137</sup> Ruggie, *Just Business* (n 85) xxxiii

<sup>138</sup> UNHRC A/HRC/23/32 (n 108) para 35



products or services is unlikely by itself to satisfy key stakeholders, and may be challenged in a legal context, if the enterprise should reasonably have known of, and acted on, the risk through due diligence.<sup>139</sup>

The responsibility ought to be shared by all the parties in the supply chain, from the ones that are sourcing raw material until those that are responsible for the final product. If the supply chain is not considered as a whole 'problems of sweatshop labour conditions or child labour will persist.'<sup>140</sup> Notably taking into account that 'supply chains are internationally connected and highly outsourced today, the risk of using slave labour somewhere in the supply chain is present in almost all industries, from electronics, high-tech, automotive and steel to agriculture, seafood, mining, garment and textiles.'<sup>141</sup>

Another important point to consider is that the source of commodities from supply chain based on conflict affected areas can fund the conflict and the parties involved, and the company may become liable. It is important to stress that in conflict affected areas the suppliers often provide raw material, representing a challenge for the implementation of responsible practices.<sup>142</sup>

Due to the inability of some governments to guarantee the protection of human rights and the fails in the system, some countries remain with a lack of protection and a fruitful place for malicious companies profit from the exploitation of workforce. Gold, Trautrim and Trodd, underline that 'slavery taints numerous of our raw materials, commodities and goods. International supply chains driven by the principle of comparative cost advantages find their way to this slave labour (and might even be seen

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<sup>139</sup> OHCHR (n 99) 42

<sup>140</sup> IEH (n 136) 4

<sup>141</sup> Stefan Gold, Alexander Trautrim and Zoe Trodd, 'Modern slavery challenges to supply chain management' (2015) 20(5) Supply Chain Management: An International Journal 485, 486 <[www.emeraldinsight.com/doi/full/10.1108/SCM-02-2015-0046](http://www.emeraldinsight.com/doi/full/10.1108/SCM-02-2015-0046)> accessed 5 June 2018

<sup>142</sup> United Nations Global Compact and PRI Publication, *Guidance on responsible business in conflict affected and high-risk areas: a resource for companies and investors* (2010) 15 <[www.unglobalcompact.org/docs/issues\\_doc/Peace\\_and\\_Business/Guidance\\_RB.pdf](http://www.unglobalcompact.org/docs/issues_doc/Peace_and_Business/Guidance_RB.pdf)> accessed 5 June 2018

as nourishing it)', emphasising that this exploitation of 'cheap human resources' by the inequality and hierarchical social relations is present worldwide.<sup>143</sup>

The authors assert that it is necessary to enhance 'supply chain visibility and transparency by supply chain mapping, even though it is not clear how to detect slave labour activities in parts of the supply chain that deliberately do not want to be detected.'<sup>144</sup> It is obvious that slave holders will make the biggest efforts to hide the use of slavery, since it is banished from all countries and considered a crime in most part of them. Hence, sneaky practices to hide and cover the use of illegal workforce will be used, creating an even more complex relation, as it will be examined in the next chapter that will analyse the timber industry in Brazil.

The international community faces a big challenge to regulate multinational corporations and its supply chains, because even if in some home countries there are advanced laws, as the MSAAct, the corporations operating transnationally are sourcing from abroad and coping with the legislation of the host country, that can be underpinned in a fragile framework. As will be analysed in the next chapter, some countries have a lack of transparency and traceability, so it is a big challenge for a company to make sure that their suppliers are acting in a lawful way. It is a complex issue. Even more complex is to address the slavery presence in supply chains, since the use of slavery work can happen in the most different sectors and in a variety of forms, proving to be a challenge even the identification of slavery.

In order to understand it better, the next chapter will focus in the timber supply chain between Brazil and UK, reflecting about the impacts (if any) that the MSAAct had in the supply chain, if it is possible to recognise any influence of the law change in the suppliers and how are the British companies behaving in order to fulfil the law.

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<sup>143</sup> Gold, Trautrim and Trodd (n 141) 485-486

<sup>144</sup> *ibid* 488

## CHAPTER THREE - A CASE STUDY IN THE TIMBER SECTOR: THE TIMBER TRADE BETWEEN BRAZIL AND UNITED KINGDOM

After the theoretical scope of this work has been presented in the previous chapters, it is the moment to bring these elements to a concrete scenario. In order to achieve that, this chapter will examine the presence of slavery in supply chains based on a case study related to the timber trade between Brazil and the United Kingdom, focusing on tropical hardwood plywood sourced from the Amazon region in Brazil.

To examine this issue, first will be necessary to look at the deforestation in Brazil and debate the impact of illegal logging in the Amazon forest. After that, a list of companies from the UK will be presented, highlighting the presence of modern slavery statements and interesting measures proposed by those companies in order to eradicate slavery in their supply chains. With the Brazilian and English panoramas at sight, will be possible to discuss if the section related to supply chains in the MSAct is actually effective and if there were impacts in the supplier countries, in this case, in Brazil.

### 3.1. DEFORESTATION IN BRAZIL: THE IMPACTS ON THE AMAZON FOREST

The Amazon Forest is the biggest rainforest in the world. The Amazon basin has 6,9 millions square kilometres and it is present in Brazil, Bolivia, Peru, Colombia, Ecuador, Venezuela, Guiana, Suriname and French Guiana. Around 60% of the Amazon basin is in Brazil, in the states of Amazonas, Pará, Mato Grosso, Acre, Rondônia, Roraima, Amapá, Tocantins and Maranhão, with 4,2 millions square kilometres of extension, 49% of Brazilian territory.<sup>145</sup>

The Global Forest Watch established that Brazil was the second country with greatest tree cover loss in the period of 2001 to 2016, just after Russia, acknowledging

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<sup>145</sup> Greenpeace Brasil, 'Amazônia: patrimônio brasileiro, futuro da humanidade' <[www.greenpeace.org/brasil/pt/O-que-fazemos/Amazonia/](http://www.greenpeace.org/brasil/pt/O-que-fazemos/Amazonia/)> accessed 10 June 2018

that 'between 2001 and 2016, Brazil lost 46.4Mha of tree cover. This loss is equal to 8.9 % of the area's tree cover extent in 2000, and equivalent to 3.84Gt of CO<sub>2</sub> emissions.'<sup>146</sup>

The above mentioned numbers are closely connected with the exponential development of agricultural industry in Brazil, but also with illegal deforestation. According to PRODES<sup>147</sup>, the estimate of illegal deforestation in the Amazon forest, during the year 2017, is of 6.624 square kilometres. The state of Pará led the forest devastation with 36,4% of the extraction, followed by Mato Grosso (20,2%), Rondônia (18,9%) and Amazonas (14,6%). There was a little reduction in the deforestation if compared to the data of 2016, when 7.893 square kilometres of the forest were overthrown.<sup>148</sup>

Furthermore, in 2017, 12% of the deforestation in the Amazon Forest happened in protected areas. The data released by the government monitoring established that the deforestation of the Amazon grew in around 30% from August, 2015, to July, 2016, period that 8.000 square kilometres were extracted, especially in the states of Pará, Mato Grosso, Rondônia e Amazonas.<sup>149</sup>

Greenpeace highlights that logging in Brazilian Amazon is the most most important factor to forest degradation and deforestation, since it is the first stage of the deforestation cycle. It is also connected with social conflicts, when logging invades indigenous lands or conservation areas, and there is a large use of slave labour in illegal logging, with remarkable use of violence, threats and even assassinations.<sup>150</sup>

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<sup>146</sup> Global Forest Watch, 'Countries with greatest tree cover loss (2001-2016)' <[www.globalforestwatch.org/countries/overview](http://www.globalforestwatch.org/countries/overview)> accessed 10 June 2018

<sup>147</sup> The PRODES is a project that monitors the deforestation in the Amazon and has been producing, since 1988, annual deforestation rates in the region. More information at: Instituto Nacional de Pesquisas Espaciais - Coordenação Geral de Observação da Terra, *PRODES* <<http://www.obt.inpe.br/OBT/assuntos/programas/amazonia/prodes>> accessed 12 July 2018

