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The Truth Behind Intermittent Work: Impacts for Gender (In)Equality in Brazil
Lessons to Be Learnt from Portugal

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2. Acknowledgements

I dedicate this work to all women, who have been unfairly treated as inferior and invisible since the beginnings of existence. We must be empowered and respected, regardless of who we are or chose to be. I hope that this study will provide support to our fight.

I thank everyone who believed in me and helped me conquer this new step in my career.

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3. Abstract

Over the past decades, gender equality has gained much emphasis as part of the scope of labour human rights. However, in 2017, the Intermittent Work Contract (IWC) was introduced in Brazilian labour laws, allowing more flexible working, but also threatening the human rights effectiveness regarding gender equality in labour. While society was convinced that IWC would be positive for gender representation, it will in fact, result in worse conditions of work for women. A similar process has occurred in Portugal, IWC was also recently introduced in the legal framework, causing a raise in precarity of work contracts especially for women. It reinforced the invisible process of feminine underemployment and accentuated gender inequality. Therefore, a comparison between the IWC systems in Brazil and Portugal allows to predict the impacts of flexible work relationships for gender equality in Brazil. After all, both nations have similar laws, a common historical and cultural background and experienced analogous social-economic contexts of IWC implementation. This work aims to explain via a legal and social-economic analysis which and how negative will be the impacts of IWC for women in Brazil based in the Portuguese experience, considering the similarities and differences between both nations.

Keywords: Intermittent work, Gender equality, Labour Rights, Human Rights

4. Table of contents

1. Anti-Plagiarism Declaration.....	3
2. Acknowledgements.....	1
3. Abstract.....	2
4. Table of contents.....	3
5. List of Abbreviations.....	7
6. Declaration.....	9
7. The Truth Behind Intermittent Work: Impacts for Gender (In)Equality in Brazil, Lessons to Be Learnt from Portugal.....	10
I. Introduction.....	10
II. The Labour Laws in Brazil: Gender Equality, the Protection of Minimal Labour Rights, and a Change of Paradigm.....	13
II.i. Gender, Labour Rights and the Legal Framework in Brazil.....	13
a. <i>The International Protection</i>	16
b. <i>The National Protection</i>	22
II.ii. The Labour Laws Reform in Brazil: Introduction of Intermittent Work Contracts, a Path Towards Work Flexibility and Precarity.....	25
a. Historical Background of Flexible and Intermittent Work Laws in Brazil.....	25
b. <i>The Brazilian Intermittent Work Contract: Legal Applications</i>	28
III. Portugal: A Similar Experience of Paradigm Changes and Precarity.....	32
III.i. Gender, Labour Rights and the Legal Framework in Portugal.....	32

a.	The International Protection.....	32
b.	The National Protection.....	36
III.ii.	Flexible And Precarious Labour in Portugal: The Legal Framework of Intermittent Work Contracts.....	38
a.	Historical Background of Flexible and Intermittent Work Laws in Portugal.	38
-	The Concept of Precarious Work Relations.....	38
-	The Historical Background of Precarious Work in Portugal.....	40
b.	The Portuguese Intermittent Work Contract and Flexible Conditions of Work: Legal Applications.....	43
IV.	Similarities and Differences Between the Legal Frameworks in Brazil and Portugal.....	51
IV.i.	International Laws.....	51
a.	Similarities.....	51
b.	<i>Differences: The Protection from Regional Organizations.....</i>	51
IV.ii.	National laws.....	53
a.	Similarities.....	53
b.	Differences: Lack of Regulation of Intermittent Work in the Brazilian Laws	56
V.	Intermittent Work and Gender Inequality in Labour: Practical Consequences.....	60
V.i.	Women in Work and the Increase Flexibility of Labour in Portugal.....	60
a.	Economic Crisis, Recuperation Measures and Social Effects.....	60

b.	The Reform of Labour Laws in Numbers: Increased Precarity in Portuguese Women´S Work Relations.....	62
c.	Practical Consequences for Gender Inequality.....	65
V.ii.	Women in Work and the Increase Flexibility of Labour in Brazil: Preliminary Data.....	69
a.	Economic Crisis, Recovery Measures and Social Effects.....	69
b.	The Reform of Labour Laws in Numbers: Increased Precarity in Brazilian Women´S Work Relations.....	72
VI.	How the Introduction of Intermittent Work in Brazil Will Affect Gender Equality and Human Rights Protection: Lessons to Be Learnt from Portugal, Legal Contradictions and Possible Solutions.....	75
VI.i.	Possible Impacts of Intermittent Work in Brazil Based on the Portuguese Experience: How May Gender Equality Within Labour Human Rights Be Affected by the CLT Reform.....	75
a.	The Fallacy Behind Brazilian IWC.....	76
b.	Higher Poverty Rates for Women.....	78
c.	Fragmentation of Payments and Wage Loss.....	79
d.	Permanent Availability and the Aggravation of Women´S Economic Dependency.....	81
e.	Loss of Autonomy, Private Family Life, Education and Health Issues for Women.....	83
f.	The Transference of the Risk of the Business to Female Workers.....	84

g. Weakening of Women’s Social Representation.....	85
h. Social (In)Security Risks.....	85
VI.ii. Legal Contradictions of the Labour Reform in Brazil: Violation of Human Rights Principles and Gender Equality Protection by the Introduction of IWC.....	86
VI.iii. Viable Solutions for Gender Equality in Work.....	90
8. Conclusion.....	94
9. Bibliography.....	100

5. List of Abbreviations

CEDAW	–	Convention on the Elimination of All Forms of Discrimination Against Women
CESIT	–	Centro de Estudos Sindicais e Economia do Trabalho
CFRB	–	Constitution of the Federative Republic of Brazil
CFREU	–	Charter of Fundamental Rights of the European Union
CITE	–	Comissão para a Igualdade no Trabalho e no Emprego (<i>Commission for Equality in Labour and Employment</i>)
CIG	–	Comissão para a Cidadania e Igualdade de Género
CLT	–	Consolidation of Labour Laws ²
CoE	–	Council of Europe
DIEESE	–	Departamento Intersindical de Estatística e Estudos Socioeconômicos
EC	–	European Commission
ECHR	–	European Convention on Human Rights
EcrHR	–	European Court of Human Rights
EEC	–	European Economic Community
EIGE	–	European Institute for Gender Equality
GEP	–	Gabinete de Estratégia e Planeamento
GDP	–	Gross Domestic Product
IACHR	–	Inter-American Commission on Human Rights
IASHR	–	Inter-American System for the Protection of Human Rights
IBGE	–	Instituto Brasileiro de Geografia e Estatística (<i>Brazilian Institute of Geography and Statistics</i>)
ICCPR	–	International Covenant on Civil and Political Rights
ICESCR	–	International Covenant on Economic, Social and Cultural Rights
ICJ	–	International Court of Justice
ILO	–	International Labour Organization

2 'CLT [Consolidação Das Leis Do Trabalho]' in Maria Chaves de Mello, 'Law Dictionary Portuguese – English, English – Portuguese' (São Paulo, 10th edn, Editora Método, 2012), 151.

INE	–	Instituto Nacional de Estatística
IWT	–	Intermittent Work Contract
MSESS	–	Ministério da Solidariedade, do Emprego e da Solidariedade Social (The Ministry of Solidarity, Employment and Social Security)
MTE	–	Ministério do Trabalho e Emprego
MTSSS	–	Ministério do Trabalho e da Solidariedade Social (Ministry of Labour, Solidarity and Social Security)
OAS	–	Organization of American States
OECD	–	Organisation for Economic Co-operation and Development
OHCHR	–	Office of the United Nations High Commissioner for Human Rights
PLC	–	Portuguese Labour Code
RES	–	Resolution
SDG	–	Sustainable Development Goals
TWA	–	Temporary Work Agencies
UDHR	–	Universal Declaration of Human Rights
UN	–	United Nations
UNGA	–	General Assembly of the United Nations
UNHRC	–	United Nations Human Rights Council
UNICAMP	–	University of Campinas
UPR	–	Universal Periodic Review
USD	–	United States Dollar
WW II	–	World War II

6. Declaration

I confirm that the main body of the thesis, including spaces and footnotes, occupies 31,261 words including footnotes, but excluded bibliography, and 26,616 words excluded footnotes and bibliography

7. The Truth Behind Intermittent Work: Impacts for Gender (In)Equality in Brazil, Lessons to Be Learnt from Portugal

I. Introduction

It is almost impossible to believe that recedes still happen in a world where human rights and gender equality gain importance in national and international governmental agendas. Over the past decades, gender equality in labour gained much emphasis as part of the scope of labour human rights. However, sometimes, all the efforts undertaken to guarantee equality at work for women cannot contain the aims of individualistic economic agents, that manage to pressure governments and find pretexts capable of justifying changes in the law with potential to sacrifice the entire social progress.

In Brazil, since the 1990s a silent threat for gender equality in labour has slowly grown in the legal-political framework. In 2017, after the economic crisis of around 2012 to 2013, this movement culminated in the promulgation of a reform of labour laws that introduced a new type of work contract in the national legal framework: the Intermittent Work Contract arrangement. This was the result of a pressure from enterprises, helped by the government, that were mostly interested in maintaining their profits during a period of economic recession.

The new laws allow more flexible working, and as a consequence, the fundamental labour rights and gender equality protections were suppressed. Moreover, the economic agents behind those changes have managed to convince society that their results would be positive, as they appear to create a more gender inclusive work environment, reduce unemployment and supposedly raise women's symbolic economic independence. Nevertheless, the new law brings many risks for the Human Rights, especially regarding gender equality.

In fact, the intermittent contracts will result in worse conditions of work and working relations for Brazilian women, with the erosion of rights for those who used to have stable full-time jobs, a reduction of wages, and an increase in rates of poverty among women, especially those unemployed. Therefore, the national reform of labour laws must be questioned.

A similar movement has occurred in Portugal, which also implemented IWC in 2009. In this context, a parallel between the Brazilian and Portuguese models can be established, and much can be learnt from the system there implemented, regarding the effects of this type of contract for women. After all, the inter-relations between Brazil and Portugal date from centuries ago.

They have had a common historical background since Portugal colonized Brazil around the year of 1500, and their relations were maintained even after Brazilian independence in 1822 until the present days. The cultural bounds between those nations are unquestionable, and the juridical similarities of their systems remain strong. Moreover, the economical crisis that reached Portugal few years before Brazil was also used as a pretext the implementation of IWC which, something that particularly affected Portuguese women in the labour market.

Therefore, the juridical similarities between Brazil and Portugal allied to a patriarchal culture present in both labour markets, and to the impacts of the economical crisis are enough reasons to justify a comparison of the Portuguese case to the Brazilian one, as a way to predict how negatively IWC will impact on gender equality in Brazil.

This works aims to demonstrate via a legal and social-economic analysis that if the Portuguese IWC introduction has had negative consequences for women in work, it will probably result in even worse work and living conditions for Brazilian female employees. After all, instead of learning from another country's experience before changing labour protection, the Brazilian government has chosen to follow a worse path, by offering an even less protective IWC system, which clearly violates national and international norms within labour human rights and gender equality.

The rationale of the study will lead to the possible impacts of intermittent work in Brazil while considering the consequences that the introduction of this type of work contract has had in Portugal, as well as keeping in mind the differences between regulations and social-economic background from both nations. Therefore, in order to achieve its main objective, this work will develop on the Brazilian and Portuguese international and national legal framework in force to protect gender equality within the scope of labour human rights. will be developed. A special focus on the legislation concerning IWC in both countries will be undertaken.

Subsequently, the analysis will explain the differences and similarities between the legal framework that fundamentals the existence of IWC as a flexible work contract in Portugal and Brazil. This investigation will allow to understand if the IWC laws in Brazil offers the same protections for the workers as the Portuguese, and thus, predict its possible impacts for Brazilian women. Moreover, it will help to examining if Brazil is meeting its international and national standards of gender equality within the scope of Labour Human Rights.

Afterwards, the social-economic consequences of introducing intermittent contracts and flexible working will be studied to demonstrate the impacts of this process in Portugal and the preliminary effects in Brazil. Subsequently, the possible consequences of IWC in Brazil will be deeply developed, mostly based on the Portuguese experience, but also considering the preliminary data obtained through a national research.

Finally, this work will develop on how intermittent work will affect gender equality within labour human rights, and expose the violations from the labour reform in Brazil concerning the principles of gender equality protection and human labour rights force. In the end, the viable solutions for the rise of precarity among women in Brazilian labour market will be presented.

II. The Labour Laws in Brazil: Gender Equality, the Protection of Minimal Labour Rights, and a Change of Paradigm

II.i. Gender, Labour Rights and the Legal Framework in Brazil

Laws concerning work are instrumental for guaranteeing human rights in a diverse society. They can be important tools to prevent and correct unfair disadvantages that are imposed on vulnerable groups or individuals within the labour force, guaranteeing that they have equal opportunities to experience a dignified life.

Gender inequality has been present in the world work since the beginning of human existence and remains present within employment practices through to the current time, being especially visible in western societies. This is due to patriarchal values that have perpetuated over the centuries.

In this context, labour laws are fundamental instruments to address inequalities to prevent these inequalities resulting in larger gaps between women and men regarding wages, placements, promotion, and the conservation of employment. They exist as mechanisms to support equal opportunities for all women in the labour market, which then reflects on all the other aspects of their lives.

Work laws are undoubtedly one of the most important tools for protecting human rights, with an ethical magnitude that comes from their ability to promote dignity, citizenship and social justice for all³. The individual and collective labour rights are considered as human rights that impact in the social, economic and cultural fields, which, as a result, receive wide protection from international agreements as well as national laws in almost every State in the world.

Gender equality is also a fundamental aspect of human rights. As stated in the Yogyakarta principles, discrimination is a threat to human diversity, and to the

3 Mauricio Godinho Delgado and Gabriela Neves Delgado *'A Reforma Trabalhista no Brasil: Com os Comentários à Lei n. 13.467/2017'* (1th edn, São Paulo, LTr, 2017), 67.

universality and indivisibility of human rights⁴. Furthermore, the scope of gender equality rights and labour rights have intersecting zones, which will be the foundation for the line of arguments developed in this study.

Over the past decades, many international efforts have been undertaken by governments and human rights leaders to develop an international legal framework that guarantees women's formal and material equality at work. According to UN Women,

'Investing in women's economic empowerment sets a direct path towards gender equality, poverty eradication and inclusive economic growth. Women make enormous contributions to economies, whether in businesses, on farms, as entrepreneurs or employees, or by doing unpaid care work at home'⁵

However, there is still a long path towards ensuring that laws are implemented in practice and that cultural attitudes change to reflect their underlying principles. In most countries, 'women's wages represent between 70 and 90% of men's', and 'in 2011, 50.5% of the world's working women were in vulnerable employment, often unprotected by labour legislation, compared to 48.2% for men'⁶.

The situation is similar in Brazil, where the workforce is composed by approximately 111,600,000 people⁷. According to IBGE (*Instituto Brasileiro de Geografia e Estatística*), the national institute that undertakes geography and statistics research, even though women most of this workforce, corresponding on 53,7% of the employed people, they earn only 76,0% of the men's income⁸. Moreover, 40.7% of

4 Mauro Cabral Grinspan and others, 'Yogyakarta Principles Plus 10 – Yogyakartaprinciples. Org' (Yogyakartapinciples.org, 2017) <<http://www.yogyakartapinciples.org/principles-en/yp10/>> accessed 14 April 2017, preamble.

5 UN Women, 'Economic Empowerment Of Women' (UN Women 2013) <http://www.unwomen.org/-/media/headquarters/attachments/sections/library/publications/2013/12/un%20women_ec-thematic-brief_us-web%20pdf.pdf?la=en> accessed 17 May 2018, 1.

6 Ibid 2.

7 Index Mundi, 'Força laboral – Mundo' (*Index Mundi*, data source CIA World, 1 January 2018) <<https://www.indexmundi.com/map/?t=0&v=72&r=xx&l=pt>> accessed 25 June 2018.

8 IBGE, 'Síntese de Indicadores Sociais: Uma Análise das Condições de Vida da População Brasileira: 2017' (Rio de Janeiro, Coordenação de População e Indicadores Sociais IBGE 2017) 23,37. Instituto Brasileiro de Geografia e Estatística (IBGE), Estatísticas de Gênero: Indicadores Sociais Das Mulheres no Brasil' (IBGE, Coordenação de População e Indicadores Sociais, 2018) <<https://biblioteca.ibge.gov.br/index.php/biblioteca-catalogo?view=detalhes&id=2101551>> accessed 17 May 2018, 5.

women are employed in non-rural informal jobs, while 34.9% of men have jobs with the same conditions⁹.