<sup>148</sup> Instituto Nacional de Pesquisas Espaciais, 'Taxas anuais de desmatamento na Amazônia legal brasileira' <[www.obt.inpe.br/prodes/dashboard/prodes-rates.html](http://www.obt.inpe.br/prodes/dashboard/prodes-rates.html)> accessed 10 June 2018

<sup>149</sup> Ana Luísa Herzog and Renata Vieira, 'Brasil destrói 128 campos de futebol de floresta por hora' (Revista Exame, 29 June 2017) <[exame.abril.com.br/revista-exame/brasil-destroi-128-campos-de-futebol-de-floresta-por-hora/](http://exame.abril.com.br/revista-exame/brasil-destroi-128-campos-de-futebol-de-floresta-por-hora/)> accessed 12 June 2018

<sup>150</sup> Greenpeace Brazil, *The Amazon's silent crisis* (2014) 7 <[www.greenpeace.org/usa/wp-content/uploads/legacy/Global/usa/planet3/PDFs/SilentCrisisTimberReport.pdf](http://www.greenpeace.org/usa/wp-content/uploads/legacy/Global/usa/planet3/PDFs/SilentCrisisTimberReport.pdf)> accessed 12 June 2018

A remarkable sentence from a report of Pastoral Land Commission (CPT) and the Centre for the Defence of Human Rights Carmen Bascarán (CDVDH/CB) is that there is no illegal logging without slavery work in the Amazon.<sup>151</sup>

Moreover, WWF discloses that the illegal logging in the Amazon forest is marked by the following characteristics: the use of false licenses, the extraction of any valuable tree regardless of the fact that they are protected, the extraction of higher amounts of wood than the legally allowed, the extraction out of permitted areas and the extraction in conservation units and indigenous land. The organisation emphasises that the control of the legality of the timber sourced from the amazon is a challenge, considering the distance and isolation of the forest.<sup>152</sup>

Bales points out that the 'illegal logging in Brazil, it is happening in places where the forest is supposed to be protected. I appreciate that, at local level, that is an issue often controversial. Because some will claim: “we need to open these places up to development.” But the key thing is that people are working under violent control in forests that are supposed to be protected.’<sup>153</sup>

Greenpeace refers that illegal logging in Brasil, especially in the Amazon region, is related with the following factors:

This illegal logging is fuelled by a lack of governance in public areas, indigenous lands and other protected and community lands; a lack of inspection and enforcement capacity on the part of local authorities; high demand for timber, including high-value species; and illegal deforestation for agriculture (with illegal timber as a by-product). Governance of the timber sector in the Brazilian Amazon is weak and open to exploitation. Studies have demonstrated vast discrepancies between volumes of timber harvested and the quantities actually authorised. The national system for approval of forest management plans is structurally flawed, as is the chain-of-custody system, leading

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<sup>151</sup> Centro de Defesa da Vida e dos Direitos Humanos Carmen Bascarán - CDVDH/CB and Comissão Pastoral da Terra - CPT, *Por debaixo da floresta: Amazônia paraense saqueada com trabalho escravo* (Urutu-Branco 2017) 16

<sup>152</sup> WWF Brasil, *Extração de madeira* <[www.wwf.org.br/natureza\\_brasileira/areas\\_prioritarias/amazonia/ameacas\\_riscos\\_amazonia/desmatamento\\_na\\_amazonia/extracao\\_de\\_madeira\\_na\\_amazonia/](http://www.wwf.org.br/natureza_brasileira/areas_prioritarias/amazonia/ameacas_riscos_amazonia/desmatamento_na_amazonia/extracao_de_madeira_na_amazonia/)> accessed 19 June 2018

<sup>153</sup> Ana Aranha and João César Diaz, *Current regulations unable to ban products from slave labor, expert says* (Repórter Brasil, 13 March 2017) <[reporterbrasil.org.br/2017/03/current-regulations-unable-to-control-trade-in-products-from-slave-labor-expert-says/](http://reporterbrasil.org.br/2017/03/current-regulations-unable-to-control-trade-in-products-from-slave-labor-expert-says/)> accessed 20 June 2018

to systemic crime in the logging sector. Large amounts of illegal timber enter national and international timber markets after being laundered using genuine documents obtained by fraudulent means. [...] in Maranhão and Pará states alone almost 500,000m<sup>3</sup> of timber had fraudulent documents in 2013 – enough to fill 14,000 trucks. Given the magnitude of the fraud and corruption, there is no question that official documents issued in Brazil to certify the legality of timber are largely unreliable and cannot alone be considered as evidence of legality.<sup>154</sup>

As it is mentioned by the environmental organisation, the problem in Brazil goes beyond the deforestation, but it is related to weak public policies and lack of inspection and law enforcement. The Brazilian environmental licensing system has many failures and weakness, that can increase the possibilities of illegal timber become part of the market.

It is important to reflect, as mentioned in the previous chapter, that there are several instruments that establish that corporations must comply with international human rights regulations, regardless of failures in the national system of the host country. However, instead of complying and implement good practices to overcome the deficiencies, enterprises are profiting with the lack of regulation enforcement in Brazil and taking its share of the system.

A point to be observed is that the regulatory system of timber in Brazil is not integrated, so each state has its own system of control. As an example, the states of Mato Grosso and Pará, the biggest timber producers in the Amazon region, have regulatory systems and chain-of-custody systems that, unfortunately, are not entirely effective raising the possibility of occurrence of a range of abuses, resulting in rates of 78% in Pará and 54% in Mato Grosso of illegal timber logged during 2011–12.<sup>155</sup>

One interesting example related to the deforestation of high value species is the harvest of Ipê. Last March, Greenpeace presented a report focusing on the extraction of Ipê and the impact in the Amazon forest. The Ipê tree is one of the most valuable tropical timber in the Amazon forest and can be commercialised for around US\$2500,00

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<sup>154</sup> Greenpeace, Amazon silent crisis (n 150) 6

<sup>155</sup> *ibid* 11

per cubic meter, what makes the logging really attractive and encourages the illegal extraction in very remote areas, protected areas and indigenous land.<sup>156</sup>

The Ipê trees growing in the Amazon forest have 'a low population density, with an average of one tree per 10 hectares. This means that large areas of forest need to be opened up to access these valuable trees', also while 'the volumes of Ipê harvested and exported have declined in recent years, the price continues to increase – driving loggers ever deeper into the forest in search of it.'<sup>157</sup>

The Greenpeace report presented a summary with the main destinations and importers of Ipê timber originated from possible illegal sources based in the existence of unusual high densities of Ipê in their inventory.<sup>158</sup> One company is identified as importer in the UK, but it is pertinent to observe that this company is not present in the list of importers in the Timber Trade Federation (TTF) website that will be analysed further.<sup>159</sup> However, there is a high presence of Ipê decks available in the companies in the UK, as will be possible to examine in the next section. Considering that a big part of the Ipê sourced from the Amazon forest is illegal, it is fair to say that there is illegal timber being sold in the UK.