The national juridical system has adopted minimum legal standards that secure the dignified entry and permanent employment of workers in the labour market. They are divided into three main groups of laws: International Laws, Constitutional Laws and the national Ordinary Labour Laws¹⁰. Together, they form the existing, they are the existent legal mechanisms to reduce women's workplace inequality.

However, in November of 2017, the Ordinary Labour Laws were changed through a national legislative reform (Law number 13.467/2017¹¹). Among the changes were those changes, it is worth highlighting the introduction of flexible work contracts in the laws, for example as the Intermittent Work Contract (IWC). Such changes have negatively interfered impacted on in the most fundamental guarantees for workers, among which, including those that are responsible for maintaining a certain level of equality among workers, as will be developed in the further analysis. In this context, women were are particularly affected, once as they are a vulnerable group in society, and consequently easier targets of unequal measures. This argument, that will be fully, which will also be comprehensively described on the next chapters.

Within this context, this section of this study will initially explore the human rights dimensions of labour laws and gender protection laws present in the international instruments ratified by Brazil, in the national framework and describe their national juridical status. Secondly, the fundamental protections provided by national legislation will be examined, with a focus on the relevant rights as affected by the previously mentioned labour laws reform of 2017. Third, a comparative study will be made between

9 IBGE, 'Estatísticas de Gênero – Indicadores Sociais das Mulheres no Brasil, Estruturas Econômicas, Participação em Atividades Produtivas e Acesso a Recursos, Tabela 9 – Proporção de Pessoas de 14 Anos ou Mais de Idade Ocupadas na Semana de Referência em Trabalhos Informais, em Relação ao Total de Pessoas Ocupadas em Atividades Não Agrícolas, por Sexo, com Indicação do Coeficiente de Variação, Segundo Cor ou Raça e as Grandes Regiões – 2016' (IBGE, Coordenação de População e Indicadores Sociais, 2016) <<https://www.ibge.gov.br/estatisticas-novoportal/multidominio/genero/20163-estatisticas-de-genero-indicadores-sociais-das-mulheres-no-brasil.html?=&t=resultados>> accessed 17 May 2018, Table 9.

10 Maurício Godinho Delgado and Gabriela Neves Delgado, (n 3) 61.

11 Brazil, 'Lei N° 13.467, de 13 de Julho de 2017' (Brasília, 2017) <http://www.planalto.gov.br/ccivil_03/_ato2015-2018/2017/lei/113467.htm> accessed 17 May 2018

the former Brazilian legal standards and the new ones imposed by the labour laws reform. Finally, the potential negative effects of a new type of work contract introduced by the reform will be discussed, and the consequences and conflicts of the change in this parameter to the formal protection of women's labour equality in the Brazilian legal system will be presented.

a. *The International Protection*

Over the past decades, until the 2017 labour laws reform, the Charter of Human Rights was progressively implemented and expanded in Brazil with the aim to integrate it into activities, as developed by the judiciary, legislative and executive powers. As a result, at the current time, international laws play an important role in the protection of human rights in Brazil. They ensure civil and political rights, and also social, economic, and cultural rights, as well as solidarity rights.

Brazilian governmental representatives have further ratified a considerable number of international treaties, conventions, and other instruments that are still in force, which aim to ensure the realisation of human dignity. This group of rules are comprised within the nationally ratified International Charter of Human Rights, and they cover an increasing number of human rights in their most varied dimensions, including health rights, social equality rights, education rights, labour rights, and so on.

Due to the existence of such a broad legal framework, this study will focus mostly on the intersection between international labour rights and social equality rights. The former norms are part of the 'International Charter of the Labour Human Rights', which aims to protect decent work conditions for all. The focus of the examination on the latter social equality rights will be concern the protection of gender equality in labour relations through international laws, which reaffirm women's fundamental right to a dignified work-life. Both of these legal aspects will be relevant for the study that will be developed in this thesis.

Hence, in terms of gender-protection within the in-force International Labour Charter, Brazil is part of the UN system of human rights. More specifically, it recognizes the competence of the UNHRC, of the OHCHR, of the ICJ, of the UNGA Third

Committee, which deals with social, humanitarian & cultural issues, of the special reporters and work groups, and finally, of the special procedures within the UN such as UPRs and the Human Rights Committees¹².

Likewise, Brazil has adopted international protective laws such as the Universal Declaration of Human Rights (UDHR), from 1948. This instrument establishes a wide list of labour rights to prevent gender gaps in labour, such as the right to equal remuneration for equal work, access to fair, retributive and adequate wages, to paid rest and leisure time, ranging from a reasonable limitation on the amount of daily working hours, paid periodical vacations, the free choice of employment, fair and favourable conditions of work and to protection against unemployment¹³.

Moreover, the UDHR has a general and specific approach to female labour rights. Generally, the human rights established by the Charter apply to every and each worker, while specifically they aim to protect social, economically and politically vulnerable groups that frequently have their rights abused, such as when gender discrimination occurs in work. According to Articles II and VII of the UDHR, equality and non-discrimination are orienting and inspiring principles that must be followed by the member-states, even if this instrument (the Charter) has not established a specific method of coercion for countries that violate it¹⁴.

Brazil acknowledges the competence of the International Labour Organization (ILO) to recognize, create and adopt special conventions on Human Labour Rights. Among the wide scope of ILO's institutional documents the Declaration of Philadelphia (1944), as known as the Declaration that restated the traditional objectives of the International Labour Organisation (ILO), and the Declaration on Fundamental Principles and Rights at Work (1998) must be highlighted.

12 Maurício Godinho Delgado and Gabriela Neves Delgado, (n 3) 67.

13 United Nations (UN), 'Universal Declaration of Human Rights(UDHR)' [1948] UNGA Res 217 A(III); Maurício Godinho Delgado and Gabriela Neves Delgado, (n 3) Ibid 68.

14 Humberto Lima de Lucena Filho, 'O Trabalho da Mulher e os Mecanismos Internacionais de Proteção Normativa: um Estudo sob o Viés da Isonomia Material' (Anais do II Congresso Nacional da Federação de Pós-Graduandos em Direito (FEPODI), Pontifícia Universidade Católica de São Paulo, São Paulo, September 2013).

The Declaration of Philadelphia establishes some fundamental principles of International Human Labour Rights. Among them stands out the ideas that ‘Labour is not a commodity’¹⁵ and that the dignity of the human being must be protected in the work environment through rules that control the market imperatives¹⁶. Another major principle is that ‘poverty anywhere constitutes a danger to prosperity everywhere’, a concept that effectively promotes citizenship and individual dignity for human beings, with the Declaration stating furthermore that that peace needs to have its foundations in social justice in order to be long-lasting¹⁷. Other relevant principles for gender recognition in the work environment that can be found in this legal instrument are ‘the promotion of the common welfare’¹⁸, as well as the principle that says that:

‘All human beings, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity’¹⁹ (II, a)

Those two latter principles are more directly related to the protection of decent working conditions for women and to measures against gender discrimination in labour.

In parallel, the previously mentioned Declaration on Fundamental Principles and Rights at Work (1998) also defines some basic human rights of workers²⁰, including the right to the elimination of discrimination at work regulated by Conventions 100 and

15 International Labour Organization (ILO), ‘Declaration of Philadelphia: Declaration Concerning the Aims and Purposes of the International Labour Organisation’ (26th International Labour Conference (ILC) session, Philadelphia, 10 May 1944) Art I a.

16 Mauricio Godinho Delgado and Gabriela Neves Delgado (n 3) 69.

17 ILO (n 15) Art II heading;

Mauricio Godinho Delgado and Gabriela Neves Delgado (n 3) 69.

18 ILO (n 15) Arts I c and I d.

19 Ibid Art II a.

20 ILO, ‘*Declaration on Fundamental Principles and Rights at Work and its Follow-up*’ (86th ILC Session, Geneva, 18 June 1998) s 2

Mauricio Godinho Delgado and Gabriela Neves Delgado (n 3) 70.

111 of the ILO²¹. The contents of these conventions are particularly relevant to the protection of gender equality and women's human labour rights.

Convention 100 promotes equal remuneration for work of equal value, a provision directly related to the correction of gender wage gaps, while Convention 111 forbids any kind of gender-based employment and work discrimination or exclusion, and supports equal opportunities for all women, including in the placement, promotion, or conservation of occupation and work conditions²².

By accepting the competence of the ILO, Brazil is bound by all the internal conventions and standards of the organization. Therefore, the promotion of gender equality and decent work for the vulnerable segments of the population is an international obligation to which Brazil has agreed.

Furthermore, Brazil has ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR, 1966) and optional protocols, the International Covenant on Civil and Political Rights (ICCPR, 1966), as well as the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW, 1979)²³.

The ICESCR protects gender equality by guaranteeing a balanced application of the rights enunciated in the Convention to all women and other vulnerable groups. Moreover, it reinforces the obligation of state-parties to 'ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights', reassures '[f]air wages and equal remuneration for work of equal value without distinction of any kind, in particular [for] women(...)', as well as protects worker's health, including through the guarantee of their right to paid maternity leave²⁴. In parallel, the ICCPR establishes that

21 Mauricio Godinho Delgado and Gabriela Neves Delgado (n 3) 70.

22 ILO, 'Convention C100: Equal Remuneration Convention (1951) No. 100' (34th ILC session, Geneva, 29 Jun 1951) Art 1 b;

ILO, 'Convention C111: Convention concerning Discrimination in Respect of Employment and Occupation No. 111' (42nd ILC session, Geneva, 25 Jun 1958) Art 1 b.

Humberto Lima de Lucena Filho (n 14) 1215.

23 Mauricio Godinho Delgado and Gabriela Neves Delgado (n 3) 66-67.

24 UN, 'International Covenant on Economic, Social and Cultural Rights(ICESCR)' [1966] UNTC 999/3, Arts 2 (2), 3, 7 i, and 10 (2).

all the treaty members have to ensure that women and men have all their political and civil rights respected effectively and also prohibits any kind of discrimination²⁵.

When it comes to CEDAW, this instrument establishes a special system of protection for women that promotes gender equality in the work environment. Initially, it determines the obligation of states to ensure that women have equal opportunities to represent their governments at the international level and to participate in international organizations²⁶. Aside from this specific obligation, CEDAW obliges state parties to guarantee equal employment opportunities and criteria for selection, the free choice of profession and employment, the right to promotion, job security and all benefits, the right to receive vocational training, the right to equal remuneration, including benefits in respect of work of equal value, the right to social security, and the right to the protection of health and to safety in working conditions. In addition, it prohibits any discrimination against women on the grounds of marriage or maternity through the imposition of sanctions or dismissal and encourages governmental supportive measures ‘to enable parents to combine family obligations with work responsibilities and participation in public life’, as well as to offer special protection for pregnant women against harmful work²⁷.

In addition, CEDAW regulates the security of women’s work in rural areas and non-monetized sectors of the economy in order to ensure their right to participate in development planning, to have adequate health care facilities, to have access to social security programmes, to obtain training and education, to organize self-help groups and co-operatives, to take part in community activities, ‘to have access to agricultural credit and loans, marketing facilities, appropriate technology and equal treatment in land and agrarian reform’, and to enjoy adequate living conditions.²⁸

Finally, as a member of the UN, Brazil also has to make all possible effort to progressively implement the UN Sustainable Development Goals (SDG), which include the protection of labour rights and the promotion of ‘safe and secure working

25 UN, ‘International Covenant on Civil and Political Rights (ICCPR)’ [1966] UNTC 999/171, Arts 3, 26.

26 UN, ‘Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)’ [1979] UNTC 1249/3, Art 8.

27 Ibid Art 11.

28 Ibid Art 14.

environments for all workers, including migrant workers, in particular women migrants, and those in precarious employment'. The SDGs also encourage the achievement by 2030 of 'full and productive employment and decent work for all women and men, including for young people and persons with disabilities, and equal pay for work of equal value'²⁹.

In the regional sphere, Brazil is part of the OAS. This organization has set up the Inter American System of Human Rights that operates through the Inter American Commission on Human Rights (IACHR), and the Inter-American Court of Human Rights, both nationally recognized. Their functions are determined in the American Convention on Human Rights (1969), also known as the Pact of San José, and in the American Declaration of the Rights and Duties of Man (1948)³⁰. In the context of the OAS, protection against gender discrimination in labour is achieved through the guiding principles of equality and non-discrimination³¹.

In summary, the various international conventions, treaties, and recommendations of the UN, ILO, and OAS that were ratified in Brazil reveal that over the past decades the country has proven to be interested in adopting a protective perspective with regard to women's human rights in labour³². As a result of the ratifications, Brazil is duty-bound to conduct internal affairs in accordance with the international and regional agreements, even when enacting new legislation. The international agreements of human rights, including the intersection between labour rights and gender protection, establish the minimal parameters for the progressive implementation and fulfilment of human dignity. Any regression is strictly forbidden³³.

The international laws concerning human rights have a special hierarchical position in Brazil when compared to other national laws. If they are accepted by 3/5 of each house of the National Congress, in two polls, these rules receive the status of Constitutional amendments. If they are approved but receive less than 3/5 of the votes,

29 UN, 'Goal 8: Promote inclusive and sustainable economic growth, employment and decent work for all', *UN Sustainable Development Goals* (website), <<https://www.un.org/sustainabledevelopment/economic-growth/>> accessed: 19 June 2018.

30 Mauricio Godinho Delgado and Gabriela Neves Delgado (n 3) 66.

31 Humberto Lima de Lucena Filho (n 14) 1214.

32 Mauricio Godinho Delgado and Gabriela Neves Delgado (n 3) 70.

33 Ibid 73.

they will be considered as supra legal norms: in a hierarchical position inferior to the Federal Constitution, but superior to the ordinary national legislation. In any event, where there is a conflict between international and national laws concerning human rights, the ones that are most favourable to human dignity must always prevail³⁴.

Once the international agreements that regulate women's individual and collective labour rights have been given the nature of human rights legislation, they predominate if there is a conflict with new national but less favourable laws. The principles of the most favourable norm to the worker as a human person, to equality, and the principle of prohibition of retrogression are mandatory parameters in fixing the interpretation criteria and to the resolution of any conflict³⁵.

However, the reality is more complex. The recent reform of the Brazilian Labour Code does not match all the existing international human rights parameters, but has been approved in Brazil. Within a context of practical inequality and discriminatory national habits, this reform represents not only an incentive to the perpetuation of an unequal reality for workers but also an outrageous disrespect to the progress made by Brazil in the past decades. At the same time, it is a complete disrespect for the internal hierarchy of norms and a situation of flagrant illegality.

b. The National Protection

In the national sphere, the Constitution of the Federative Republic of Brazil (CRFB) of 1998 has instituted a wide scope of Fundamental Rights – how human rights are referred to within the Brazilian domestic political scene – that represent the guidelines for the protection of women's labour rights. In accordance with the international behaviour of the State, its Constitution is considered as one of the most advanced in terms of the progressive protection of human rights in all their dimensions: civil and political, economic, social and cultural, and even concerning the solidarity aspect.

34 Ibid 71.

35 Ibid 71 – 72.

The Constitution determines that everyone is equal to each other without any distinction, and therefore men and women should receive the same rights and have the same duties.

The CFRB regulates essential social rights, including the right to work and leisure, social security as well as maternity rights. Furthermore, it institutes labour security and specifically notes the necessity of particular incentives for the protection of women in the labour market³⁶, establishing the protection of the women in the work environment, including through legal incentives, as well as prohibits gaps in wages, hierarchical positions, and admission criteria related to one's sex, gender, race, age or civil status. Provisions are states for the facilitation of conciliation between private life and labour³⁷.

Concerning the labour rights that are specifically relevant to the type of work contract that will be studied in the next section, the CRFB guarantees a minimum wage capable of supporting the basic needs of housing, food, education, health, leisure, clothing, hygiene, transport, social security of the individual and the family, the irreducibility of the monthly wage, a wage never inferior to the minimal for those who receive variable remuneration, and the right to take remunerated rests. In matters of duration of work, the Brazilian Constitution also regulates the right to a limitation of the length of the working day³⁸.