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<sup>156</sup> Greenpeace Brasil, *Imaginary trees, real destruction*, (2018) 8 <[es.greenpeace.org/es/wp-content/uploads/sites/3/2018/03/Greenpeace-Report\\_Imaginary-Trees-Real-Destruction\\_March-2018.pdf](https://es.greenpeace.org/es/wp-content/uploads/sites/3/2018/03/Greenpeace-Report_Imaginary-Trees-Real-Destruction_March-2018.pdf)> accessed 12 June 2018

<sup>157</sup> Greenpeace, Amazon silent crisis (n 150) 5

<sup>158</sup> Greenpeace, Imaginary trees (n 156) 11

<sup>159</sup> The report mentions the Tradelink Wood Products LTD imported 123.873 cubic meters. In the website of the company (<https://www.tradelink-group.com>) they mention that they have a factory in Brazil and there is information about the availability of hardwood decking from Brazil, made with the species: Ipe, Cumaru, Massaranduba, Garapa, Muiracatiara (Tigerwood), Jatoba (Brazilian Cherry), and Balau (Bangkirai). It is also possible to buy solid hardwood flooring from Brasil and plywood. They have a Modern Slavery statement and in this document it is mentioned that, in Brazil, they are operating in Belém (PA) and they have signed the National Pact for the Eradication of Slave Labour in Brazil. In the TTF website they appear as importers of hardwood (not as hardwood plywood - the key word for the search performed in section 3.2). However, it is relevant to point out that Tradelink Madeiras (one of the companies part of Tradelink Group) was mentioned in one of the reports of Reporter Brasil, which found out that the company sourced timber of a Brazilian supplier, Bonardi da Amazônia, that were recruiting people to work under slavery conditions. Tradelink continue its trade with Bonardi, even after Bonardi was part of the transparency list of slave labour. (André Campos, 'Suppliers of Lowe's in the US and Walmart in Brazil linked to slave labor in the Amazon' (Repórter Brasil, 15 March 2017) <[reporterbrasil.org.br/2017/03/suppliers-of-lowes-in-the-us-and-walmart-in-brazil-linked-to-slave-labor-in-the-amazon/](https://reporterbrasil.org.br/2017/03/suppliers-of-lowes-in-the-us-and-walmart-in-brazil-linked-to-slave-labor-in-the-amazon/)> accessed 10 June 2018)

Last year, one operation of the Brazilian Federal Police found illegal extraction of Ipe trees in an indigenous land in the state of Pará. The police claims that the companies involved in the crime, were planning to export the timber, since it is a valuable wood.<sup>160</sup>

As the Greenpeace highlights the extensive extraction of wood can lead to the extinction of species, as it almost happened with the Brazilian mahogany, which started to be extracted during the 1970s, without any control, and by the 2000s around 5,7 million cubic meters of mahogany have been logged from the Amazon and its extraction had to be banned. In 2002, the Brazilian mahogany was included in Annex II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora.<sup>161</sup>

Moreover, Bales has an important reflection associating slavery and environmental destruction, which for him 'hand in hand'<sup>162</sup>, and emphasising that the cut of timber ordered by slave holders takes a small number of value trees, leaving a path of dead nature.<sup>163</sup> This is also related with the “selective deforestation”, a way that the loggers are using to cheat the satellites monitoring. Instead of logging a wide range of the forest, the loggers select the valuable trees and cut them. In this cases it is not possible to visualise that the trees were cut, the activity goes almost "invisible", turning the inspection into a harder, almost unachievable, job.

In this type of logging, the workers face even worst conditions. The activities go for a short period, deep in the forest, and they have to move the camp to where they find the trees, in an extremely precarious condition, without any protection with high risks of death and accidents.<sup>164</sup>

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<sup>160</sup> Fabiano Maisonave, ‘Polícia Federal desarticula roubo de ipê em terra indígena no Pará’ (Folha de São Paulo, 04 October 2017) <[www1.folha.uol.com.br/ambiente/2017/10/1924196-pf-desmonta-extracao-madeira-ilegal-de-r-900-mi-em-terra-indigena.shtml](http://www1.folha.uol.com.br/ambiente/2017/10/1924196-pf-desmonta-extracao-madeira-ilegal-de-r-900-mi-em-terra-indigena.shtml)> accessed 22 June 2018

<sup>161</sup> Greenpeace, Imaginary trees (n 156) 8

<sup>162</sup> Kevin Bales, *Blood and earth: modern slavery, ecocide and the secret to saving the world* (Spiegel&Grau, 2016) 8

<sup>163</sup> *ibid* 10

<sup>164</sup> CDVDH/CB and CPT (n 151) 28



Bales describe a very interesting case, related to charcoal production, but the same scenario can be applied for deforestation:

He [labour inspector] knew where the slaves were and he was ready to take official action - but when local bosses realised that he was serious about doing his job his telephone was taken away, the furniture removed from his office, and his official car was 'recalled'. The charcoal camps using enslaved workers were many miles away and deep in the forests, and on the occasions when he did manage to hitch a ride into the countryside, someone always seemed to tip off the slaveholders and the workers would go missing. The government had no real intention of dealing with slavery; the influence of rich landowners who benefited from forced labour was too strong and the slaves themselves were seen as irrelevant and disposable.<sup>165</sup>

Another emblematic case is related to the death of two young mans, that were working in a remote part of the forest clearing the land:

They worked hard for more than a month in terrible conditions, and then, fed up, they went to the landowner to demand their wages. The landowner promised he would send payment to them at the camp where they were working in the forest. Instead, he sent a gang to kill them. It took three years for the story to leak out and for the police to find their graves in the woods. The killers are long gone. Unable to tie the landowner directly to the murders, the police did what they could and jailed him for forty days, charged with the crime of cutting and clearing in a nature reserve.<sup>166</sup>

It is pertinent to mention that in Pará, the biggest Brazilian producer of tropical timber, from 2003 to 2016, '931 workers recruited to cut down trees have been rescued', this number represents more than a fifth of the Brazilian workers rescued in this sector.<sup>167</sup>

At this point, the important question is, what is the destination of the timber extracted in Brasil? As it was presented, the tropical timber is most probably (for the CPT, certainly) tainted with slavery.

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<sup>165</sup> Bales, Blood and earth (n 162) 176

<sup>166</sup> *ibid* 192

<sup>167</sup> Thais Lazzeri, 'Investigation reveals slave labor conditions in Brazil's timber industry' (Repórter Brasil, 15 March 2017) <[reporterbrasil.org.br/2017/03/investigation-reveals-slave-labor-conditions-in-brazils-timber-industry/](http://reporterbrasil.org.br/2017/03/investigation-reveals-slave-labor-conditions-in-brazils-timber-industry/)> accessed 22 June 2018

According to the Timber Trade Federation (TTF) website, the top timber exporter in South America to the UK, in 2017, was Brazil and the main product exported was the softwood plywood.<sup>168</sup> This research, however, will focus in the import of tropical hardwoods, since they are species that are sourced from the Amazon, and seemingly using slavery.

### 3.2 EXAMINE OF THE UK IMPORTERS

This section will focus on the UK companies that are importing Tropical Hardwood Plywood from South America, according to the list of the TTF.<sup>169</sup> The option for the analysis of Tropical Hardwood Plywood is related to the participation of the student in the project “The interaction of law and supply chain management in cross-judicial supply chains: Supply chain effectiveness of modern slavery legislation”, within the Rights Lab in the University of Nottingham. It was necessary to narrow the analysis, otherwise the examine of all the uses of tropical hardwood would be extremely broad for the purpose of this thesis.

According to the list in the Annex of this document, there are 27 companies in the UK importing Tropical Hardwood Plywood from South America. In order to do the present analysis, the first thing was observe the financial turnover of each company, considering that according to section 2 of the Modern Slavery Act 2015 (Transparency in Supply Chains) Regulations 2015<sup>170</sup>, the total amount turnover that demands a modern slavery statement is £36 million.

In this case, of the 27 companies listed by TTF as importers of tropical hardwood plywood from South America, only nine would have the obligation of presenting a

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<sup>168</sup> Timber Trade Federation, 'UK imports from Central & South America, by product 2017' <[www.ttf.co.uk/Data/Content/images/04%20Central%20and%20South%20America.PNG](http://www.ttf.co.uk/Data/Content/images/04%20Central%20and%20South%20America.PNG)> accessed 10 June 2018

<sup>169</sup> Timber Trade Federation, 'List by product. Tropical Hardwood Plywood, America South' <[www.ttf.co.uk/directory/list-by-product.aspx?CategoryId=258](http://www.ttf.co.uk/directory/list-by-product.aspx?CategoryId=258)> accessed 10 April 2018

<sup>170</sup> The Modern Slavery Act 2015 (Transparency in Supply Chains) Regulations 2015

modern slavery statement: Brooks Bros London (row 5), Caledonian Plywood (row 6), International Plywood Importers (row 16), Lathams (row 17), MDM Timber (row 19), Metsa Wood UK (row 20), MKM Building Supplies (row 21), Snows Timber (row 23) and Wood International Agency (row 27).

All the above mentioned companies have a modern slavery statement available in their websites, as it is listed in the third column of the Annex table that brings the information of the existence of a Modern Slavery statement.

However, as it will be discussed in the following section the Modern Slavery statements are extremely general, especially when it comes to the supply chain monitoring. In this sense, it is necessary to reflect if the mere existence of the statement would be enough to comply with the MSAAct.

About this point, Craig reflects that 'evidence is emerging about the extent to which companies are responding to the supply chains clause with a significant number of companies either producing weak or 'template' antislavery statements or no statements at all', the author mentions that this should demand a strengthening of this provision.<sup>171</sup>

In the MSAAct, section 54 establishes that the commercial organisation must prepare a slavery and human trafficking statement, containing the steps that the company has taken during the financial year to ensure that slavery and human trafficking is not taking place in any of its business relationships [4(a)] or that the organisation didn't implement any measures related to it [4(b)].

Moreover, item 5 establishes that the statement will contain the business structure, including of the supply chains, policies and due diligence processes, point out the most vulnerable parts of the supply chains which presents the high risk of slavery take place, performance indicators of its effectiveness in the monitoring of the supply chains to make sure that it is free of slavery, and available training for the staff.

Another important aspect is that the statements don't reflect a true commitment of the companies, especially when it comes to the suppliers. The focus is mention the zero

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<sup>171</sup> Craig (n 49) 25

tolerance of the parenting and a commitment of spreading awareness about the problem, but concrete measures to prevent and ensure transparency in the supply chains, as visits to the suppliers (especially from high risk areas), are not mentioned.

Further, in the cases where they ask for information about the suppliers, the material is provided by the supplier, and there is no mechanism which allow the importer to assure that the information is realistic and accurate. This is a significant issue, especially related to suppliers that are in the bottom of the chain, in countries with lack of transparency and high rates of corruption.

Nevertheless, important to mention that some cases, as James Lathams and Wood International, published their leading supplying countries, a relevant measure to allow the tracing of the chain. Thus, considering section 54.5(a) and (d), this list should be present in all the statements, and not considered a good practice of some.

Moreover, there is a clear concern about environment impact, and environmental certification, but it is not possible to visualise if this concern is also focused on the workforce conditions and human rights impacts.

Additionally it was possible to verify that the FSC certification is present in almost all the companies, as it is stated in the column 4 of the Annex. Nevertheless, the certificate is used by the companies only for some species of timber and in the majority of the cases the tropical hardwood wasn't between them. It arises the question that the timber sourced and sold in the UK as certified and traceable, in the cases of wood from tropical forests, is not.

An example of this would be Ipê (*Handroanthus spp.*, formerly known as *Tabebuia spp.*). Of the 27 companies only 2 (Brooks Bros London and Horndon Timber Products) have the Ipê between their certificate species, and Ipê decking is extremely common between the products available by the UK companies.

Besides, the companies claim that they use products free of slave labour, but the tracking and traceability of this products is not public information. There is no relevant information about it. It is not possible to find out the suppliers and in some cases not even the countries that are supplying the raw material. The bottom of the chain remains

a very grey area.

### 3.3 THE UK IMPORTERS AND THE BRAZILIAN SUPPLIERS: CHALLENGES AND PERSPECTIVES

To begin with the examine of the informations presented, one important point must be explored, related to the modern slavery statement. As mentioned, the total amount turnover that demands a modern slavery statement is £36 millions. It is necessary to question if this sort of differentiation, based on the turnover of the company, could be applied in cases involving human rights, whereas slavery as already discussed is a severe violation of human rights. After all, a small company can profit from slavery work and can do a lot of damage, maybe not in the same dimension as big business but still. An obligation related to human rights impacts shouldn't be measured by the economic capacity.

Further the UNGPs does not have a special treatment for small companies. On the contrary, it clearly establishes that 'these Guiding Principles apply to all States and to all business enterprises, both transnational and others, regardless of their size, sector, location, ownership and structure.'<sup>172</sup> This different treatment implemented by the UK legislation is not appropriate.

Moreover, if the obligation is just related to reporting, there is no punishments for the companies that actually have modern slavery, there is no reason to justify this distinction. Transparency should be universal and valid for all kinds of businesses, otherwise will be really hard to achieve an effective impact.

Also, as discussed about Brazil, without an effective due diligence of the companies that are interested in the tropical timber, there are too many ways that the supplier can provide illegal timber. As the Greenpeace highlights there are multiple ways of laundering illegal timber in Brazil: logging authorised in area already harvested

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<sup>172</sup> UNHRC A/HRC/17/31 (n 96) 6

or deforested, overstating the total volume within a sustainable forest management area of trees belonging to valuable species, authorised area with no signs of timber extraction, credits issued for more timber than the logging authorisation authorises to be harvested and credits issued without a logging authorisation or a sustainable forest management plan.<sup>173</sup>

As it was mentioned before, the environmental licensing system in Brazil is weak, so if there is no initiative of the companies that are profiting with the trade, the cycle of environmental destruction and use of slave work will just continue.

One interesting case presented by Greenpeace is related to the Virola Jatobá Sustainable Development Project, in the State of Pará. Created in 2002, it was the first sustainable development project of the state of Pará, based on the idea of a 'new model of settlement intended to ensure settlers a secure additional source of income based on managed harvesting of timber, without destroying the forest.'<sup>174</sup> The settlement families created an association to execute forestry activities, based on a sustainable forest management plan.

The management plan was approved in 2007 and, in order to start the project, the association began a partnership with the private company Vitória Régia Exportadora, which was responsible for 'implementing the management plan, producing the forest inventory for the next UPAs<sup>175</sup> and ensuring that forestry activity met Forest Stewardship Council (FSC) standards'.<sup>176</sup>

However, in 2013 the Greenpeace visited the area and found out that the partnership brought negative environmental and social impacts to the region. Vitória Régia have been sold to another company and the management of the partnership was with a third company. The obligations related to the FSC requirements and to provide supplies for the families weren't fulfilled. Documents related to timber transportation

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<sup>173</sup> Greenpeace, Amazon silent crisis (n 150) 14

<sup>174</sup> *ibid* 16

<sup>175</sup> Annual production unit.

<sup>176</sup> Greenpeace, Amazon silent crisis (n 150) 16

were hidden from the members of the communities and they also found out that the same documentation was being used for more than one truckload of timber. Also, they abandoned lots of logs and didn't harvest other trees, using the credits for timber logged somewhere else.

Greenpeace found 13 companies which have exported timber sourced from Virola Jatobá, and the UK appears as one of the importers.<sup>177</sup> It is important to mention that Vitória Régia was still exporting timber from Virola Jatobá (even after withdrawing from the partnership) and the company claim to be sustainable and FSC certified.

It is clear, in this case, not just the fragile Brazilian system, but also the vulnerability of the entire supply chain, because a project that should be based on a sustainable project, in fact is harvesting in a completely irregular way and even claiming to have FSC certification. There is an “appearance” of legality, and, unfortunately, the timber market is full of wood with this same appearance.

Additionally it was possible to verify that the FSC certification is used for the companies for only some species of timber and in the majority of the cases the tropical hardwood wasn't between them. It arises the question that the timber sourced and sold in the UK as certified and traceable, in the cases of wood from tropical forests is not.

It is pertinent to mention, just as a related case of international certificates, the company Cutrale, which produces fresh citrus orange juice. Cutrale is in the Brazilian "dirty list" of slave labour, because cases of slavery were found in its farms in Minas Gerais. Thus, at the same time it got the Rainforest Alliance seal for good practices in a farm in São Paulo. The Rainforest Alliance justified that the certificate is related to a different farm of the company and it would be a tool to improve the practices.<sup>178</sup>

However, if the farms are owned and managed by the same company, and if they all produce the same products, how is it possible to separate the products, in order to the seal just appear for the products of the farm from São Paulo? And a worst reflection: if

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<sup>177</sup> Greenpeace, Amazon silent crisis (n 150) 18

<sup>178</sup> Daniela Penha, 'Included in the dirty list, Cutrale still has farms certified with “good practice” seal' (Repórter Brasil, 17 May 2018) <[reporterbrasil.org.br/2018/05/included-in-the-dirty-list-cutrale-still-has-farms-certified-with-good-practice-seal/](http://reporterbrasil.org.br/2018/05/included-in-the-dirty-list-cutrale-still-has-farms-certified-with-good-practice-seal/)> accessed 25 June 2018

this practice is present and accepted in one of the farms, who can guarantee that is not going to spread around the others? After all, slave labour is very cheap and there are a lot of workers willing to accept the conditions imposed by the business because they need to survive and provide for their families. This problem is highlighted by Bales:

The cost of acquiring a slave in rural Brazil is practically zero. Desperate for work, a potential slave only needs to be offered a job, chivied along with some food, and transported into the forest. For the slaveholder there's no purchase price, no up-front payment, just the expense of finding them, feeding them, moving them, and providing the axes, saws, and shovels needed for the work. The cost of getting a slave is so low that the length of enslavement is shortened, in many cases, to around a month. [...] for the criminals tearing out the forest, short-term slavery is a great way to maximise profits while minimising risks.<sup>179</sup>

So, if there is a pattern of behaviour, and there are so many people that would accept it, it is really hard to believe that certificating and rewarding a company that actually has really BAD practices will change anything.