Separate and subsidiary to the Constitution, the Brazilian Labour Code, formally called the Consolidation of Labour Laws (CLT)³⁹, provides more specific protection to some of the rights associated with work. There is a special section dedicated to the protection of women's work conditions and against discrimination towards women in work.

36 Brazil, 'Constituição da República Federativa do Brasil de 1988 (CFRB)' (Brasília, 1988) <http://www.planalto.gov.br/ccivil_03/constituicao/constituicao.htm> accessed 17 May 2018, Arts 5 (XX).

37 Ibid Arts 6, 7 XVIII-XX, XXV, XXX.

38 Ibid Art 7 IV, VI, VII, XIII, XV.

39 Brazil, 'Consolidação das leis do trabalho – Decreto-lei nº 5.452, de 1º de maio de 1943 (CLT)' (Brasília, 1943) <http://www.planalto.gov.br/ccivil_03/decreto-lei/Del5452.htm> accessed 17 May 2018;

'CLT [Consolidação das Leis Do Trabalho]' in Maria Chaves de Mello, *Law Dictionary Portuguese – English, English – Portuguese*, (São Paulo, 10th edn, Editora Método 2012) 151.

It is forbidden to refer to a specific sex or gender in a job opportunity; to refuse to employ, refuse to promote or justify a dismissal for reasons of sex, age, colour, family situation or pregnancy; to define wage, vocational training, and professional promotion based on sex, age, or family situation; to demand a medical certificate or exams to prove pregnancy or sterilization; to define admission or the permanence of an individual in a job, prevent the access or adopt subjective criteria to defer the inscription or approval of women in private enterprise's contests based on sex, age, race, family situation or pregnancy; or to enact strip-searches on workers and employees⁴⁰. Other norms of the CLT that are relevant for this study are ones that protect the minimum wage and the determined duration of the working day, two central aspects of the work contract that are necessary for a life with dignity.

Before the 2017 labour laws reform, which will be explored subsequently, the CLT had established that the time spent by a worker inside the enterprise waiting for orders and tasks from the employer would have to be considered as part of the daily hours of paid work^{41,42}. This provides a protection to the worker's wage, as all the periods of time that were spent being available for the employer would be counted for the purposes of remuneration.

Wage and remuneration currently receive special protection through the CLT. A minimum wage must be paid for workers without any kind of distinction, and this wage has to be enough for food, housing, clothing, hygiene and transport of the individual and the family. Additionally, whenever the monthly wage is variable or paid according to the amount of production, the legal minimum still has to be respected in order to meet the purpose that guarantees that a worker and their family will always earn enough money to maintain a standard of life with dignity. Finally, the CLT regulates the worker's right to remunerated rest, as well as providing a limitation to the duration of work⁴³.

In summary, through the analysis of the domestic legal framework, it is possible to conclude that, until 2017, there had been an effort by the national legislation to

40 Brazil, (n 39) Art 373-A (I – VI).

41 Ibid Art 4 Heading.

42 Patrícia Maeda, *'A Era dos Zero Direitos: Trabalho Decente, Terceirização e Contrato Zero-Hora'* (São Paulo, LTr, 2017) p. 126.

43 Brazil, (n 39) Arts 58-72, 76, 78.

protect a worker's minimum rights as well as women's equal rights to equivalent conditions of work. Furthermore, there had always been a legal and consequently judicial preoccupation with the provision of humane conditions of work for all, and the respect for the minimum wage, independent of the number of hours spent by the worker waiting for tasks to be assigned. However, with the implementation of the 2017 reforms, there has been a change to this approach, which will result in negative consequences for all workers, especially women, who represent a more vulnerable group in labour market, as will be developed in the next sections of this work.

II.ii. The Labour Laws Reform in Brazil: Introduction of Intermittent Work Contracts, a Path Towards Work Flexibility and Precarity

a. *Historical Background of Flexible and Intermittent Work Laws in Brazil*

For the benefit of didactics, this section will focus on the examination of some specific aspects of the labour contract, while their relations to gender equality at work will be developed in later sections. The general rules of labour in Brazil are applicable to all workers and thus they must be studied in a broader perspective in order to facilitate the comprehension of the reader, and then later studied within the framework of gender equality at work.

Originally, the individual work contract regulated by the Brazilian CLT and the CFRB, as well as the work and employment relations that originated from them, were structured around two central aspects, as previously mentioned: that there had to be a remuneration for work that could never be lower than the minimum standard, and that the duration of the working day had to be contractually fixed and clear⁴⁴.

Related to the duration of the work was the idea that the time considered as daily work would be a period of time during which a worker would make his or herself available to work for the employer, irrespective of whether he or she would be effectively working or just waiting for new orders and tasks to be assigned.

44 Brazil (n 39) Arts 4 Heading, 76, 78;
Brazil (n 36) Art 7 IV, VI, VII.

Until November of 2017, the CLT used to hold that the time a worker remained inactive, due to waiting for orders and tasks from the employers⁴⁵, would be included in the calculation of the working day as well as the time spent effectively working⁴⁶. In other words, the complete working day was counted for means of remuneration at the end of the month. This provided a considerable protection for workers' wages⁴⁷.

A move for the CLT to become more flexible started in Brazil during the 1990s, and there have been various attempts from enterprises to deviate from the labour protection law. In 1995, an international enterprise tried to avoid considering the time of inactivity as applicable for payment of wages. All those efforts from the national legislation to consider as work the time of inactivity that employees would stay waiting for new tasks and orders.

This company developed a model similar to the intermittent work arrangement, which will be the subject of the next section. It tried to implement the concept that only the hours that were spent in effective work would be counted for means of payment (something that was actually recently implemented in Brazil by the CLT reform of November 2017). At that time, the previously mentioned transnational attempted to introduce a model of changeable and variable work timing in its work contracts. According to this model, the employees would stay in a room called the "Break zone" inside the enterprise waiting for the employer to assign them more work. The time spent inside this room was unpaid and would not be count as effectively worked time⁴⁸.

In practical terms, this enterprise hired individuals without a prefixed work day and only the hours effectively worked would be paid, while the hours that the employee remained waiting for orders would not be considered for wage purposes. This represented a significant threat to the guarantee of a monthly minimal salary, because it could decrease the salary to levels lower than the legal minimum if there was not enough work for the employees⁴⁹.

45 Ibid.

46 Patrícia Meada (n 42) 126.

47 Mauricio Godinho Delgado and Gabriela Neves Delgado (n 3) 154-155.

48 Patrícia Meada (n 42) 126.

49 Ibid 126.

In this context, the Brazilian Labour Courts decided that such a kind of contract was illegal, through a public civil proceeding against the company. The Courts remarked that the absence of a defined working day and of weekly schedules and timetables to be worked had a negative impact on employee's salaries, as they had to wait for their employer on a full-time basis without remuneration. The Courts stated that this situation meant that the commercial risk faced by the business was being transferred to the workers, who were penalized if the company had no success in attracting customers. The Courts considered this transference of risk as a violation of Articles IV and IX of the CLT. Furthermore, the Courts decided that the subjection of the workers to the free will of the employer caused by the referred practices was against the fulfilment of the employee's personal dignity, the principle of valuable work and the right to social justice. In fact, the business practices were considered to reinforce the merchandising of human work, which was completely opposite to the international and national labour legislation in force at the time⁵⁰.

According to the Brazilian Courts, the human component of work must be emphasized in order to fulfil the value of dignity in labour. Thus, there has to be a rupture with the idea of transforming the work force into an object of the market. This logic demands the abandonment of practices such as the changing or variable working day once it does not guarantee the protection of minimum fundamental work rights. The practices that the aforementioned company was following prevented workers knowing in advance how much time would be spent at work and how much money would be earned at the end of the month, both of which can cause anxiety and worries that may affect their health. At the same time, if the worker could be called for work at any time of the day, there would not be a set routine and thus they would not be able to make plans, which can lead to an unhealthy, unpredictable and stressful life.

It is important to emphasize that labour rights are social human rights that result from a historical process between employers and employees over the centuries. In this sense, the Brazilian Courts understood, at the time of their decision, that allowing restrictions to labour rights would potentially transform human work into a commonly

⁵⁰ Ibid 126, 139.

disqualified product by not taking into account the human individuality of the person employed. They considered that those practices of the mentioned transnational enterprise – which were similar to an intermittent work arrangement contract – could result in low incomes and poverty for the workers, as they would never have the guarantee of a minimum amount of work⁵¹.

The Courts also remarked in their decision that in the 1990's, a process of flexibilization of the work laws had begun among companies in Brazil, but that those practices were illegally trying to deviate from the standard labour regulations, by irregularly reducing the paid rest between two working days as well as the amount paid for the extra hours worked. This would unlawfully obligate employees to work on Sundays and National Holidays, for example. Therefore, the Brazilian Courts reaffirmed that all those measures – including the variable working day introduced by the referred-to company – did not respect the minimum conditions of dignity that had to be provided for workers, and thus they had to be abolished⁵².

Nevertheless, irrespective of the pro-worker position of the Brazilian Labour Courts, since the 1990s a silent threat has grown slowly and been gradually constructed in the legal-political framework: it would later be implemented by the National Congress. These attempts aimed to change the concept of the working day in the CLT and prevent time that workers remained waiting for tasks as being counted as worked time⁵³.

This silent movement culminated in the promulgation of the CLT reform that introduced a new type of work contract in the Brazilian legal framework: the IWC arrangement. This new contract represents the regulation and legalization of those former practices that the Brazilian Courts and former labour laws had previously forbidden.

b. *The Brazilian Intermittent Work Contract: Legal Applications*

As a result of the 1990's political movements for work flexibility mentioned in the previous section, in 2017 the Brazilian National Congress and Senate approved a major reform in labour law through Law number 13.467/2017, which entered into force in

51 Ibid 129-130.

52 Ibid 123.

53 Ibid 139.

November⁵⁴. As a result, the fundamental aspects of labour that were studied in chapter II.i of this thesis were changed, notably once new types of flexible work contract were introduced into the national legal framework. One of these new types of contract was the IWC. This will be focus of this study.

The creation of more flexible possibilities of work have concrete potential to profoundly affect gender equality in labour, something that has begun to be noticed by preliminary data research in Brazil, as will be explained in the following chapters. Therefore, for now, it is essential to understand the relevant changes caused by the labour reform that will lead to such negative consequences for women.

Initially, a third paragraph was introduced by the reform in Article 443 of the CLT, at the same time that a new Article 452-A came into force. Both measures resulted in the creation of a new work contract in Brazil, the IWC. This contract type allows the creation of alternation between periods of labour and inactivity in subordinated ‘at will’ work contracts, regardless of the enterprise’s activity. As a consequence, the workers wages vary according to the number of hours, days or months effectively worked by the employee. The only requirements for intermittent contracts to be fixed are that the alternation is expressly written in the contract, and that the remuneration for each hour worked is not lower than the minimum salary per hour, or different than the amount received per hour by non-intermittent workers in similar posts⁵⁵.

Furthermore, intermittent workers must be called for work at least three days in advance, and they have one day to reply to the call. Silence will be presumed as a refusal, but the refusal does not break the contractual subordination. Moreover, if the worker accepts the call for work and later fails to appear without justification, a penalty of 50% of the due remuneration will be applied, an innovation which flagrantly transfers the risks of the entrepreneurial activity to the labourer⁵⁶.

Workers hired under IWC are allowed to work for the same employer or for others during periods of inactivity, but they are still obligated to rest during vacations,

54 Brazil, ‘Lei N° 13.467, de 13 de Julho de 2017’ (Brasília, 2017) <http://www.planalto.gov.br/ccivil_03/_ato2015-2018/2017/lei/l13467.htm> accessed 17 May 2018

55 Brazil, (n 39) Arts 443 heading, ph 3, 452-A.

56 Ibid Art 452-A ph 1 – 4.

which only can be taken after twelve months of work. At the end of each period of activity, the employee must receive the immediate payment of wages, proportional paid holidays, proportional Christmas bonus, proportional weekly remunerated rest and other legally applicable charges. There is no payment provisioned for times of inactivity, and the workers are left to themselves to guarantee their and their families survival during these periods. However, times of inactivity are counted for the purposes of seniority⁵⁷.

Therefore, the introduction of the IWC has caused a modification in two central general rules of the CLT: those related to the length of the work day and to the payment of wages.

According to the new legal text, it is now allowed for IWC contracts to count as remunerated service-time only those periods that the employee is effectively working⁵⁸. As seen before, the duration of work used to involve the amount of time that a worker remained available for the employer, whether the person was effectively working or just waiting for new tasks. However, from 2017 on, Law n.13.467/2017 provisions began to establish a new conception, in which the time spent waiting for new tasks is no longer part of the length of the service and consequently does not produce juridical effects for the purposes of calculating wages.

As a consequence of that modification, it is possible to conclude that the Labour Law Reform represents an attempt to overcome the idea of a set wage as a fixed compensation stipulated in work contract. This change may lead to inaccurate interpretations in the future, in which the wage may exist only occasionally if the worker is called for work, once the payment seems to be conditional on the limits of the occasional activities effectively exercised.

The new law has established the creation of a new modality of variable wage that depends on production, once it is based on the amount of time spent effectively working, according to the convocation by the employer. Therefore, the previously studied minimum wage protected by the CFRB and by Article 78 of the CLT still has to be respected by IWCs due to the hierarchy of constitutional and human rights favourable

57 Ibid Arts 138, 452-A phs 5 -6, 8-9.

58 Ibid Art 4 ph 2.

norms. As a consequence, even after the labour reform, the minimum wage is still guaranteed every month to workers⁵⁹. Any future misinterpretations of the new Labour Law in this sense must be considered illegal.

Finally, concerning the changes in the duration of work, it is necessary to examine if the concrete case of inactivity can effectively be considered as ‘free time’ for the worker for the purpose of payments, or if it should be counted as remunerated work. After all, according to the principles of Labour Law what counts is the reality of facts, and not what is written in the contracts⁶⁰.

In summary, even if some minimal labour rights guarantees were preserved after the Labour Law Reform introduced by the Law number 13.476/2017, the new system clearly reinforces the ideology of the deregulation of social rights and of excessive flexibilization of labour guarantees in work relations that has grown from the 1990s onwards⁶¹. The implementation of an IWC, among other introduced flexibilization measures, has definitely changed of some fundamental aspects of labour, by reducing the protection regarding the amount of time that a worker remains available to the employer, and dis-articulating the fundamental right to a fixed wage.

These evil innovations will possibly result in severe negative consequences for more socially vulnerable groups, including women, as will be developed further. Therefore, from now, these innovations must be questioned and the target of criticism. A similar attempt occurred in Portugal, and much can be learnt from the IWC system there implemented, as the effects of this type of contract for women in Portugal will possibly be the same to those that will happen in Brazil. The next chapter of this thesis will better develop this idea.

59 Mauricio Godinho Delgado and Gabriela Neves Delgado (n 3) 155.

60 Ibid 104.

61 Ibid 155.

III. Portugal: A Similar Experience of Paradigm Changes and Precarity

In order to facilitate the comparison that will be made with Brazil in the next chapters of this work, it is important to present the International Labour Charter in force in Portugal that protects gender equality with regard to access to work

The inter-relations between Portuguese and Brazilian legal framework date from centuries ago. Those nations have had a common historical background since Portugal colonized Brazil around the year of 1500, and the relations between those states has been maintained from after Brazilian independence in 1822 until the present days. The cultural bounds are unquestionable, and the juridical similarities are still strong.

Moreover, the economical crisis that reached Brazil around 2012 and 2013 has also stricken Portugal some years before, around 2008/2009. As a result, the Portuguese government has implemented a system of IWC which particularly affected women in the labour market.

Much can be learnt from the system of IWC adopted in Portugal, once the effects that this type of contract has had for women will possibly be the same in Brazil. Therefore, the present chapter aims to explain the legal background of the Portuguese attempt to reform the labour laws.

III.i. Gender, Labour Rights and the Legal Framework in Portugal

a. *The International Protection*

Portugal is a member state of the United Nations, and part of the European Union and Council of Europe in the regional sphere. As a consequence, Portugal is bound by many international conventions, treaties, laws, directives, regulations, resolutions, decisions and recommendations that aim to promote and protect gender equality in labour, as well as those which guarantee equal opportunities for women concerning their access and permanence market. This means that Portugal has the international and regional obligation to respect and progressively implement policies and laws for gender equality, especially in labour.