Moreover, as mentioned, it is interesting to stress that in the cases where the companies ask for information about the suppliers, the material is provided by the supplier, without a mechanism that allow the importer to ensure that the information is realistic. This is a significant issue, especially related to suppliers that are in the bottom of the chain, in countries with lack of transparency and high rates of corruption, as it is the case of Brazil.

In Brazil there are a lot of politicians profiting with slavery, as it was disclosed by a research from Reporter Brasil, which find out that, in the election of 2014, 51 of the 513 elected federal deputies in Brazil received money from donors that are implicated in the use of slavery.<sup>180</sup> If those that should be fighting against slavery, are profiting with it, it is very hard to believe that serious measures will be implemented to eradicate this

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<sup>179</sup> Bales, *Blood and earth* (n 162) 193

<sup>180</sup> Ana Sophie Gross, 'One in 10 senior politicians in Brazil funded by companies 'linked to slavery'' (The Guardian, 16 February 2018) <[www.theguardian.com/global-development/2018/feb/16/one-in-10-senior-politicians-in-brazil-funded-by-companies-linked-to-slavery](http://www.theguardian.com/global-development/2018/feb/16/one-in-10-senior-politicians-in-brazil-funded-by-companies-linked-to-slavery)> accessed 10 March 2018; Piero Locatelli, 'Empresas flagradas com trabalho escravo financiaram 10% dos deputados federais' (Repórter Brasil, 30 January 2018) <[reporterbrasil.org.br/2018/01/empresas-flagradas-com-trabalho-escravo-financiaram-10-dos-deputados-federais/](http://reporterbrasil.org.br/2018/01/empresas-flagradas-com-trabalho-escravo-financiaram-10-dos-deputados-federais/)> accessed 20 June 2018



practice. And also, that the suppliers will be serious enough to eradicate this practice by their own initiative, if they face a scenario that allows them to keep with it. It is clear that the commitment must be of the importer, that should have the initiative of checking the activities of the suppliers and not just taking it for granted.

As discussed in the previous chapter, the UNGPs establish that the business is responsible for human impacts within its business relationships, so it is more than clear that a serious monitoring system of their supplier activities should be implemented. Just ask for information, that they know (or ought to know) that is not reliable, is not complying with their responsibility to respect human rights.

The OECD MNE and the MNE Declaration, are also clear about the responsibility of the enterprises of eradicating slavery from its operations. This goes even further, because it means that companies must implement measures, must use their leverage, to influence their suppliers. It is beyond monitoring and reporting, it demands action!

Another important point to be stressed, is connected to the impunity and the length of judicial procedures. On April 2017, in the city of Colniza, north of the state of Mato Grosso, there was a slaughter of 9 rural workers by a group of hooded men, hired by the owner of a logging company that was aiming to get rid of settlers families in order to extract illegal wood of the forest, since the region has species of high value, as Ipê, Jatobá and Massaranduba. Even with strong evidence related to who hired the workers and who committed the crimes, the operations of the logging companies weren't suspended and they are still exporting, even to Europe.<sup>181</sup> So, if a company is aware that the supplier is facing a judicial procedure in a heinous case like this, should it still be importing from them? Because that would be a clear way of profiting from a conflict environment.

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<sup>181</sup> Greenpeace Brasil, *Madeira manchada de sangue* (2017) <[www.greenpeace.org.br/hubfs/Campanhas/Chega%20De%20Madeira%20Illegal/Relatório%20-%20Madeira%20Manchada%20de%20Sangue.pdf](http://www.greenpeace.org.br/hubfs/Campanhas/Chega%20De%20Madeira%20Illegal/Relatório%20-%20Madeira%20Manchada%20de%20Sangue.pdf)> accessed 27 June 2018

The Public Prosecution of the State of Mato Grosso, filed a complaint against 5 people connected to the slaughter (Janã Pinheiro, 'Os encapuzados: MP denuncia 5 acusados de participar da chacina de 9 pessoas em Colniza' (MPMT, 15 May 2017) <[mpmt.mp.br/conteudo/58/71849/mp-denuncia-5-acusados-de-participar-da-chacina-de-9-pessoas-em-colniza](http://mpmt.mp.br/conteudo/58/71849/mp-denuncia-5-acusados-de-participar-da-chacina-de-9-pessoas-em-colniza)> accessed 27 June 2018)

Bales, in an interview to Repórter Brasil, made an interesting reflection about slavery in supply chains, mentioning that 'often the criminals are hiding behind “front” people. Even the people who are inspecting supply chains will find it difficult to penetrate down to the bottom level. And once criminals are exposed, they will move to a different supply chain. So it’s about constant vigilance.’<sup>182</sup> Constant vigilance is the key.

It is not possible to eradicate slavery from the timber supply chains without measures that are actually targeting the supplier countries. Because, even if the supplier guarantee that the timber harvested is legal, there are numerous ways of laundering timber. It is necessary to improve transparency and traceability. Without public and accessible information about the production it is not feasible that the system will move forward, because it will remain with vulnerable spots.

There are limits for the State, but not for private companies. They must be seen as the most important players in this relation, because they are able to comply with different jurisdictions and to implement good practices in weak environments. The only point is that the will is essential, the motivation must have clear goals in order to achieve a positive impact. The fight against slavery has an important ally: the corporations. They just need to realise that, and decide that it is better to respect and promote human dignity, than profit with slavery.

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<sup>182</sup> Aranha and Diaz (n 153)

## CONCLUSION

The eradication of slavery is not a new discussion. As reviewed in the previous pages, there are several treaties related to it and to the promotion of workers protection.

In 1926 one of the most important treaties for the eradication of slavery was adopted by the League of Nations, establishing that slavery is connected to the exercise of the right of ownership over another person. Almost one hundred years after this document, there are still discussions related to the concept of modern slavery, that can vary from a country to another. An advance in this field was the creation of the BHG, which consists in a list of guidelines that provide parameters for the comprehension of the concept.

Even if there are discussions related to the definition, there is no question that slavery is still present all over the world. The forms that prevail can be different, based on cultural, social and, especially, economic factors. Today the majority of cases are not based on racial discrimination, but in a relation of economic domination.

Slavery nowadays is a major consequence of inequality and poverty, which creates a crowd of disposable people. It is a result of high vulnerability and desperation of people trying to survive, that encounters the greed of those eager to profit without any shame of exploiting a human being.

Nevertheless, initiatives related to the elimination of slavery are raising, as the UK Modern Slavery Act. Also, the international community is aware that it is necessary to overcome the traditional view related to the obligations focused only in the State and engage with different actors: the corporations.

In a globalised market, where companies' suppliers come from many different parts of the world, the responsibility of corporations to assess and address human rights impacts is ever increasing. Especially after the UNGPs made clear that companies have a responsibility to respect human rights, and in this responsibility is included all its business relationships. Even when facing a complex supply chain, with higher risks and more points of vulnerability, it is important that a company is able to trace and

implement due diligence processes until the bottom of it, using its leverage to influence the business relations.