In the international sphere, it is first important to emphasize that Portugal is part of the UN system, and acknowledges the competence of this organization to deal with Human Rights issues through the UNHRC, the OHCHR, the ICJ, the Third Committee of the General Assembly of the United Nations, the special reporters and work groups, and finally, the special procedures within the UN such as UPRs and the Human Rights Committees.

Portugal has adopted the UDHR (1948), the ICCPR (1966), the ICESCR (1966) and its optional protocols, as well as CEDAW (1979). The country also recognizes the competence of the ILO to enact special Conventions on Human Labour Rights⁶², and consequently, it accepts the validity of the Declaration of Philadelphia (1944), and the Declaration on Fundamental Principles and Rights at Work (1998), which lead to the previously studied Conventions 100 and 111 of the ILO.

As a member of the UN, Portugal also participates in the implementation of the UN SDGs, already studied on the last chapter, which, among other targets, aim to protect labour rights, access to employment and decent equal work for all⁶³.

As part of the EU, Portugal is bound by a great number of international laws that regulate important aspects of gender equality within the scope of International Labour Charter. The country has ratified the Treaty of Amsterdam, which places the promotion of equality between women and men as a mission of the EU and one of its transversal objects. In addition, this instrument gives power to the European Commission to combat all forms of discrimination of gender or sex, based on the community's legal standards for equal treatment in opportunities of employment⁶⁴.

Moreover, the Charter of Fundamental Rights of the EU (CFREU) is accepted by Portugal, which is bound by the Charter's objective to enact equality between men and

62 Comissão Para a Igualdade no Trabalho e no Emprego (CITE) et. al., 'A Igualdade de Género na Legislação Nacional, Internacional e na União Europeia' (2009) Fascículo VI: Caderno Prático Para a Integração da Igualdade de Género na Cáritas em Portugal 2 <http://cite.gov.pt/asstscite/downloads/caritas/cadernocaritas_fasciculo_vi.pdf> accessed 25 may 2018.

63 UN, 'Goal 8: Promote inclusive and sustainable economic growth, employment and decent work for all', UN Sustainable Development Goals' (website), <<https://www.un.org/sustainabledevelopment/economic-growth/>> accessed: 19 June 2018.

64 'Treaty of Amsterdam Amending the Treaty on European Union' OJ C 340/115, Arts 2-3, 13, 141.

women as well as the right to balance professional and family life⁶⁵. Portugal is also bound by the European Parliament resolution of 13 March 2007 that establishes a roadmap for equality between women and men⁶⁶.

Among the Communitarian legislation, there are a large number of Regulations, Directives⁶⁷, Decisions⁶⁸, Resolutions⁶⁹ and Recommendations⁷⁰ that aim to promote gender equality in labour, as well as decent employment in non-precarious conditions (a concept that will be developed further in this study). As part of the EU, Portugal has the legal duty to enforce and implement all of them in the national legal framework and governmental policies.

Additionally, the country is part of the Council of Europe (CoE), an international organisation that promotes democracy and protects human rights in Europe. The European Convention on Human Rights (ECHR) – additional protocols included – is the organisation's main treaty. It guarantees civil and political rights to all individuals,

65 'Charter of Fundamental Rights of the European Union (CFREU)' [2000] OJ C 364/01, Art 23, 33 (2).

66 European Parliament, 'Resolution of 13 March 2007 on a Roadmap for Equality Between Women and Men (2006-2010) (2006/2132(INI))' [2007] OJ E 301/13.

67 e.g. Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding (tenth individual Directive within the meaning of Article 16 (1) of Directive 89/391/EEC) [1992] OJ L 348/1;

Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation [2000] OJ L 303/16;

Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time [2003] OJ L 233/9;

Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast), [2006] OJ L 204/23.

68 e.g. Decision No 1554/2005/EC of the European Parliament and of the Council of 7 September 2005 amending Council Decision 2001/51/EC establishing a programme relating to the Community framework strategy on gender equality and Decision No 848/2004/EC establishing a Community action programme to promote organisations active at European level in the field of equality between men and women [2005] OJ L 255/9;

Commission Decision of 16 June 2008 relating to the setting up of an Advisory Committee on Equal Opportunities for Women and Men (Codified version) 2008/590/EC [2008] OJ L 190/17.

69 e.g. European Parliament, Resolution of 12 March 2013 on the Impact of the Economic Crisis on Gender Equality and Women's Rights (2012/2301(INI))' [2013] OJ C 36/6;

European Parliament, 'Resolution of 9 June 2015 on the EU Strategy For Equality Between Women and Men Post 2015 (2014/2152(INI))' [2016] OJ C 407/2;

European Parliament, 'Resolution of 3 February 2016 on the New Strategy for Women's Rights and Gender Equality in Europe post-2015 (2016/2526(RSP))' [2018] OJ C 35/35.

70 e.g. Commission Recommendation of 7 March 2014 on strengthening the principle of equal pay between men and women through transparency Text with EEA relevance 2014/124/EU [2014] OJ L 69/112.

including the right to equality and non-discrimination based on gender and sex⁷¹. Furthermore, the CoE's judicial organ, the European Court of Human Rights (ECrHR), has the duty of oversees the implementation of the rights established the ECHR⁷². Both the CoE and the EU are institutions that cooperate in the promotion of human rights throughout Europe⁷³.

Furthermore, the CoE has enacted the European Social Charter, adopted in 1961 and revised in 1996, and the additional Protocol of 1988, which are all binding to Portugal. The revised version guarantees respect for fundamental social and economic rights for individuals, taking account of the evolution that occurred in Europe in terms of human rights since 1961. It includes: the rights to protection against poverty and social exclusion; protection in cases of termination of employment; protection against sexual harassment in the workplace and other forms of harassment; equal opportunities to workers with family responsibilities; reinforces the principle of non-discrimination and the improvement of gender equality in all fields covered by the treaty; and offers better protection of maternity and better social protection of mothers⁷⁴.

However, even with all the international and regional laws, gender equality in Portugal is still a distant target to be reached, while men and women work according to different conditions. In Portugal, flexibility commonly manifests itself as a negative aspect in the labour market once it is implemented through precarious work contracts, and not as a tool to enable effectiveness for human rights. This phenomenon especially affects women, who are more vulnerable to such work conditions, a theme that will be better explored in the following topics and chapters of this study.

71 CoE, 'Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR)' [1953], Protocol 12 Art 1.

72 CoE, 'The Council of Europe in Brief: Who We Are' (*Council of Europe Portal*) <<https://www.coe.int/en/web/about-us/who-we-are>> accessed: 20 June 2018.

73 CoE, 'The Council of Europe and the European Union: Partners in Promoting Human Rights and Democracy' (*Council of Europe Portal*) <<https://edoc.coe.int/en/different-roles-shared-values/6332-leaflet-the-council-of-europe-and-the-european-union-partners-in-promoting-human-rights-and-democracy.html>> accessed: 20 June 2018.

74 CoE, 'European Social Charter (Revised)' [1996] ETS 163.

b. *The National Protection*

The Portuguese national laws also play a role in formally protecting equal opportunities for women in the work environment. A primary source is the National Constitution that establishes among the fundamental obligations of the State an equal promotion of civil and individual rights and freedoms, economic social and cultural rights, and equality among genders. It also enacts the principle of equality and dignity for all citizens, without any privilege based on sex or gender (among others), and establishes a special protection for pregnant, puerperal and breastfeeding workers⁷⁵.

With respect to access to decent conditions of work for all, the Portuguese constitutional law sets the principle of liberty of choice of profession and access to public careers, the right to work and the promotion of employment policies, the equality of opportunities in the workplace regardless of the worker's gender identity or sex, and on the opportunities to receive continuous technical and cultural formation by the state. In addition, it establishes the right to fair and equal remuneration for the work of equal value; the facilitation of a balance between work and family life for all; the right to leisure time and remunerated rest; the limitation of the work day; the duty of the State to ensure that these provisions are respected; as well as the right to an adequate minimum wage fixed by the State⁷⁶.

The Portuguese Labour Code (PLC) follows the logic of the Constitution by determining that the duties of the state in matters of the professional development of the individual are: the guarantee of access to professional formations, the guarantee of initial qualifications for young people and vulnerable groups that allow them to enter in labour market, and the guarantee of right to equal access to employment and work for all. This instrument also regulates the prohibition of discrimination, whether direct or indirect, allowing measures of positive discrimination and determining the right to reparation in case of discriminatory behaviour of employers⁷⁷.

75 Portugal, 'Constitution of the Portuguese Republic – Official Consolidated Translation of the Constitutional Law No. 1/1997 of 20 September 1997 – The Fourth Revision of the Constitution' (Diário da República, I A 218, 25 April 1976) Arts 9, 13, 59.

76 Ibid Arts 47, 58, 59.

77 CITE, '*Código Do Trabalho (Versão Atualizada – 20 de Março de 2018)*' (CITE, 2018) <<http://cite.gov.pt/asstscite/downloads/legislacao/CT20032018.pdf>> accessed 02 June 2018, Arts 6, 24-

Finally, the PLC has a special section concerning equality and non-discrimination related to sex and gender, which regulates the guarantee of access to employment and professional education, the preference for workers in more vulnerable social positions, and which prohibits discriminatory work adverts and selection processes. This section demands equality of work conditions for all, especially concerning wages for work of equal value, as well as reassures the prohibition of wage difference based on health leaves⁷⁸.

Particularly concerning wages and the duration of work, which are relevant aspects of the work contract for this thesis, the Portuguese Constitution establishes some protective measures. Firstly, it enacts the State's obligation to set a national minimum wage that is sufficient for workers' subsistence, always considering rising living costs, the level of productivity, economic stability and development. According to the legal conditions, the national government has the duty to fix the limits of work duration at a national level⁷⁹.

The PLC determines that the daily work duration can be considered as the period spent in the exercise of a workers' duties and activities as well as the time spent in interruptions and intervals provisioned for in the law⁸⁰. Before the 2009 reform, this period was included the time spent waiting for tasks to be assigned from employers⁸¹.

The PLC also establishes the relevant duties and obligations of the employer in front of employees, such as the requirement to punctually pay the labourer's wage according to the amount of work done, and to respect the legal guarantees for the worker a general prohibition of reducing wages or the prohibition of arbitrary transferences of arbitrarily transferring the employee to an inferior job⁸².

In summary, similarly to the Brazilian framework, the most important and hierarchically superior laws of Portugal provide real protection of gender equality in

28.

78 Ibid Arts 30, 31.

79 Portugal, (n 75) Art 59 (2) a, b.

80 CITE, (n 77) Art 197 (1).

81 Maria Fernanda Rodrigues Alves Estevez, 'A Evolução Legislativa Sobre o Tempo de Trabalho em Portugal – de 1990 à Actualidade' (LLM Thesis, Universidade Autónoma de Lisboa, September 2013) 69.

82 CITE, (n 77) Arts 127 b, 129 d, e.

access to work and labour conditions, including regarding wages and the right to fixed work time, as well as to the consequent payment of minimum wages that are enough for a life with dignity.

III.ii. Flexible And Precarious Labour in Portugal: The Legal Framework of Intermittent Work Contracts

a. *Historical Background of Flexible and Intermittent Work Laws in Portugal*

In Portugal's legal framework, IWCs were gradually introduced over the decades by subsequent reforms of, notably after the economic crisis of 2008. As mentioned before, these changes in the laws, together with the introduction of other flexibility measures have resulted in a complicated situation for work relations in the country, especially concerning gender segregation in labour. As a vulnerable group, women have suffered a lot due to this change, which nowadays have resulted in difficulties related to work and financial life, as it will be studied on the following chapters.

However, before presenting the legal framework that supports the existence of IWCs in Portugal and showing its similarities to the Brazilian model, it is important to present the history of flexible or precarious work in the former country and demonstrate the context that allowed this type of work relationship to come in force. Through this, it will be possible to compare the situation which has led to the flexible reforms of labour laws in both countries and further understand the possible consequences of these changes in Brazil on the next chapters of this study.

- The Concept of Precarious Work Relations

Intermittent work is considered as a type of flexible work contract. However, its introduction in the Portuguese framework brought about negative effects for the population, especially women, once it caused a growth in precarious work conditions.

In this context, the social, temporal and economical dimensions are the most often used to define precarious work relations. The social dimension is related to the social protection provided by the work to the worker. The temporal one relates to aspects

such as stability and security (or the lack of them thereof) in the duration of the relationship with the employer, while the economic dimension is directly related to the low wages paid to precarious workers. Thus, the involuntary non-permanent and uncertain labour relations that derive from IWCs bring risks and bring the worker to a situation of social and economic vulnerability and fragility⁸³.

Involuntary precarious relations have subjective and objective aspects. The subjective aspects – those related to the individual conditions of work – include the instability and the lack or absence of a guarantee to labour rights or social benefits established in legislation. Objectively, precariousness of work results from a context in which the contracting enterprises do not have the necessary economic and financial resources to maintain the business. As a result, social rights are mostly or completely absent, work duration is uncertain or limited, and wages are low, situations that may be in existence since the beginning of a person's career and pose a risk to one's prospects. This situation affects not only the individual but the entire society, which has reduced incentives for innovation and the development of knowledge, and raises a lower amount of tax revenue for social security and economic growth⁸⁴.

In summary, the idea of 'precarious work' refers to jobs that do not follow to the traditional standards for work contracts: full-time with social guarantees of unlimited duration. Precarious jobs do not ensure minimum rights to the labourers or dignified work conditions. Their relationship is characterized as unstable, low paid, with irregular or discontinuous daily work length and a lack of social benefits, part-time service, a limited duration of the contracts and a lack of social benefits such as holidays, unemployment insurance, or a retirement pension⁸⁵. These conditions may vary depending on the type of contract, and there is no need for all of them to be present at the same time.

83 Regina Luzia Gomes, 'Recursos Sociais e Académicos dos Licenciados: Implicações com a Precariedade no Trabalho', (Master of Sociology Thesis, Law Faculty of NOVA University of Lisbon, June 2013) 13, 16.

84 Ibid 16.

85 Teresa Sá, '*Precariedade*' e '*Trabalho Precário*': *Consequências Sociais da Precarização laboral*' (2010) vol. 10, n 7, *Configurações Revista de Sociologia Trabalho e Não Trabalho: Valor e (in)visibilidade*, pp. 91-105 <<https://journals.openedition.org/configuracoes/203>> accessed 22 May 2018, 2.

The concept of precarious work is in Portugal, and includes intermittent work, but also exists through limited-time work contracts, fake enterprises of service rendering that hide a real work relationship behind them, scientific investigation scholarships given to students who end up having the same functions as professors in universities, internship contracts that hide a real work relationship⁸⁶, part-time contract for workers who want to work full-time, autonomous work without social security but with effective subordination in practice, seasonal or occasional work independent on the existence of a contract with undetermined duration, domestic work, or any unstable work without social guarantees to which the worker is involuntarily subordinated⁸⁷.

Even though it is difficult to find a common and rigorous definition of ‘precarious work’, the present study will consider it as the opposite of full-time work with a regular working day that is set in the contract, such as the, which consists on the possible precariousnesses generated by IWC.

- The Historical Background of Precarious Work in Portugal

In western society, precarious work relations emerged from the process of creating instability in formerly stable work relations among low and middle-class employees who were threatened by losing their jobs. Teresa Sá states that over the years and economic crisis, the work relationship with wages above the minimum, social benefits and stability was substituted by a new relationship with lower incomes and benefits and no job stability. As a result, the borders between subordinated work and insubordinated work, or between precarious work and unemployment, became more tenuous⁸⁸.

According to the history of labour laws, access to work started being considered as a right in Europe since 1945, but this only happened in Portugal after the

86 Raquel Varela et. al., ‘Força de Trabalho em Portugal, 2008-2012’ (2013) vol 17 n 3 Diálogos, 947-976
<
https://run.unl.pt/bitstream/10362/23118/1/IHC_Raquel_Valera_Ana_Raado_Ant_nio_Sim_es_do_Pa_o_Maria_Jo_o_Berhan_Renato_Guedes_For_a_de_trabalho_em_Portugal_2008_2012.pdf> accessed 23 May 2018, 952 – 953.

87 Regina Luzia Gomes (n 82) 13-17.

88 Teresa Sá, (n 85) 3-4.

Carnation Revolution of 1974, followed by the enactment of the Portuguese Federal Constitution of 1976⁸⁹.

In Portugal and most Organisation for Economic Co-operation and Development (OECD) countries, the duration of work has become more flexible, especially in the second half of the 20th century, when companies started aiming to increase productivity allied to a cheaper workforce⁹⁰. Since then, workers who came from most vulnerable social, political and economic contexts were the main targets of the social risks brought about by companies' flexible employment strategies⁹¹.

The existence of fragile and vulnerable groups among the Portuguese workforce comes from profound an ancient economic underdevelopment, non-democratic political systems, and strong emigration from which the country has suffered from World War II until the 1960s. Different to other European nations that experienced the 'glorious thirty years' of regeneration after World War II, the consolidation of welfare policies in Portugal (and consequent progress in the living conditions), was postponed until the Carnation Revolution of 25 April 1974 and significantly attenuated by the economic crisis that global economy was passing through at that time⁹².

This evolution has brought the democratization to the State, and after that, the amount of precarious work was expected to reduce. However, contrary to all expectations, the international crisis of the 1970's led to an increase of precarious work relations in Portugal, which resulted on several forms of precarious contracts⁹³. This is due to the fact that since the revolution, the consolidation of labour right has depended on interaction between social classes: the concessions from employers versus the resistance of workers⁹⁴.

Thus, it is possible to find in Portugal, operating at the same time, traditional labour relations that are based on full-time work with 'at will' employment contracts from

89 Raquel Varela et. al., (n 86) 952.

90 Sara Falcão Casca, 'Flexibilidade, Emprego e Relações de Género: a Situação de Portugal no Contexto da União Europeia' in Kovács, I. (coord.), *Flexibilidade de Emprego: Riscos e Oportunidades* (Oeiras, Celta Editora, 2005), 6.

91 Teresa Sá, (n 85) 3.

92 Ibid 4.

93 Ibid 4.

94 Raquel Varela et. al., (n 86) 952.

1974, which derive from the corporatist state and guarantor state intervention from that period, as well as the fast growth of precarious work relations from 1976 onwards. This growth was aided by the introduction of laws regulating term employment contracts in the 1980s, and new measures for labour flexibility introduced in 1989⁹⁵.

Nowadays, precarious labour relations have become controversial in Portugal, notably as an issue between employers and employees. On one side this issue may be associated with the defence of better conditions of work and a higher quality of life, with supposable better possibilities to conciliate private life with labour, but on the other side, they may also result in worse conditions of work for employees, with more intensive tasks, work outside commercial hours, less hours of work than the weekly legal minimum, or even in work during weekends and holidays, which represents a major violation of the principles of the minimum salary, the duration of work and the right to leisure time for workers⁹⁶.

A particular issue with intermittent work comes from the work practices in which workers have to remain at the workplace waiting for tasks, under the regular surveillance of the employer, similar to the situation in Brazil with the previously studied attempt of a transnational to create a flexible work contract in 1995⁹⁷.

Legally speaking, the embryo of the IWC in force in Portugal is the *at will* employment contract⁹⁸ with occasional concession⁹⁹. Until 1999, it was only possible for this nation's employers to seasonally or temporarily lend a labourer to other companies if the person was linked with Temporary Work Agencies (TWA) through a term employment contract¹⁰⁰ associated to a contract for the use of temporary employment. This latter contract provided legal justification for the session. In order to make things easier, the IWC was created in 1999, and in this way workers could be hired by TWAs under 'at will

95 Teresa Sá, (n 85) 4.

96 Sara Falcão Casca, (n 90) 6,8.

97 Joana Carneiro, 'O Contrato de Trabalho Intermittente: A Relação Laboral Cimentada na Segurança do Emprego Através do Trabalho Descontínuo', (2016) Associação de Jovens Juslaboralistas <<https://www.ajj.pt/publicacoes/9>> accessed 24 may 2018) 7.

98 'Contrato de Trabalho com Prazo Indeterminado' in Maria Chaves de Mello, 'Law Dictionary Portuguese – English, English – Portuguese', (São Paulo, 10th edn, Editora Método 2012) 161.

99 Joana Carneiro, (n 97) 7.

100 'Contrato de Trabalho a Termo' in Maria Chaves de Mello (n 98) 161.

contracts'¹⁰¹ and temporarily lent for work in other companies in response to market demands, without the need of for extra legal justification¹⁰².

Moreover, before 2003, the duration of work in Portugal included the time that a worker used to spend available for the employer, waiting for new tasks to be assigned. In 2003, a labour law reform that implemented certain European Directives has changed the former concept¹⁰³. After the reforms, according to Luíz Menezes Leitão, IWC as it is presently formed in Portugal was introduced through a post-crisis labour laws reform in 2009, representing another step compared to the law of 2003 to regulate the existence of periods of activity and inactivity for the worker. In this contract inactivity is not considered as a time of work, even though the worker is always available to be called by the employer¹⁰⁴. Therefore, IWC is a category of work contract under a special regime¹⁰⁵.introduced new hypothesis of work intervals, changing the former concept¹⁰⁶.

However, this change also contributed in free time and work time becoming part of the regulations in the PLC in the shape of rights to leave and absence. This phenomenon has caused the subordination of the private sphere in a workers' life, for instance with the introduction of IWCs, in which employees are called for work only when necessary, a situation that is incompatible with more traditional work contracts. As a result, the time that the worker remains not doing any tasks but has to be available to the employer is not free time, nor a work time, but a third precarious category of time: the permanent availability to the employer¹⁰⁷.

b. The Portuguese Intermittent Work Contract and Flexible Conditions of Work: Legal Applications

As previously explained, the IWC was introduced in the PLC of 2009 aiming to regulate situations of work intermixed by periods of inactivity. As mentioned, this kind of work contract came from the practices of temporary contracting of workers to other

101 'Contrato de Trabalho com Prazo Indeterminado' in Maria Chaves de Mello, (n 98) 161.

102 Joana Carneiro, (n 97) 9-10

103 Maria Fernanda Rodrigues Alves Estevez, (n 81) 69.

104 Joana Carneiro, (n 97) 7.

105 Luiz Menezes Leitão, *'Direito do Trabalho'* (2nd edn, Almedina, Coimbra, 2010) 530.

106 Maria Fernanda Rodrigues Alves Estevez, (n 81) 69.

107 Joana Carneiro, (n 97) 8.

companies when there a discontinuity in activities developed at the hiring enterprise¹⁰⁸. In this type of precarious work, the general labour rules and rights related to wages apply during periods of activity, when employees are effectively working. In times of inactivity, these workers can pursue another activity and only maintain their rights, duties and guarantees unrelated to wages and concern other aspects of the IWC established with the hiring enterprise¹⁰⁹.

According to the PLC, the annual number of hours or days that should be worked has to be established in the IWC, to quantify the provision of work¹¹⁰. If the initial and final terms of the activity periods are written, the contract will be classified as an *alternated* work contract¹¹¹. If there is not a clause specifying what will be the periods of activity, and the worker has to answer the employer's call for work, this type of intermittent contract will belong to the category of *on call* work¹¹².

Intermittent *alternated* work is similar in practice with part-time work, another category of contract in the PLC. This is due to the fact that the part-time vertical annual contract established by article 150, (3) also sets reduced annual periods of activity. This similarity was observed by jurists and, as a consequence, there is no practical distinction between the two types of work¹¹³. Therefore, *alternated* intermittent work and part-time vertical annual work cannot be differentiated from each other in reality.

In parallel, under the IWC *on call* regime, the rhythm of alternation is unpredictable for the employee, and the person has to be informed of the work with at least 20 days in advance from the start date. The amount of time worked is always

108 João Leal Amado and Joana Nunes Vicente, "Contrato de Trabalho Intermitente", in António Moreira (coord.), *XI – XII Congresso Nacional de Direito do Trabalho - Memórias* (1th edn, Almedina, 2009) 124;

Pedro Madeira de Brito, '*Código do Trabalho Anotado*' (7th edn, Almedina, Coimbra, 2009) 409-410; CITE, (n 77) Art. 157 (1).

109 João Leal Amado, '*Contrato de Trabalho: À Luz do Novo Código do Trabalho*', (1th edn, Coimbra Editora, 2009) 134.

110 CITE, (n 77) Art 158 (1) b.

111 João Leal Amado, '*Contrato de Trabalho: Noções Básicas*' (2nd edn, Wolters Kluwer/Coimbra Editora, Coimbra, 2010) 140;

CITE, (n 77) Art 159 (1).

112 CITE, (n 77), Art 159 (1).

113 João Leal Amado, '*Contrato de Trabalho: À Luz...*' (n 109), 135;

Maria Fernanda Rodrigues Alves Estevez, (n 81) 100-101

CITE, (n 77) Art 150 (3).

reduced when compared to full-time contracts, but it must not be lower than a total of six months per year, and at least four months have to be of consecutive work¹¹⁴. According to João Leal Amado, the lack of specificity of the work periods in the *on call* contracts has created employer flexibility, who administrates when the worker will be in an activity or on stand-by. Due to such greater amount of power given to the employer, Portuguese law demands the presence of certain conditions for an IWC to be valid¹¹⁵.

The first demand has to do with the activity operated by the contracting enterprise, which must essentially have a factor of discontinuity, frequent systematic interruption, or variable intensity (fluctuation)¹¹⁶. The seasonality of the activity developed can have artificial or natural causes, such as when enterprises operate only during months of snow, or during the seasonal reproduction of certain animals (e.g. fishing companies)¹¹⁷.

Therefore, discontinuity can be conceptualized whether as periods of time when the company does not operate at all or times when the enterprise operates continually but has a variable volume of work, a cyclicity that generates a greater or lesser demand for a workforce. Discontinuity does not always mean a complete interruption of the company's activities, even though the variable intensity must always correspond to predictable cycles of work¹¹⁸.

This means that the IWC has to stipulate or expressly indicate which is the seasonality or discontinuity of the work. Therefore, the second requirement for an IWC to be so considered is directly related to the company's obligation of establishing the cycles of work: the seasonality of the work over the year must be expressly described. If it does not provide a predictable seasonality or cycle of work, it will be invalid as an intermittent contract, and legally considered as a regular work contract without intermittency¹¹⁹. As a result, wages will have to be paid for workers on a regular basis, even during inactivity

114 CITE, (n 77) Art 159 (3), (2).

115 João Leal Amado, '*Contrato de Trabalho: À Luz...*' (n 109) 135.

116 Joana Carneiro, (n 97) 13;
CITE, (n 77) Art 157 (1).

117 Joana Carneiro, (n 97) fn 29.

118 Ibid 13-14.

119 CITE, (n 77) Art 158 (2).

periods¹²⁰. This condition provides legal security for this type of contract, which can only be adopted in special occasions¹²¹.

Third and finally, if the IWC does not determine a minimum number of hours or days to be worked over the course of the year, or if it establishes an amount of work lower than the minimum, the six months fixed by article 159 (2) of the PLC will be considered for all legal effects¹²². In this case, the contract continues to be in force as an IWC, but the duration of the period of the work becomes the one provisioned by law. This provides further security for the employee, since the activities are highly uncertain with regard to the number of workers and hours that will be necessary to complete the tasks¹²³

However, all those intrinsic characteristics of the IWC can be subject to negotiation through individual agreements or collective bargaining and regulation, even if the result is less favourable to the workers. The PLC only prohibits less favourable provisions concerning the subjects discriminated in article 3 (3)¹²⁴, but the fundamental characteristics of the IWC are not listed¹²⁵.

Therefore, it is always possible for the contracting parts to establish a type of IWC (alternate or *on call*), as well as the periods of activity and inactivity. Additionally, the IWC can also be individually negotiated with the employee in a more favourable sense¹²⁶. However, due to the lack of protective regulation from article 3 (3) of the PLC, collective regulations may change the minimal notification period of 20 days before work may start and the minimal period of activities per year, even if the end results are less favourable for the worker¹²⁷.

As a result, the mandatory characteristics of the IWC that provide protection for workers remain open for future negotiation¹²⁸. This situation threatens the principle of

120 CITE, (n 77) Art 158 (3).

121 Joana Carneiro, (n 97) 13-14.

122 Ibid.

123 Ibid 14.

124 CITE, (n. 77) Art 3 (3).

125 CITE, (n. 77) Art 3 (3).

126 João Leal Amado and Joana Nunes Vicente, (n 108), 135;
CITE, (n 77) Art 3 (4).

127 João Leal Amado and Joana Nunes Vicente, (n 108), 135.

128 Joana Carneiro, (n 97), 15.

legal security on the conditions of work to which employees are subordinated, and represents a disadvantage from the PLC provisions concerning IWC.

Moving forward in the study of Portuguese legislation, the country's Labour Code also determines the rights and guarantees that workers are entitled to under IWCs during the periods of inactivity.

Firstly, the intermittent employee has the right to earn a retributive compensation for the time spent on stand-by¹²⁹. The amount of this compensation must be established in collective regulations or correspond to the legal minimum of 20% of the base remuneration received during activity¹³⁰. The contracting parties are allowed to fix an amount superior than the legal percentage or than the one determined by collective regulations¹³¹. Furthermore, and these retributive compensations must be paid with the same frequency as the remuneration paid during activity¹³².

The right to receive a retributive compensation aims to guarantee that the workers will have the means to economically maintain themselves and their families during the stand-by periods, and in this way they will be completely available to come back for work¹³³. However, there are different legal consequences depending on whether the IWC is *alternate* or *on call*, concerning the possibility of working during inactivity, as well as concerning paid vacations and the Christmas bonus¹³⁴.

In theory, both *alternate* and *on call* workers are allowed to establish other employment relations during inactivity without changes to their retributive compensations¹³⁵. Any exclusivity clause in an IWC is illegal. However, the workers have the duty to remain loyal to the employee and not compete with the latter while on stand-by¹³⁶.

129 Ibid,16.

130 CITE, (n 77) Art 160 (1).

131 João Leal Amado and Joana Nunes Vicente, (n 108),135 fn 28.

132 Joana Carneiro, (n 97) 16.

133 Pedro Romano Martinez et. al. '*Código do Trabalho Anotado*' (8 edn, Coimbra., Almedina 2003) 422.

134 Joana Carneiro, (n 97) 16.

135 CITE, (n 77) Art 160 (3).

136 Catarina de Oliveira Carvalho, 'A Desarticulação do Regime Legal do Tempo de Trabalho', In *Direito do Trabalho + Crise = Crise do Direito Do Trabalho?* (Coimbra Editora, 2011), <http://www.cej.mj.pt/cej/recursos/ebooks/trabalho/o_tempo_de_trabalho.pdf> accessed 07 June 2018, 30;

However, work during inactivity is less common for *on call workers* due to the uncertainty of their situation. After all, they can never predict the period of inactivity for which they will be able to work for others: in comparison, *alternate* workers have times of inactivity fixed in their contracts, and thus can manage more easily their inactive periods¹³⁷.

When it comes to Christmas bonus and paid vacations, intermittent workers have the right to receive both of these incomes, which must be calculated based on the average of the remunerations and retributive compensations earned during the past twelve months. In addition, according to the article 264 (1) of PLC, the amount received as paid vacations has to be the same as the worker would have during activity. Lastly, the dates of paid vacations, must not coincide with periods of inactivity, once vacations are necessary periods to guarantee a physical recuperation of the worker and maintain their health, and therefore, it is not allowed to work at all during this period, even for other employers¹³⁸.

Concerning *on call* work, both of these payments (paid vacation and Christmas bonus) certainly aim to compensate for the time spent in ‘availability’ by the worker. Nevertheless, in alternate work, some may question the applicability of those benefits, given the period of inactivity can not precisely be considered as a period of availability to the employer, once the worker will not be called by the enterprise during stand-by.

However, this time is, in fact, a time of self-availability during which the person is able to work for other employers and establish other contracts. Consequently, vacations are still necessary and remain as a valid and legitimate right to be claimed. While on holiday, workers are forbidden to work for other employers.

Even if the Portuguese law has established some minimal protections, a critical analysis developed by Catarina de Oliveira Carvalho regarding IWCs concludes that the number of paid holidays and Christmas bonus received by IWC workers in Portugal should be an average only of the wages from the period of activity. After all, this

CITE, (n 77), Art 128 (1) f.