Notwithstanding this favourable legal framework, the reality is not following it and there are still several gaps in the implementation of effective mechanisms to comply with it. As evident in the study of the timber supply chain, the legislation in the UK focus in transparency in the supply chains, corroborated by several international guidelines which regulate that companies should address human rights impacts in its business relations, yet the timber extracted from the Amazon forest is still tainted by slavery and deforestation.

Despite the advanced slavery legislation implemented in the UK, tracing supply chains remains a challenge. Not only due to a weak compliance of the companies with the British law, but especially because there is no mechanism to monitor the companies and enforce the legislation. Further, in the study case related to Brazil, the weaknesses can be identified by the lack of inspection and legislation enforcement in Brazil, associated with high levels of corruption, that create an ideal scenario for illegal logging thrive.

The aim of this work was to analyse how the legal mechanisms can affect global supply chain practices towards eradication of modern slavery. In order to do that, the focus was primarily on the UK Modern Slavery Act and on the UNGPs, analysing its impacts in the conduct of companies.

Although the UNGPs aims towards a drastic change in the scenario, influencing a variety of legislation related to business and human rights, that is still an area with a lot of voluntary instruments. Even if good practices are being implemented, the impact of the legislation in the supply chains remains a challenge. Corruption, weak legislation, lack of law enforcement, bribery, there are several factors that can be listed as influence for non-compliance.

Nonetheless, corporations must set high standards of human rights respect even when facing a fragile government structure. Instead of profiting from a vulnerable structure, they must be a positive influence, since the practices that the enterprises will

implement in their operations have the power to create a positive impact in the livelihoods of its employees and the community. Thus, it is completely dependent on the willingness of the board to implement due diligence processes assessing human rights risks and raise awareness amongst its suppliers about ways to eliminate human rights impacts and, specifically, slavery.

The case of timber in Brazil is extremely emblematic, because it associate slavery and environmental destruction in a heinous relationship. As discussed, it is not possible to rely exclusively in the Brazilian environmental regulation system or in the labour inspection in the country. As a result of a range of issues, that are related to corruption, lack of personnel and weak legislation, the Brazilian government is still struggling to monitor the deforestation and to implement effective policies to protect the Amazon.

An important concern connected to the illegal logging, is that the timber harvested from the Amazon is traded in the UK with an appearance of legality, in some cases even underpinned by an environmental certificate, creating an illusion that it was sourced in a sustainable way. Thus, based on this study, it is likely that the tropical timber traded in the UK come from illegal sources.

In face of a reality like that, what are the measures that could be implemented? Some may argue that it is necessary to work with the public institutions, fight against corruption, try to implement a legislation with more severe punishment for perpetrators. However, when it comes to Brazilian reality, unfortunately, the Amazon region is still like the Old West. There are powerful landowners benefiting from environmental impacts and slavery, controlling the police and influencing political decisions. It is a system with deep roots, that will take several years of work to change it.

In this sense, in order to achieve a prompt impact the target should be the enterprises that are operating or sourcing from the region, because they have an economic importance and can drive a change in this scenario. The challenge is how to engage with this corporations making them aware of their important role for the promotion of human rights, not just the respect that is a minimum, but their relevance to the promotion of decent livelihoods.

Legislation is extremely important by all means. The Modern Slavery Act, the UNGPs, the OECD Guidelines, set the standard and are responsible for stimulate changes. But what was identified is that the legislation itself is not enough. The illegal market is flourishing and driven by the pursue of profit. While there is a mass of people willing to perform work in slavery conditions, there will be a mass of people prepared to exploit them. It is necessary to change this equation. And the most important subjects to change it are those who can employ and who profit most.

The pursue for dignity and the fight against slavery conditions must be daily and of all. Slavery is present in the history of mankind since the ancient times, but it needs to stop. The initiative of the UN establishing in the SDG 8 the target to achieve decent work for all by 2030 is remarkable. It is an amazing goal to aspire to and hopefully will change the life of 45.8 million of slaves around the world.

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## ANNEX

	Company	Turnover	Modern Slavery Statement	FSC certificate - species plywood (W8.1)
1	Altripan ( <a href="http://www.altripan.com">http://www.altripan.com</a> )- Company number (CN): 06245964	Financial statement of 2017. Turnover of £19,186,141.	The website doesn't bring a lot of relevant information. There is nothing about the species of the products they use. There is no modern slavery statement. They mention some part of the timber is certified by FSC, PEFC, EUTR.	Aucoumea klaineana Pierre; Betula spp.; Calophyllum spp.; Camptosperma spp.; Eucalyptus spp; Fagus sylvatica L.; Palaquium spp.; Pinus elliotii; Pinus radiata; Populus spp.; Terminalia spp.
2	ATP - Advanced Technical Panels ( <a href="http://www.advancedtechnicalpanels.co.uk">http://www.advancedtechnicalpanels.co.uk</a> )	Latham group.	Part of James Lathan Group. No relevant information in the website, all connected with Latham Group.	
3	Arnold Laver ( <a href="https://www.laver.co.uk">https://www.laver.co.uk</a> ) - CN: 10608445	Changed state of the company, there's no financial statement yet.	They have a modern slavery statement, signed on January 2018. They acknowledge that some suppliers are in high risk of using slave labour. Between their hardwood products it is possible to find Brazilian cedar. But between the timber species, all the tropical hardwood they mention are sourced in Asia and Africa. However, in other part of their website they mention between the range of the hardwood, the specie Ipe ( <a href="https://www.laver.co.uk/content/hardwood">https://www.laver.co.uk/content/hardwood</a> ).	Aucoumea klaineana Pierre; Betula spp.; Pinus elliotii
4	AW Champion ( <a href="http://www.championtimber.com">http://www.championtimber.com</a> ) - CN: 04844708	Financial statement of 2016 - Turnover of £29,108,862.	They don't mention the suppliers of the hardwood in the website, but they have teak between the species. The FSC certificates are related to a supplier in Finland. There is no modern slavery statement.	FSC certificate is not for plywood (it mentions would panels [W8], but not the species).

5	<p>Brooks Bros London (<a href="http://brookslondon.co.uk">http://brookslondon.co.uk</a> and <a href="http://www.brookstiber.co.uk">http://www.brookstiber.co.uk</a>) - CN: 01644146 (UK) - 01035431 (London)</p>	<p><b>F i n a n c i a l</b> statement (UK) of 2016 - Turnover of <b>£54,961,069</b>. Brooks Bros London is a small company.</p>	<p>In the website, between the hardwood options, there is no one of the tropical ones. With the FSC certificate they have a risk assessment document related to timber harvested in the UK. In the website of Brooks Timber, they mention that the American hardwoods used by the company are: alder, ash american, cherry, cocobolo/rosewood, eco mahogany, elm red, laurel, maple hard, maple soft, oak american red, oak american white, Spanish cedar, Spanish oak, tulipwood, walnut black, jatobá. Brooks Bros has two modern slavery statements, one of 2016 and other of 2017. They mention that they have a due diligence system, implemented in their supply chain, to make sure that the imported products comply with EU regulations. The statement of 2017, mentions that 78,6% of the products purchased by them is certified.</p>	<p>Don't mention plywood, but the wood panels [W8] species are: <i>Acer saccharum</i> L; <i>Fraxinus excelsior</i>; <i>Fraxinus americana</i>; <i>Prunus serotina</i> Ehrh.; <i>Pterygota macrocarpa</i>; <i>Quercus robur</i> L.; <i>Sacoglottis</i> spp. (Brooks Bros UK). The species used for wood panels by Brooks Bros London are: <i>Abies grandis</i>; <i>Abies</i> spp.; <i>Acer</i> spp.; <i>Aesculus</i> spp.; <i>Albizia procera</i> Benth.; <i>Alchornea triplinervia</i> (Spreng.) Muell. Arg. (Tapi?); <i>Alnus</i> spp.; <i>Alstonia</i> spp. - section <i>Alstonia</i>; <i>Apuleia leiocarpa</i>; <i>Araucaria angustifolia</i> O. Ktze; <i>Aucoumea klaineana</i> Pierre; <i>Bambusa vulgaris</i>; <i>Betula pendula</i>; <i>Betula pubescens</i>; <i>Betula</i> spp.; <i>Carya illinoensis</i>; <i>Castanea sativa</i> Mill., <i>Castanea</i> spp.; <i>Cedrela odorata</i>; <i>Dalbergia decipularis</i> Matt. &amp; Rizz.; <i>Dipterocarpus</i> spp; <i>Dipteryx odorata</i>; <i>Dryobalanops</i> spp.; <i>Entandrophragma cylindricum</i>; <i>Entandrophragma utile</i>; <i>Erisma uncinnatum</i> Warm; <i>Erythrophleum ivorense</i>; <i>Eucalyptus globulus</i>; <i>Eucalyptus grandis</i>; <i>Eucalyptus maidenii</i>; <i>Fagus</i> spp.; <i>Fagus sylvatica</i> L.; <i>Fraxinus excelsior</i>; <i>Fraxinus americana</i>; <i>Fraxinus</i> spp.; <i>Gossweilerodendron balsamiferum</i> (Verm.) Harms; <i>Hevea brasiliensis</i>; <i>Juglans nigra</i> L.; <i>Juglans regia</i> L.; <i>Juglans</i> spp.; <i>Khaya ivorensis</i> A. Chev.; <i>Khaya</i> spp.; <i>Larix decidua</i>; <i>Larix kaempferi</i>; <i>Liriodendron</i></p>
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6	Caledonian Plywood Company ( <a href="http://www.caledonianplywood.com">http://www.caledonianplywood.com</a> ) - CN: SC195444	Financial information until May 31st, 2017 - Turnover of 51,329,489.	In the website there is the information that they import from Brazil, and they mention the following: "Elliottis Pine softwood plywood manufactured from a mix of Elliottis and Taeda Pine. The product has FSC® Certification and can be offered to both CE4 and structural CE2+ under the Construction Products Directive with supporting DOP (Declaration of Performance). The face grades are C+/C and B/C and the glue line is suitable for external use, EN314/2 Class 3." They have a Modern Slavery act statement, available at <a href="http://www.caledonianplywood.com/assets/docs/Statement.pdf">http://www.caledonianplywood.com/assets/docs/Statement.pdf</a> In the statement they mention a lot of measures, and an annual report that should be available in the website, but it wasn't accessible.	Pseudotsuga menziesii
7	Decor Solutions ( <a href="http://www.decor-melamine.co.uk">http://www.decor-melamine.co.uk</a> ) - CN: 00620437 (E.C. Griffiths & CO. Limited)	Small company	The website doesn't bring a lot of relevant information. There is nothing about the species of the products they use. There is no modern slavery statement.	Betula spp.; Picea abies (L.) H. Karst.; Pinus spp.
8	Devon Hardwoods ( <a href="http://devonhardwoods.co.uk">http://devonhardwoods.co.uk</a> ) - CN: 01922845	Small company. Part of Hardwood Dimensions (Holding) Limited, that is qualified as a small group. The turnover of 2015 was £8,536,348.	Between their products they have teak, and can source rubber wood and mahogany. And they mention that Ipe is used for decking. There is no modern slavery statement.	The certificate is not for plywood.

9	DHH Timber products ( <a href="http://www.dhhtimber.co.uk">http://www.dhhtimber.co.uk</a> ) - CN: 02377214	Financial statement of 2017. Turnover of £15,539,082.	They don't mention hardwood between their products. There is no modern slavery statement.	Betula spp.; Picea spp.; Pinus spp.
10	EO Burton ( <a href="http://www.eoburton.com">http://www.eoburton.com</a> ) - CN: 00543509	Small company	They mention that they supply timber from South America. Between the species used as hardwood, it wasn't possible to identify tropical hardwoods. There is no modern slavery statement.	The certificate is not for plywood.
11	Enfield Doors ( <a href="https://www.enfielddoors.co.uk">https://www.enfielddoors.co.uk</a> ) - CN: 00325017 (George Wood & Sons (Enfield) Limited)	Small company	They are specialists in doors. The website doesn't bring information about the species used and the suppliers. There is a brochure available that mention some woods that can be used. No modern slavery statement.	The certificate is not for plywood.



12	Graeme Holburn & Company - CN: 03762039	Small company	TTF website mentions that between their products are conifers plywood and tropical hardwood, both from South America.	Abies sibirica; Abies spp.; Alnus glutinosa; Alstonia spp. - section Alstonia; Anisoptera spp.; Anthocephalus chinensis Rich.; Aucoumea klaineana Pierre; Betula pendula; Betula spp.; Calophyllum spp.; Dillenia spp.; Dipterocarpus spp; Durio spp.; Entandrophragma cylindricum; Eucalyptus deglupta Blume; Eucalyptus globulus Labill.; Eucalyptus grandis; Eugenia spp; Fagus sylvatica L.; Gluta spp.; Heritiera spp.; Hopea spp.; Koopassia malaccensis Maing.; Larix sibirica; Octomeles sumatrana Miq. (Binuang); Palaquium spp.; Picea abies; Picea obovata; Pinus elliottii; Pinus pinaster; Pinus radiata; Pinus sibirica; Pinus strobus; Pinus sylvestris; Pinus taeda L.; Populus spp.; Populus tremula; Scaphium macropodum (Miq.) Beumée ex K. Heyne; Shorea leprosula Miq.; Shorea macrophylla (de Vriese) Ashton; Shorea multiflora (Burck) Sym.; Shorea siamensis Miq.; Shorea spp.; Sindora spp.; Spondias mombin L. (Jobo); Terminalia superba
13	Hanson Plywood ( <a href="https://hanson-plywood.co.uk">https://hanson-plywood.co.uk</a> ) - CN: 00336717	Financial statement of 2017. Turnover of £33,632,878.	Clearly refer to wood from Indonesia, Finland, Italy and Brazil. "Elliottis Pine Plywood is sourced from FSC® forest concessions in the states of Paraná and Santa Catarina, Southern Brazil." They don't have modern slavery statement.	The certificate has wood panels, but doesn't mention the species.