137 João Leal Amado and Joana Nunes Vicente, (n 108) 128.

138 CITE, (n 77) Arts 160 (2), 237 (4), 264 (1).

would be more beneficial for the workers (as the average would be higher). This was already the case before 2009 for theatre and performance employees, who are subject to a special regime¹³⁹.

Another distinctive feature of the IWC that is also a right of the workers under it, is that the contract is not suspended or interrupted during the inactivity of the workers, once the intermittence corresponds to a regular particularity of this contract. Even if constant changes affect the power of direction from the employer over the employee, the disciplinary powers and the relationship of subordination are maintained. In addition, the entire period of the contract must be considered for the means of counting seniority, including times of inactivity. Therefore, the rights and guarantees that do not depend on effective activity are maintained during periods of inactivity for all employees¹⁴⁰. Nevertheless, the Portuguese IWC also establishes that sanctions may also be applied during times of inactivity with the loss of retributive compensation by the employee¹⁴¹.

Finally, even if the IWC in Portugal offers some guarantees to the employers, there are more criticism that can be made of the way that intermittent work was legally determined in the country. Catarina de Oliveira believes that there should be a limit to the employer's power to hire more people during periods of inactivity for contracted workers (i.e. contracted workers should be used first), as it would be more beneficial for workers to be called for work and receive wages instead of retributive compensation. Furthermore, there is no regulation concerning the right of the worker to refuse a call from the employer, a characteristic that is present in part-time contracts in which employees have seven days to refuse acceptance of a call for work¹⁴².

In summary, the IWC legislation in Portugal offers some protection and guarantees for workers who are bound by this legal regime, so that they have financial incentive to remain available for work. However, as will be studied in the following chapters, the introduction of this type of contract was a neutral measure that affected mostly women and prevented them of having access to full time contracts in which more

139 Catarina de Oliveira, (n 136) 32.

140 Joana Carneiro, (n 97) 20
CITE, (n 77) Art 160 (4).

141 Joana Carneiro, (n. 97) 23.

142 Catarina de Oliveira, (n 136) 32.

rights are guaranteed. Even with the legal protection, the IWC is not enough to guarantee dignified conditions of living for this vulnerable part of the population, representing merely a palliative for unemployment and a failed attempt to include them in the labour world without effective respect for equality, but instead allowing a lack of social benefits and lower income than men.

IV. Similarities and Differences Between the Legal Frameworks in Brazil and Portugal

The present chapter will focus on the analysis of the differences and similarities between the legal framework that fundamentals the existence of IWC as a flexible work contract in Portugal and Brazil. The analysis will be of great importance to understand if the IWC laws in Brazil guarantee the same minimal protections for the workers as the Portuguese, and thus, predict the possible impacts of this type of contract for Brazilian women based on the Portuguese experience. Furthermore, the comparison will allow to further exterminate if Brazilian IWC meets the international and national standards of gender equality within the scope of Labour Human Rights.

IV.i. International Laws

a. *Similarities*

In the international sphere, Brazil and Portugal have mostly ratified the same UN treaties and ILO conventions. Both countries are bound to comply with the UNHRC, OHCHR, ICJ, the Third Committee of the General Assembly of the United Nations, the special reporters and work groups, and the special procedures within the UN such as UPRs and the Human Rights Committees. Both have ratified the UDHR (1948), the Statute of the International Court of Justice (1945), the ICCPR (1966), the ICESCR (1966) and its optional protocols, CEDAW (1979), the ILO's Declaration of Philadelphia (1944), as well as the Declaration on Fundamental Principles and Rights at Work (1998). Both are obligated to progressively implement the UN SDGs, including the protection of labour rights, promotion of decent work conditions, and equality in labour, especially for women.

b. *Differences: The Protection from Regional Organizations*

On the other hand, there are differences on the regional level between the international laws recognized and applicable in Brazil and Portugal concerning gender

equality and labour rights protection. Both nations are part of regional organisations that aim to protect human rights: the OAS for Brazil, and the EU and CoE for Portugal.

However, the EU has a larger volume of competent organs and laws in force that specifically encompass the intersection between gender equality and the International Labour Charter. These include the Treaty of Amsterdam, the CFREU, the European Parliament resolution of 13 March 2007¹⁴³, and numerous Regulations, Directives, Decisions, Resolutions and Recommendations.

Further, Portugal is member of the CoE, the organisation responsible for promoting the ECHR and guaranteeing the respect for human rights, including gender equality and social rights protection. The judicial organ of the CoE is the European Court of Human Rights, while the EU has the Court of Justice of the European Union. Both have different but complimentary mandates regarding the protection of human rights, mainly through the claims procedures, including individual complaints. Moreover, the EU and CoE are regionally strong organisations whose regulations and decisions are binding and mandatory. They receive financial support from the member-states, which include some of the strongest economies in the world¹⁴⁴.

On the other hand, the OAS's Inter American System of Human Rights (IASHR) is much simpler than the EU and CoE systems. The IASHR operates through the Inter American Commission on Human Rights (IACHR) and the Inter-American Court of Human Rights, which operate as protective organs of gender equality in labour mostly through their fundamental principles, but also through decisions from the claim procedures. Individual petitioners are not allowed to present claims to the Inter-American Court of Human Rights, but only to the IACHR, which would then be in charge of taking the complaints further to the court. IASHR receives financial support from the member-

143 'European Parliament, 'Resolution of 13 March 2007 on a Roadmap for Equality Between Women and Men (2006-2010) (2006/2132(INI))' [2007] OJ E 301/13.

144 Comissão Europeia, "O Orçamento da UE no Meu País: Portugal" (*Sítio da Comissão Europeia*, 07 February 2014) <http://ec.europa.eu/budget/mycountry/PT/index_pt.cfm> accessed 22 June 2018.
CoE, 'The Council of Europe in Brief: Budget' (*Council of Europe Portal*) <<https://www.coe.int/en/web/about-us/budget?desktop=true>> accessed 22 June 2018.

states, but not all of them recognize the competence of the court to oversee violations, and in this event it is only possible to make claims to the Commission¹⁴⁵.

Therefore, concerning the international organisations and legislation, the regional specific protection of human rights gender equality within the scope of Human Labour Rights is not as strong in Brazil, as in Portugal. Furthermore, the system implemented in the Americas is not as sophisticated as in Europe. Finally, the IACHR is not as powerful as the courts in Europe, due to a lack of support offered from OAS member-states. This means that Brazilian workers, especially women, are more vulnerable to violations than the Portuguese, once they do not receive similar amount of protection in the regional sphere. Therefore, if less protective laws are being enacted, they will possibly result in worse conditions of work for such groups, a hypothesis that will be demonstrated over the next chapters.

IV.ii. National laws

a. Similarities

Nationally, there are similarities between Portugal and Brazil when comparing the existent framework of labour rights, gender equality at work and the IWC. At this point, it is pertinent to remark that the relations between Brazilian and Portuguese national laws derive from a common historical background. This is not only due to Brazil having been a Portuguese colony for more than 300 years (from 1500 to 1822) and having inherited cultural traditions, but also due to Portugal transmitting much of its juridical rationale and corpus to Brazil. Prior to 1827, when the first law university was created in Brazil, future jurists and academics used to go to Portugal to study law mainly at the University of Coimbra¹⁴⁶. Therefore, a large part of Brazilian legislation was inspired by

145 Comissão Interamericana de Direitos Humanos (CIDH), ‘B-32: Convenção Americana Sobre Direitos Humanos (Pacto de San José de Costa Rica)’ <https://www.cidh.oas.org/basicos/portugues/d.Convencao_Americana_Ratif..htm> accessed: 22 June 2018;

Hélio Bicudo, ‘Defesa dos Direitos Humanos: Sistemas Regionais’ (2003) vol 17 n 47 Estudos Avançados 225 <<https://dx.doi.org/10.1590/S0103-40142003000100014>> accessed 22 June 2018, 225-236.

146 Carta Forense, ‘A origem das Faculdades de Direito no Brasil’ *Jornal Carta Forense* (03 August 2009) <<http://www.cartaforense.com.br/conteudo/artigos/a-origem-das-faculdades-de-direito-no-brasil/4485>> accessed 06 July 2018.

Portuguese juridical knowledge, a characteristic that has been maintained over the centuries.

This influence can be observed even in recent years. For instance, the constitutional interpretation theories of Portuguese scholars such as Jorge Miranda, Marcelo Rebelo de Souza, and José Joaquim Gomes Canotilho are often studied in Brazilian law schools and applied by national jurists. Furthermore, the CFRB text has many influences from the Portuguese Constitution concerning extant fundamental rights, the primacy of human dignity (which Portugal imported from German law) and constitutional review proceedings. Another inheritance was the post-Salazar constitutional softening of elements within the constitution that had previously been used by the state to effect control over the economy¹⁴⁷.

When it comes to the specific sections of the legal framework, as shown previously, both Brazil and Portugal have constitutional laws and labour codes that aim to protect gender equality in work, ensure a general minimum salary, regulate the duration of work and many other related aspects of labour relations. Their provisions largely correspond to each other.

Firstly, concerning gender protection of women's labour, both countries constitutions and labour codes have provisions that aim to promote and guarantee respect for equality, as well as the ideal of equal pay for work of equal value¹⁴⁸. All workers in the two countries should enjoy the liberty of professional choice, including employment policies to bring about effective access to work¹⁴⁹, the prohibition of discriminatory

147 Fernando Martines, 'Influência para o Brasil, Constituição portuguesa chega aos 40 menos ideológica' *Consultor Jurídico* (07 April 2016) <<https://www.conjur.com.br/2016-abr-07/constituicao-portuguesa-chega-aos-40-anos-ideologica>> accessed 06 July 2018.

148 Brazil, 'Consolidação das leis do trabalho – Decreto-lei nº 5.452, de 1º de maio de 1943 (CLT)' (Brasília, 1943) <http://www.planalto.gov.br/ccivil_03/decreto-lei/Del5452.htm> accessed 17 May 2018 Art 5;

Portugal, 'Constitution of the Portuguese Republic – Official Consolidated Translation of the Constitutional Law No. 1/1997 of 20 September 1997 – The Fourth Revision of the Constitution' (Diário da República, I A 218, 25 April 1976) Art 59 (1) a;

Brazil, 'Constituição da República Federativa do Brasil de 1988 (CFRB)' (Brasília, 1988) <http://www.planalto.gov.br/ccivil_03/constituicao/constituicao.htm> accessed 17 May 2018, Art 7 XXX;

CITE, 'Código Do Trabalho (Versão Atualizada – 20 de Março de 2018)' (CITE, 2018) <<http://cite.gov.pt/asstscite/downloads/legislacao/CT20032018.pdf>> accessed 02 June 2018, Art 31 (2).

149 Portugal, (n 148) Arts 8 (2) c, 47;

advertises or selective processes¹⁵⁰, and the offering of the quality of opportunities in the workplace regardless of gender or sex, with continuous technical and cultural formation sponsored by the state¹⁵¹.

Discrimination for reasons of gender or sex in labour is expressly forbidden by the law in Brazil and Portugal, notably with relation to admission criteria, dismissal, reasons for employment or promotion that are based on sex, gender, age, colour, family situation or pregnancy. Both countries' legislation allows positive discrimination through affirmative action by the government¹⁵². The laws also establish special protection for pregnant, puerperal and breastfeeding women as well as for the balancing of work and private life¹⁵³.

More general protections related to work rights that are relevant for this study, which are present in the laws of both countries, include the right to an adequate fair minimum wage fixed by the state, the right to irreducible remuneration¹⁵⁴, the right to remunerated rest and the limitation of the working day, as well as to leisure time¹⁵⁵.

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- Brazil, 'CFRB' (n 148) Arts 6, 23 V, 205;
CITE, (n 148) Arts 6, 24 (1), 24 (2) b.
- 150 Brazil, 'CLT' (n 148) Art 373-A I-VI;
Portugal, (n 148) Art 58 (2) b;
Brazil, 'CFRB' (n 148) Art 7 XX, XXXI;
CITE, (n 148) Arts 24 (2) a, 30 (2).
- 151 Brazil, 'CLT' (n 148) Arts 7 XXX, XXXI, XXXIV, 373-A, III;
Portugal, (n 148) Art 58 (2) b;
Brazil, 'CFRB' (n 148) Art 5 heading, XX;
CITE, (n 148) Art 24 (1).
- 152 Brazil, 'CLT' (n 148) Art 373-A I-VI;
Portugal, (n 148) Art 58 (2) b;
Brazil, 'CFRB' (n 148) Art 7 XX, XXXI;
CITE, (n 148) Arts 24 (2) a, 30 (2).
- 153 Brazil, 'CLT' (n 148) Arts 373-A II, IV, V, 391-400;
Portugal, (n 148) Art 59 (2) c, 68 (3);
Brazil, 'CFRB' (n 148) Art 6;
CITE, (n 148) Arts 25 c, 35-65.
- 154 Brazil, 'CLT' (n 148) Arts 76-83, 117-128;
Portugal, (n 148) Art 59 (2) a;
Brazil, 'CFRB' (n 148) Art 7 IV;
CITE, (n 148) Arts 127 (1) b, 129 d, e.
- 155 Brazil, 'CLT' (n 148) Arts 4, ph 2 (2), 66-72;
Portugal, (n 148) Arts 59 (1) d;
Brazil, 'CFRB' (n 148) Arts 6, 7 IV, XV;
CITE, (n 148) Art 7 (1) c.

Concerning IWC regulation, it is possible to find a few similarities between the models adopted in Brazil and Portugal. A legal comparison leads to the conclusion that the Portuguese legislation is much more protective of intermittent workers than the Brazilian one, something that will be studied on the next topic of this chapter.

However, some similarities remain between the national regimes which are: the particular IWC characteristic of fluctuation between periods of activity and inactivity by the workers and the obligation of the contracts to be *at will* contracts¹⁵⁶; the necessity of remuneration for the times of activity; the possibility to work for other employers during periods of inactivity¹⁵⁷ allied to a prohibition of work during vacations¹⁵⁸; the rights to receive paid holidays and a Christmas bonus¹⁵⁹; as well as inclusion of periods of inactivity for seniority¹⁶⁰.

Therefore, considering the similarities between the two national and international legal frameworks, allied to other social, political and economic contexts that will be developed in the next chapter of this work, it is possible to predict the effects that the introduction of IWCs will have for gender equality in the Brazilian labour market based on the Portuguese experience. This idea will be further explained and detailed in the last chapter of the thesis.

b. *Differences: Lack of Regulation of Intermittent Work in the Brazilian Laws*

Although there are aspects in common in the national laws in Brazil and Portugal related to gender protection and the promotion of equality in the labour environment, and even though both nations have recently adopted the possibility for IWCs that are essentially similar, it is remarkable that the norms that apply to this kind of contract present differences in each country.

156 Brazil, 'CLT' (n 148) Art 443 ph 3, 452-A heading;
CITE, (n 148) Art 157, 158 (1).

157 Brazil, 'CLT' (n 148) Art 452-A ph 5;
CITE, (n 148) Art 128 (1), 160 (3).

158 Brazil, 'CLT' (n 148) Arts 138, 452-A (9);
CITE, (n 148) Art 237 (4).

159 Brazil, 'CLT' (n 148) Art 452-A ph 6;
CITE, (n 148) Art 160 (2) and 264 (1).

160 Brazil, 'CLT' (n 148) Art 452-A phs 6, 8, 9;
CITE, (n 148) Art 160 (4).

In Portugal, the intermittent contract has a more detailed regulation, resulting in higher protection for the worker, than the one introduced in Brazilian legislation in 2017. The lack of regulation in Brazil represents an advantage for enterprises seeking opportunities to explore cheap labour and, as a consequence, employees are obliged to accept worse conditions of work.

To begin with the detailed comparison, the PLC establishes that intermittent work can only be used by enterprises with discontinuous or fluctuating patterns of activities, while in it can be adopted unrestrainedly by any type of enterprise, regardless of the frequency or pattern of the activity developed¹⁶¹.

The Portuguese laws also determine that the employees contracted under IWC regime are entitled to receive retributive compensation for the periods of inactivity that correspond to at least 20% of the base remuneration for activity¹⁶². On the other hand, in Brazil, the workers basic needs were not covered by the laws and there is no obligation for the enterprise to pay any amount for the workers during periods of inactivity¹⁶³.

Moreover, in Portugal, IWCs have to determine the annual number of days or hours of activity, and the sum cannot be less than six months of work per year, with one period of work needing to be a minimum of four months of duration¹⁶⁴. In Brazil, the law has not set a minimum amount of time to be worked or minimal duration of activity periods. Workers therefore need to live with the anguish of uncertain work and remuneration¹⁶⁵.

As a result of these two differences, it is possible for Brazilian workers to remain without wages if they do not find other jobs during periods of inactivity, a situation that may seriously hinder the livelihood of many families for long and uncertain

161 Flávia Pacheco et. al., 'Análise Comparativa Normativa: Trabalho Intermitente no Brasil e em Diplomas Estrangeiros' (2017) vol 2 n 3 Revista Científica Faculdades do Saber 204, 213;

GT Reforma Trabalhista, '*Contribuição Crítica à Reforma Trabalhista*' CESIT/UNICAMP Research Paper Campinas, 2017 <<http://www.cesit.net.br/wp-content/uploads/2017/06/Dossie-14set2017.pdf>> accessed: 25 June 2018, 19. 33;

CITE, (n 148) Art 157 (1).

162 CITE, (n 148) art. 160, 1.

163 Flávia Pacheco et. al., (n 161) 213.

164 CITE, (n 148) Arts 158 (1) b, 159 (2).

165 Flávia Pacheco et. al., (n 161) 213.

periods of time. In this way, the risk of the business is unfairly transferred to the employees and they have to contend with the consequences of a lack of demand for the companies' services or products.

Such a variable wage that only depends of the number of hours effectively worked according to the employer's will, further represents an unfair disadvantage for the workers, for example, because they are obliged to pay the difference to reach the minimal contribution for social security. What is more, considering that, they are the ones who are suffering the most with the impacts of the economic crisis that is taking place in Brazil, this measure will only make the situation worse¹⁶⁶.

Intermittent workers in Portugal must be called for work at least 20 days in advance, while in Brazil they can be called only three days before the initial term of work, a much shorter period of time for the employees to organize their personal and professional lives. This situation may cause great anxiety and stress for individuals due to the need to create, cancel, or postpone plans at the last minute¹⁶⁷.

An even worse difference between legislations is that if the worker in Brazil accepts the call for work and later gives it up without justification, a penalty of 50% of the due remuneration can be applied in thirty days¹⁶⁸. This represents, once again, an abusive transference of the risks of entrepreneurial activity to the labourer.

In summary, even the few common aspects between the laws in Brazil and Portugal are limited in matters of IWCs – even if they created in both nations to answer the demands of a more flexible labour market – and consequently in matters of gender protection, general labour regulation. There is an evident difference that makes Brazilian IWC laws much less protective of the worker than the Portuguese ones.

166 Marcella Fernandes, 'O Impacto da Reforma Trabalhista na Criação de Empregos até Agora' *Huff Post* (08 February 2018) <https://www.huffpostbrasil.com/2018/02/08/o-impacto-da-reforma-trabalhista-na-criacao-de-empregos-ate-agora_a_23355807/?guccounter=1> accessed 22 June 2018.

167 CITE (n 148) Art 159 (3).

Flávia Pacheco et. al., (n 161) 213;

Brazil, 'CLT' (n 148), Art 452-A ph 1.

168 Flávia Pacheco et. al., (n 161) 213;

Brazil, 'CLT' (n 148), Art ph 4.

Therefore, if the introduction of intermittent work has had negative effects for women in the Portuguese labour market, as will be shown on the next chapter, a legal analysis leads to the conclusions that the negative impacts in Brazil may be even worse, and that the female population would suffer equally or even more with IWC than the Portuguese. In other words, this situation may be interfered to exist even more negatively with regard to Brazilian women's work than it has impacted Portuguese women, as will be demonstrated in the next chapters.

V. Intermittent Work and Gender Inequality in Labour: Practical Consequences

The consequences of introducing intermittent contracts and flexible working need to be examined. Foremost, the study will demonstrate the effects of this phenomenon in Portugal, before the preliminary effects in Brazil of the IWC as a flexible and precarious work type will be presented.

Finally, in the last chapter of the thesis, the possible consequences of IWC in Brazil will be developed more deeply, mostly based on the Portuguese experience, and a parallel between both countries will be established. In addition, it will be demonstrated that the preliminary data obtained through national research in Brazil already confirms the hypothesis of this thesis that the IWCs have worsened working conditions, especially for women, exactly as happened in Portugal.

V.i. Women in Work and the Increase Flexibility of Labour in Portugal

a. *Economic Crisis, Recuperation Measures and Social Effects*

Labour relations are always modified and adapted whenever there is a cyclical crisis in western capitalism, and the results often involve a rise in precarious work¹⁶⁹. Portugal is no exception to this pattern. The 2008/2009 economic crisis has led to flexible employment policies and regulations in the country as an attempt to reduce unemployment. Nevertheless, their practical results have been fictitious rises in formal employment, once they came along with the growth in precarious work relations, especially for women.

In order to understand this development, of the crisis it is first important to remark that in the post-crisis capitalist system, labour flexibility and high rates of unemployment are necessary for the competition of states and enterprises in the national or international market. Through the consolidation of poor labour conditions within the economically active sectors of population, those company agents are capable of

169 Teresa Sá, “Precariedade” e “Trabalho Precário”: Consequências Sociais da Precarização Laboral’ (2010) vol 10 n 7 Configurações Revista de Sociologia Trabalho e Não Trabalho: Valor e (In)visibilidade 91 <<https://journals.openedition.org/configuracoes/203>> accessed 22 May 2018, 4.

maintaining low wage levels, or at least reducing its cost, and temporarily increasing their profits. This is, in fact, a new way of generating social-labour disempowerment, once it restricts the employability of certain individuals (women) and increases their risk of social and economic exclusion¹⁷⁰.

This is what has been taking place in Portugal since the Labour Code reform of 2009, which represented a strategy to overcome the preceding economic crisis of 2008/2009. A study developed by XXX in 2017 shows that even though unemployment rates have decreased in Portugal following the crisis highs of 2008/09, precarious employment rates have not experienced the same decrease¹⁷¹. Furthermore, albeit the growth in flexible working relations was it was modestly expressed in Portugal, but mostly based on the increase in precarious labour relations that has particularly affected the female workforce, a socially vulnerable group, which is alarming in a Human Rights perspective. After all, this context has resulted in a real growth of the poor labour sector, composed of the most socially vulnerable groups, such as women¹⁷².

The changes in Portugal were the outcome of economic entrepreneurial will allied to national policies in Europe that developed the sense of promoting flexible work. These public policies can be associated to an offensive logic of rapidly increasing the number of available job posts without causing a growth in labour costs, to a defensive strategy by the state to reduce unemployment, as well as to a traditionalist idea that the regress of women to housework during periods of inactivity is essential for maintaining familial cohesion. Furthermore, studies have shown that flexible work has a false gender neutrality due to the lack of investment in the promotion of strategies oriented to the modernization of the gender roles and due to social ideologies that maintain such roles, while the weight of articulating professional and family life remains over women's shoulders¹⁷³.

170 Sara Falcão Casca, 'Flexibilidade, Emprego e Relações de Género: a Situação de Portugal no Contexto da União Europeia' in Kovács, I. (coord.), *Flexibilidade de Emprego: Riscos e Oportunidades* (Oeiras, Celta Editora, 2005), 26-27.

171 Margarida Peixoto and Cristina Oliveira da Silva, 'O Desemprego Está a Baixar Em Portugal. E a Precariedade No Trabalho?' *Economia Online* (12 February 2018) <<https://eco.pt/2018/02/12/o-desemprego-esta-a-baixar-e-a-precariedade-no-trabalho/>> accessed 04 June 2018.

172 Raquel Varela et. al., 'Força de Trabalho em Portugal, 2008-2012' (2013) vol 17 n 3 *Diálogos*, 955-956.

173 Sara Falcão Casca, 'A (des)igualdade de Género e a Precarização do Emprego' in Virgínia Ferreira (coord) *A Igualdade de Mulheres e Homens no Trabalho e no Emprego em Portugal: Políticas e*

Anyway, according to research from 2010, soon after the crisis, the implementation of intermittent and other flexible contracts has impacted 41,3% of the population in Portugal, which experienced work relations that could be considered precarious at that time¹⁷⁴. This proves that the rise in precarious labour conditions was the social cost of the change in labour laws that led to the introduction of intermittent work and other types of flexible contracts after the crisis in Portugal, especially for women, as will be subsequently presented.

b. The Reform of Labour Laws in Numbers: Increased Precarity in Portuguese Women'S Work Relations

Measuring the real rates of precarious work through official statistics is a remarkably difficult task (especially in Portugal, where illegal work precariousness and fake autonomous work are very common and cannot be tracked by national research). Still sociological research can prove that the numbers of precarious employments have raised after the corrective measures that were adopted by the Portuguese government after the crisis. This research is able to reconcile qualitative and quantitative data, allowing a more comprehensive picture of the situation to be developed¹⁷⁵.

The recent trend of deregulating and flexible labour relations, especially after the economic crisis, has raised the precariousness of work contracts, increased underemployment and resulted in consequently reducing wages. It is noteworthy that Portuguese women are particularly more vulnerable to this, a reality that leads to the conclusion that flexible jobs including intermittent work represents a type of underemployment reserved for women, which is therefore a process of invisible impoverishment that accentuates the logic of gender difference and gender inequality¹⁷⁶.

According to Teresa Sá, the precarious worker profile within EU member states is mostly comprised of women, young people (below 25 years old), and less qualified professionals, while the economic sectors that most exploit this type of work are small business and seasonal business, such as tourism, services, the primary sector, and

Circunstâncias (Estudos 7, CITE 2010) 261.

174 Teresa Sá, (n 169) 5.

175 Ibid 1-4.

176 Sara Falcão Casca, 'Flexibilidade, Emprego...' (n 170) 15 – 16.

construction. Specifically, in Portugal, the workers most affected are usually women, young people, old people, and less qualified or recently graduated individuals. Therefore, the category of precarious work has spread amongst all generations, becoming a structural characteristic of the reconfiguration of labour markets after moments of cyclical economic crisis¹⁷⁷.

Concerning national numbers, according to Prodata¹⁷⁸, a Portuguese institute of data research, Portuguese women represented 48,7% of the employed population in 2017, against 46,7% in 2008 before the Labour Code reform. However, after the crisis and the 2009 labour laws reform that subsequently introduced intermittent work in the Portuguese laws, women started to work less hours per week, including compared to men. In 2017, the average of hours worked per week by women was 32,2¹⁷⁹ against 33,2 in 2008, which represents a difference of approximately 52 hours of work per year (more than one and a half weeks of work and income), and the second lowest amount since 1983, when records began. On the other side, men have not suffered a significant change in terms of work time since the introduction of flexibility to the laws. They worked approximately 36,3 hours per week in 2017 and 36,8 hours in 2008¹⁸⁰.

Moreover, the average female wage in Portugal was 982,5 euros in 2016 against 1.215,1 euros for men¹⁸¹. Even in the years closer to the economic crisis and the

177 Teresa Sá, (n 169) 3,5.

178 Pordata, 'População do Sexo Feminino Empregada em % da População Empregada' (*Pordata*, data source Inquérito ao Emprego (INE), 2018) <<https://www.pordata.pt/Portugal/Popula%C3%A7%C3%A3o+do+sexo+feminino+empregada+em+percentagem+da+popula%C3%A7%C3%A3o+empregada+-638>> accessed: 25 june 2018.

179 Pordata, 'Duração Média Semanal do Trabalho Efectivo dos Trabalhadores do Sexo Feminino por Conta de Outrem: Total e por Sector de Actividade Económica' (*Pordata*, data source INE, 2018) <<https://www.pordata.pt/Portugal/Dura%C3%A7%C3%A3o+m%C3%A9dia+semanal+do+trabalho+efectivo+dos+trabalhadores+do+sexo+feminino+por+conta+de+outrem+total+e+por+sector+de+actividade+econ%C3%B3mica-362>> accessed: 25 june 2018.

180 Pordata, 'Duração Média Semanal do Trabalho Efectivo dos Trabalhadores do Sexo Masculino por Conta de Outrem: Total e por Sector de Actividade Económica' (*Pordata*, data source INE, 2018) <<https://www.pordata.pt/Portugal/Dura%C3%A7%C3%A3o+m%C3%A9dia+semanal+do+trabalho+efectivo+dos+trabalhadores+do+sexo+masculino+por+conta+de+outrem+total+e+por+sector+de+actividade+econ%C3%B3mica-820>> accessed: 25 june 2018.

181 Pordata, 'Salário Médio Mensal dos Trabalhadores por Conta de Outrem: Remuneração Base e Ganho Por Sexo' (*Pordata*, data source Quadros de Pessoal GEP/MTSSS until 2009, GEE/MEc from 2010 to 2012, GEP/MSESS, MTSSS from 2013 on 2018) <<https://www.pordata.pt/Portugal/Sal%C3%A1rio+m%C3%A9dio+mensal+dos+trabalhadores+por+conta+de+outrem+remunera%C3%A7%C3%A3o+base+e+ganho+por+sexo-894-7301>> accessed: 25 june 2018.accessed: 25 june 2018.

introduction of flexible labour legislation, men have experienced an annual rise in their wages. Women, on the other hand, have suffered a decrease in their income between 2012 and 2014, demonstrating that they were more vulnerable to the effects of the 2008/2009 crisis and reduction of the amount of time worked..

Finally, women's vulnerability to the process of precarity caused by the Labour Laws Reform of 2009 can be proven by the fact that in 2017, 49,2% of the women in Portugal who work less hours per week did this involuntarily against 44,3% of men, notably because they could not find a full-time job¹⁸². That number has grown compared to 2008, the respective figures for which were 41,7% for women and 36,0% for men. This data shows that the introduction of IWC and flexible work contracts in the Labour Laws after the crisis has impacted more Portuguese women than men, and as a result, they more frequently had to work in jobs considered precarious because they have no other option since the crisis. In other words, this demonstrates the higher interference that the introduction of more flexible work contracts has had for women in this country¹⁸³.

Therefore, there is a direct relationship between the growth of feminine precarious employment since 2009 and the introduction of IWC as flexible work contracts in the Portuguese Labour Code, which proves that those measures have negatively interfered in the levels of gender equality in the market.. After all, the flexible jobs are mostly undertaken by women, and frequently correspond to a decline of employment conditions with lower incomes, a lack of professional growth prospects, fewer social benefits and higher risks of social exclusion¹⁸⁴. As demonstrated through the statistics, intermittent work and other forms of flexible part-time jobs are involuntary for a considerable proportion of women, and sometimes correspond to the only alternative available job¹⁸⁵.

182 Eurostat, 'Involuntary Part-Time Employment As Percentage Of The Total Part-Time Employment, By Sex And Age (%)', (*Eurostat*, 31 of May 2018) <http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=lfsa_eppgai&lang=en> accessed 25 June 2018.

183 Comissão Para a Cidadania e a Igualdade de Género (CIG), '*Igualdade de Género em Portugal: Indicadores-Chave 2017*' (Divisão de Documentação e Informação, CIG 2017), 6.

184 Sara Falcão Casaca, 'As Novas Dinâmicas Laborais e os Desafios da Articulação Com a Vida Familiar' (2013) vol 72 *Sociologia, Problemas e Práticas* 31 <<http://sociologiapp.iscte-iul.pt/pdfs/10340/10481.pdf>> accessed 22 May 2018, 34.

185 Sara Falcão Casca, 'Flexibilidade, Emprego...' (n 170), 17.

Therefore, even if increased flexibility may reduce unemployment and lower the cost of work in periods of economic recession, it has evil consequences for society, resulting not only in lower income and reduced acquisitive power for the Portuguese people – mostly women -, but it also results in the fomenting of labour insecurity and a lack of social rights, raising gender inequality in the market which will be better developed in the next section. All these aspects are becoming progressively more frequent among the Portuguese population due to the flexible labour laws and are generating profoundly negative consequences especially for women's, but also for the entire society's existence due to the disempowerment that they cause as well as the worsening of living conditions¹⁸⁶.

C. *Practical Consequences for Gender Inequality*

As previously mentioned, the introduction of laws that allow more flexible working, such as IWC, which have changed the structure of employment through the modification of contract types and duration of work, have ambiguous effects for gender representation in labour: the changes appears to bring opportunities, but in fact creates many risks for the Human Rights of the Portuguese population, especially regarding gender equality.