14	<p>Horndon Timber Products (<a href="https://www.horndontimberproducts.co.uk">https://www.horndontimberproducts.co.uk</a>) - CN: 03791550</p>	Small company	<p>There is no modern slavery statement. Between the species of the FSC certificate, they have “hevea brasiliensis”, which is Brazilian rubber tree. In the website, they mention Ipe as the hardwood timber for decking.</p>	<p>Wood panels: Abies grandis; Abies spp; Acer spp.; Aesculus spp.; Albizia procera Benth.; Alchornea triplinervia (Spreng.) Muell. Arg. (Tapi?); Alnus spp.; Alstonia spp. - section Alstonia; Apuleia leiocarpa; Araucaria angustifolia O. Ktze; Aucoumea klaineana Pierre; Bambusa vulgaris; Betula pendula; Betula pubescens; Betula spp.; Carya illinoensis; Castanea sativa Mill., Castanea spp.; Cedrela odorata; Dalbergia decipularis Matt. &amp; Rizz.; Dipterocarpus spp; Dipteryx odorata; Dryobalanops spp.; Entandrophragma cylindricum; Entandrophragma utile; Erisma uncinnatum Warm; Erythrophleum ivorense; Eucalyptus globulus; Eucalyptus grandis; Eucalyptus maidenii; Fagus spp.; Fagus sylvatica L.; Fraxinus excelsior; Fraxinus americana; Fraxinus spp.; Gossweilerodendron balsamiferum (Verm.) Harms; Hevea brasiliensis; Juglans nigra L.; Juglans regia L.; Juglans spp.; Khaya ivorensis A. Chev.; Khaya spp.; Larix decidua; Larix kaempferi; Liriodendron tulipifera L.; Milicia excelsa; Nothofagus spp.; Parashorea spp. (Urat mata, white seraya, gerutu); Picea abies; Picea sitchensis; Picea spp.; Pinus contorta; Pinus elliottii; Pinus nigra; Pinus radiata; Pinus spp.; Pinus strobus; Pinus sylvestris; Pinus taeda; Populus tremula;</p>
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15	Hunt Brothers & Co. - CN: 00530406	Small company	In the TTF website related to South America, there is just the information of tropical hardwood plywood.	Wood panels : Entandrophragma cylindricum; Fraxinus excelsior; Juglans nigra L.; Larix spp.; Picea abies; Pinus sylvestris; Pseudotsuga menziesii; Quercus spp
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16	<p>International Plywood Importers (<a href="http://www.plywooduk.com">http://www.plywooduk.com</a>) - CN: 01537086</p>	<p>Financial statement of 2017. Turnover of <b>£129,136,169</b></p>	<p>Modern Slavery Act statement in the home page. The statement express clearly compliance with art. 54 of MSAAct (transparency in supply chains). The mains sources of supply are China, Malaysia, Brazil, Chile, Russia and also EU countries such as Latvia, Italy and Spain.</p> <p>Distribution network: 1) International plywood (importers) - based in Gloucester, sales to UK-based costumers; 2) International panel products - Gloucester, sales to Europe and Ireland; 3) Panel Supplies Ltd. - based in Tilbury, sales to London and S.E. England.</p> <p>Partners: Saga Welco Shipping (Norway); Mediterranean shipping company; port of Tilbury; Bristol port company; Port of Tyne.</p> <p>There is also a statement related to the Responsible Timber Products Purchasing Policy, and the company commits to prevent illegal timber from being part of their supply chain.</p> <p>They established a record with information of their suppliers, tracking the chains (track record).</p> <p>They mention the use of Brazilian plywood, informing that they stock both Hardwood Plywood and Softwood Plywood from Brazilian manufacturers and also hold stocks of MDO panels.</p>	<p>In the certificate has plywood, but not the species.</p>
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17	Lathams ( <a href="http://www.lathamtimber.co.uk">http://www.lathamtimber.co.uk</a> ) - CN: 00967247	Financial statement of 2017. Turnover of £198,808,000.	They have a modern slavery statement, but it is from 2016. They use Brazilian Mahogany. In the James Latham PLC Annual Report 2017 ( <a href="http://www.lathamtimber.co.uk/downloads/james-latham-annual-reports-accounts-2017-.pdf">http://www.lathamtimber.co.uk/downloads/james-latham-annual-reports-accounts-2017-.pdf</a> ) it is mentioned that company buyers have visited individual suppliers in Europe, Russia, Congo Brazzaville, China, Indonesia, Malaysia, the United States, Uruguay, Brazil and Argentina and are trying to raise awareness about the importance of independent certification of forests and supply chains (p. 15). They also mention that are committed with supply chain transparency endorsing the Modern Slavery Act (p.16). In the FSC website, they just have a risk assessment of the wood imported from the USA.	Betula spp.; Eucalyptus grandis; Fagus spp.; Pinus elliottii; Pinus taeda
18	LDT - Direct timber ( <a href="http://www.directtimber.co.uk">http://www.directtimber.co.uk</a> )	Latham group	They use Cumaru and Ipe for decking. They are part of James Lathams Group.	
19	MDM Timber ( <a href="http://www.mdmtimber.co.uk">http://www.mdmtimber.co.uk</a> ) - CN: 02348881	Financial statement of 2017. Turnover of £68,229,756.	The Modern Slavery Statement is in the home page and the statement mention that the company is creating action plans to address the problem (but this document is not available). The statement was just valid until April 2017. They mention that their hardwood plywood is from Far East, Brazil and China.	Picea abies; Pinus sylvestris

20	Metsa Wood UK ( <a href="https://www.metsawood.com/uk/Pages/default.aspx">https://www.metsawood.com/uk/Pages/default.aspx</a> ) - CN: 03071064	Financial statement of 2016. Turnover of <b>£161,471,000</b> .	They have a Transparency Statement, related to the UK Modern Slavery Act, mentioning that the group sells timber and timber products sourced from Europe, Asia and South America. The statement is related to the financial year of 2016. They mention that in 2017, 79% of the wood bought by the group came from Finland and also purchased from Russia, Sweden and the Baltic countries.	The certificate doesn't mention the species.
21	MKM Building Supplies ( <a href="https://www.mkmb.co.uk">https://www.mkmb.co.uk</a> ) - CN: 05656601 (M.K.M. Building Supplies (Holdings) Limited)	Financial statement of 2016. Revenue of <b>£284,313,000</b> .	They have a modern slavery statement. One of the actions that they mention in the statement is a risk assessment mapping the supply chains (this document is not available). The statement was valid until 31/3/2018. There is no information of the species used and the suppliers.	The certificate doesn't mention the species.
22	Morgan Timber ( <a href="http://www.morgantimber.co.uk">http://www.morgantimber.co.uk</a> ) - CN: 04740965	Micro company	In the hardwood species they mention cumaru and ipe. There is no modern slavery statement.	The certificate has wood panels, but doesn't mention the species.
23	Snows Timber ( <a href="http://www.snowstimber.com">http://www.snowstimber.com</a> ) - CN: 01549201	Financial statement of 2017. Turnover of <b>£41,351,564</b> .	They have a modern slavery statement. One of the actions mentioned is conducting onsite audits. In their timber buyers handbook they mention cumaru, but there are no information about the suppliers.	The certificate doesn't mention the species.

24	T. Brewer ( <a href="http://www.tbrewer.co.uk">http://www.tbrewer.co.uk</a> ) - CN: 02683645	Financial statement of 2016. Turnover of £14,204,938.	The product catalogue wasn't available. It wasn't possible to find information about the species and suppliers. There is no moderns slavery statement. This company is part of the Grafton Group.	Wood panels: <i>Abies alba</i> ; <i>Betula pendula</i> ; <i>Larix decidua</i> ; <i>Pinus eliottii</i> ; <i>Pinus sylvestris</i> ; <i>Pseudotsuga menziesii</i> ; <i>Shorea</i> spp., subg. <i>Shorea</i>
25	Tradewood & Co. ( <a href="http://www.tradewood.co.uk">http://www.tradewood.co.uk</a> ) - CN: NI642180 (Tradewood International Plywood Limited)	Registered in 2016. There is no financial statements yet.	They mention that the plywood sourced from Brazil is: Elliotis pine, ECO-Trade, ECO-Wood, ECO-Max, Brazilian Tropical Hardwood Throughout , Form Ply Oiled. But they don't mention the species. There is no modern slavery statement.	The certificate has wood panels, but doesn't mention the species.
26	Wood concepts ( <a href="http://www.woodconcepts.ie">http://www.woodconcepts.ie</a> )		They have Brazilian hardwood plywood, but they don't mention which species are used in the mix of hardwoods. There is no modern slavery statement.	<i>Anacardium</i> spp.; <i>Araucaria angustifolia</i> O. Ktze; <i>Astronium lecointei</i> Ducke; <i>Aucoumea klaineana</i> Pierre; <i>Clarisia racemosa</i> Ruiz & Pav.; <i>Copaifera langsdorfii</i> Desf.; <i>Entandrophragma cylindricum</i> ; <i>Enterolobium contortisiliquum</i> ; <i>Enterolobium schomburgkii</i> ; <i>Eucalyptus benthamii</i> ; <i>Eucalyptus dunnii</i> ; <i>Eucalyptus grandis</i> ; <i>Eucalyptus</i> spp; <i>Jacaranda copaia</i> (Aubl.) D.Don, <i>Jacaranda</i> spp.; <i>Ocotea</i> spp.; <i>Parkia pendula</i> ; <i>Pinus taeda</i> ; <i>Pithecellobium winzerlingii</i> Britton & Rose; <i>Populus</i> spp.; <i>Schizolobium amazonicum</i> Huber ex Ducke; <i>Trattinnickia burserifolia</i> Mart.

27	Wood International Agency ( <a href="http://woodia.co.uk">http://woodia.co.uk</a> ) - CN: 01866287	Financial statement of 2017. Turnover of £48,411,439.	They have a modern slavery statement, mentioning that they source from several countries including Argentina, Brazil, Chile, China, Indonesia, Malaysia, Paraguay, South Africa. They also mention that they have a monitoring system to analyse potential risk areas in their supply chain. Statement for the financial year of 2017. In their products they mention that they Brazil is one of the suppliers, but don't refer to the species.	Eucalyptus spp; Pinus elliottii; Pinus patula; Pinus radiata; Pinus taeda
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