On one side, flexible labour laws seem to reduce unemployment and supposedly raise women's symbolic economic independence, with the result that women play a less marginalized role in the Portuguese economy¹⁸⁷. In other words, these changes create the impression of a more gender inclusive work environment.

On the other hand, however, the quality of women's conditions of work and working relations remain weak or become worse after the Labour Reform of 2009, due to the fact that the social order and cultural imagination always reserves the worst labour opportunities for women. This situation demonstrates not only which were the economic strategies and expectations of the enterprises and government through the adoption of flexible work, but also corresponds to the ideology of pre-established gender roles that

¹⁸⁶ Teresa Sá, (n 169), 5.

¹⁸⁷ Sara Falcão Casca, 'Flexibilidade, Emprego...' (n 170) 26-27,

still prevails in Portugal, as well as to the expectations of society and enterprises concerning their economic strategies towards the flexibilization of work and labour.

In other words, the impression that flexible work was a solution for maintaining employment in Portugal was a fallacy, once, in fact, gender equality is sacrificed as women become a vulnerable category and subject to the risks of labour precariousness, with higher chances of being fired during the next cyclical crisis, once they occupy cheaper posts in the market with contracts that can easily be undone¹⁸⁸. Even if the growth of flexible types of contract have caused a general rise in employment rates in Portugal after the economic crisis of 2008/2009 and Labour Laws reform of 2009, as seen on the last topic, this is mainly due to an increase in the precarious nature of work relations, especially for women. Despite the modest increase in numbers, Portuguese society is starting to experience the strongly negative effects. The newly flexible jobs have not only been incapable to lead to the expected economic independence for female workers and have generated an increase in the gender division of roles in society. There has also been an increase in job insecurity for women, creating a new cycle in the accumulation of disadvantages in the post-crisis context that has weakened employability and directly increased gender inequality in the market¹⁸⁹.

Another consequence of the introduction of precarious work contracts in the PLC has been the erosion of rights for women who used to have stable full-time jobs. In the years following the crisis of 2008/2009, the wages and allowances of this share of population have begun to deteriorate and have been gradually reduced with the substitution of stable work contracts for the new types of flexible ones with less rights¹⁹⁰.

Therefore, IWC and other forms of increased flexibility have led to a deficiency in the quality of work conditions, which has generated poverty among women in the years after the crisis. This is in addition to the reduction in wealth for female workers who are unemployed, which, according to Varela, represented a general loss of

188 Ibid 26-27.

189 Ibid 26.

190 Raquel Varela et. al., (n 172) 954.

124 thousand euros per unemployed person to Portuguese GDP over the period from 2008 to 2012¹⁹¹.

Such a general social weakness in Portugal that has also had an impact at the political and organizational level, which also contributed to the reduction of wages and work conditions after 2009. According to Raquel Varela, the impacts of the changes are significant at two levels: a reduction in the strength of social cohesion and a restriction in welfare and gender equality policies¹⁹².

In this sense, one more impact of flexibilization or the increased precariousness of labour contracts, which is the case of IWC, has been the de-capitalization of social security funds, as women who receive lower wages pay lower taxes, either due to the fact that the substitution of stable contracts by precarious ones has been done using the same funds that used to pay for unemployment insurance for people who were fired from stable jobs to be hired under flexible contracts or through tax exemptions for companies. This means that the Portuguese state has not complied with its duty to reconcile the unequal relations between workers and companies. Instead, it has been transferring social security funds to the private sector. As a result, the State was the executive in the task of devising the work flexibility in the legal framework, and responsible for using social funds that are collected by this same public agent¹⁹³.

The decrease of labour rights for women represented a type of work deprivation, as the process does not imply the simple absence of a wage, but also involves the loss of social rights and guarantees, independence, social status and self-esteem, effects that women have been unfairly suffering with since the legalization of flexible work. These impacts may even cause the deterioration of emotional, family and social ties, conducive to a progressive social isolation of women, or even worse, accentuate the asymmetry of power in gender relations and strengthen traditionalist patriarchal ideologies¹⁹⁴. Therefore, the gender segregation and increases in inequality are not limited to the work environment, but they have reached all spheres of private and public life.

191 Ibid, 963-964.

192 Ibid 964.

193 Ibid, 971, 973.

194 Sara Falcão Casca, 'Flexibilidade, Emprego...' (n 170) 26-27.

Work is a fundamental aspect in the construction of individual and collective identities, and a very important tool for achieving an income source, social integration, cohesion, satisfaction, personal fulfilment and the sentiment of personal independence. Precarious work relations create instability in Portuguese women's lives and prevent them from planning for the future, causing economic dependency, an inability to resist social risks in bearing basic living costs, and changes in daily routines through variable work schedules that make planning impossible¹⁹⁵.

The increased precariousness of women's labour relations demonstrates that Portugal has come to a historical crossroad in the paths of capitalism, democracy the working regime and labour rights. It is impossible to predict its future, but it is already possible to notice the contradictory tendency of this country to approximate to a capitalist model that gives up on human social rights (or at least severely restrains them) in order to benefit the interests of economic forces, even if the memory of the fascist state and the defeat of Salazar's dictatorship is still alive and there is a wide consensus on the necessity for a welfare state¹⁹⁶.

The rush to lower wages as a measure to recover from the 2008/2009 crisis has contributed to the deterioration of social rights and a rise of gender inequality in Portugal, while opening a Pandora's box, not only concerning the future of female workers, but also regarding the entire nation's population and their long-term future¹⁹⁷. That is to say, as labour rights are necessary to guarantee a life with dignity for individuals, their absence means humanity's lack of control over the resources available for survival, which prevents people from participating politically or improving their living conditions. As a result, society becomes step-by-step more individualistic, a situation that makes it easier for opportunists to gain power. In this sense, the rise of precarious work conditions through IWC or any other flexible work contracts may also have malign consequence in halting the possibility of future economic independence for the entire Portuguese population¹⁹⁸.

195 Teresa Sá (n 169) 2.

196 Rachel Varela et. al., (n 172) 973.

197 Ibid, 972.

198 Teresa Sá (n 169) 2-3.

Moreover, that rise of unemployment and the precariousness of labour relations among women are visible aspects of the countercyclical measures to contain the economic crisis. These tendencies were allied to the movement to incapacitate political and trade unions structural capability to represent labourers' resistance.

Therefore, the ultimate challenge for gender equality in Portugal nowadays is to maintain the social labour rights gained during the Carnation Revolution by the older portion of the population before a wave of increased precariousness in labour relations for the most vulnerable groups. This is the only way to overcome a threat to the entire population of workers in a historically massive regressive movement¹⁹⁹.

V.ii. Women in Work and the Increase Flexibility of Labour in Brazil: Preliminary Data

a. *Economic Crisis, Recovery Measures and Social Effects*

The reforms introducing IWC and other types of flexible work in Brazil were recent, coming into force in November 2017. For this reason, it is not possible to definitively measure their effects on gender inequality. However, based on the Portuguese experience it is possible to predict the negative impacts that the new legislation will bring for women in the market. This analysis will be deeply developed on the next Chapter. For now, it is essential to resume the context which led to this change (this time with an economical and political focus) and present the preliminary data obtained through national researches concerning the impacts of IWC introduction to gender equality in the market.

Similar to Portugal, IWC as a flexible work in Brazil has emerged in the context of an economic crisis, even if the historical process of increased flexibility began in the 1990s on that nation, as already studied on the first chapter of the thesis. The most recent cyclical crisis of capitalism has, therefore, caused the increased precariousness of worker relationships in Brazil, a repetition of the process that occurred in Portugal.

199 Raquel Varela et. al., (n 172) 974

From 1950 to 2012, female employment in Brazil grew. However, the levels began to decrease in 2012/2013²⁰⁰ due to the effects of the economic crisis that arrived in the country around this period, few years later than in Portugal. Soon after, between 2015 and 2016, the Brazilian economy suffered the second greatest recession in history, with a decrease of 7% of GDP²⁰¹.

As occurred in Portugal, the Brazilian government and economists have used the pragmatic pretext of generating more job opportunities through the introduction of intermittent work in the CLT as a manner to justify the enactment of labour laws reform. Those explanations were especially directed at women, who were more frequently unemployed and, according to them, responsible for housework and family care (according to the patriarchal values that still predominate), situations in which flexible schedules are necessary²⁰². This is clearly a sign of patriarchal values in the national culture, if domestic tasks are still considered as obligations of women.

Nevertheless, these pretexts are vague and have no factual support²⁰³. So far, the CLT has not been able to generate as many jobs as necessary in Brazil, and there are still no signs of an economic recovery, which undermines the pragmatic claim that IWCs will create more employment opportunities. Since the crisis reached CLT reform and until the present years, the country, the Brazilian economy has had fluctuating growth of around 1% in 2017, while unemployment has remained high, reaching 13,7 million people on that year. In addition, 10,8 million people were working in precarious conditions in 2017, unable to support the living costs of their families²⁰⁴.

200 José Eustáquio Diniz Alves, 'Desafios da Equidade de Gênero' (2016) v 24 n 2 May-August *Revista de Estudos Feministas* <<http://dx.doi.org/10.1590/1805-9584-2016v24n2p629>> accessed 18 June 2016, 632.

201 Departamento Inersindical de Estatísticas e Estudos Socioeconômicos (DIEESE), 'Boletim de Conjuntura' (2018) n 14 May 2018 <<https://www.dieese.org.br/boletimdeconjuntura/2018/boletimconjuntura014.html>> accessed: 19 June 2018,1.

202 Claudia Abdul Ahad, 'Reforma Trabalhista e Seus Impactos no Trabalho da Mulher' *Migalhas* (05 December 2017) <<http://www.migalhas.com.br/dePeso/16,MI270553,71043-Reforma+Trabalhista+e+seus+impactos+no+trabalho+da+mulher>> accessed 19 November 2009.

203 GT Reforma Trabalhista, 'Contribuição Crítica à Reforma Trabalhista' CESIT/UNICAMP Research Paper Campinas, 2017 <<http://www.cesit.net.br/wp-content/uploads/2017/06/Dossie-14set2017.pdf>> accessed: 25 June 2018, 19.

204 DIEESE, (n 201) 1, 2.

Therefore, unstable wages have been increased by the labour laws reform aiming to raise formal employment, and have not led to a stabilization of economic growth through the internal consumption market²⁰⁵. This shows that the introduction of a flexible work legislation in Brazil was a simple excuse used by companies interested in maintaining their profits and lowering the cost of the workforce within the context of a crisis, which was encouraged by the Brazilian governmental institutions that enacted the legal reforms, and sadly the main targets of those measures have been women, similarly to what happened Portugal.

After all, capitalism itself is not able to effectively create the necessary economic inclusion and social justice, guarantee decent work conditions, equal wages for work of equal value and wide employment for all, once the free market treats matters of gender with neutrality, creates income concentration, and causes social exclusion while aiming the economic efficiency. It is the role of the state to intervene by developing public policies that guarantee a minimal degree of equality between women and men in work opportunities and conditions and generate access for those who remain excluded from the labour market²⁰⁶.

As presented on the last section, it is worth to remark that a state that enacts flexible laws threatening to increase levels of inequality and generate precarious conditions of work for a specific group, composed of women, is not complying with its duties to mitigate the crisis by offering more protection to socially vulnerable groups. It is, instead, acting as a catering agent for enterprises' economic interests. Once again, this represents a repetition in Brazil of the same process that has occurred in Portugal, as seen on the last topics.

Even worse, preliminary research shows as another similarity that Brazilian women were among the sectors of population who were most affected by the flexible laws, which will be shown in the next section. According to the predictions, labour stagnation will continue for women until 2020 in the country²⁰⁷, which is in complete opposition to the target of the SDGs, which include 'protect labour rights and promote

205 Ibid, 2.

206 José Eustáquio Diniz Alves, (n 200) 632.

207 Ibid, 632.

safe and secure working environments for all workers, including migrant workers, in particular women migrants, and those in precarious employment’ and ‘by 2030, achieve full and productive employment and decent work for all women and men, including for young people and persons with disabilities, and equal pay for work of equal value’²⁰⁸.

Therefore, irrespective if Brazil used to have one of the most advanced bodies of legislations in terms of the respect for human rights in the world, especially in its Federal Constitution, gender equality has not been achieved in the labour market. In fact, retrograde steps are gradually being taken, as Brazilian women will remain in more precarious work and receiving lower wages than men, which will be accentuated by the recent introduction of flexible work laws, exactly as has happened in Portugal²⁰⁹.

b. *The Reform of Labour Laws in Numbers: Increased Precarity in Brazilian Women’S Work Relations*

The impacts of the reform that changed the Brazilian CLT and introduced intermittent and flexible work contracts cannot be definitely measured yet. However, the limited data yet collected by public researches in Brazil shows the first signs that the consequences of the reform for women’s work may be similar to the effects in Portugal, but probably result in even worse social conditions for the Brazilian female population.

In fact, the consequences of increased flexibility for gender inequality in labour can result in greater effects in Brazil as the country’s population is bigger and poorer than that of Portugal. According to *IndexMundi*, the Brazilian population in 2017 was 207,353,392 people, almost twenty times bigger than the Portuguese, which consisted of 10,839,514 people in the same year²¹⁰. The Portuguese workforce (5,233,000 people) is more than twenty times smaller than the Brazilian one (111,600,000 people) in 2017²¹¹.

208 UN, ‘Goal 8: Promote inclusive and sustainable economic growth, employment and decent work for all’, *UN Sustainable Development Goals* (website), <<https://www.un.org/sustainabledevelopment/economic-growth/>> accessed: 19 June 2018.

209 José Eustáquio Diniz Alves, (n 200) 631.

210 Index Mundi, ‘População – Mundo’ (*Index Mundi, data source CIA World, 1 January 2018*) <<https://www.indexmundi.com/map/?v=21&r=xx&l=pt>> accessed 25 June 2018.

211 Index Mundi, ‘Força laboral – Mundo’ (*Index Mundi, data source CIA World, 1 January 2018*) <<https://www.indexmundi.com/map/?t=0&v=72&r=xx&l=pt>> accessed 25 June 2018.

Moreover, poverty is higher in Brazil. GDP *per capita* in is 15,500 USD per year, almost half of Portugal, which had 30,300 USD per year in 2017²¹².

Those numbers are higher when it comes to working women. In 2016, in Brazil, they represented most of the workforce, corresponding to 53,7% of those employed, but receiving only 76,0% of men's income²¹³. In Portugal in 2016, women were 48,8% of the workforce²¹⁴ but received 84,2% of the masculine wages²¹⁵, a higher rate compared to Brazilian women.

Concerning the effect of the labour laws reform, in November, the month in which the measure came into force, the raise in employability predicted by economists has not happened. As a matter of fact, in November 2017, employment rate in Brazil decreased by 0,03% in relation to October, representing a loss of 12,292 job posts²¹⁶. This broke a sequence of seven months of positive results. The same happened in December, when 328,539 were lost and the employment rate decreased by 0,85%²¹⁷, reflecting the consequences of the labour laws reform.

To make the scenario worse, the job posts created with the introduction of flexible laws were mostly precarious, with part-time work, no guarantees and lower income when compared to previously existent posts. Levels of informal work increased in

212 Index Mundi, 'Produto Interno Bruto (PIB) Per Capita – Mundo' (*Index Mundi*, data source CIA World, 1 January 2018) <<https://www.indexmundi.com/map/?t=0&v=67&r=xx&l=pt>> accessed 25 June 2018.

213 IBGE, 'Síntese de Indicadores Sociais: Uma Análise das Condições de Vida da População Brasileira: 2017' (Rio de Janeiro, Coordenação de População e Indicadores Sociais IBGE 2017) 23,37.

214 Pordata, 'População Activa: Total e por Sexo' (*Pordata*, data source INE, 2018) <<https://www.pordata.pt/Portugal/Popula%C3%A7%C3%A3o+activa+total+e+por+sexo-28>> accessed: 25 June 2018.

215 Pordata, 'Remuneração Base Média Mensal dos Trabalhadores por Conta de Outrem: Total e Por Sexo' (*Pordata*, data source GEP/MSESS/MTSS, 2018) <<https://www.pordata.pt/Portugal/Remunera%C3%A7%C3%A3o+base+m%C3%A9dia+mensal+dos+trabalhadores+por+conta+de+outrem+total+e+por+sexo-367>> accessed: 25 June 2018.

216 Ministério do Emprego e do Trabalho (MTE), 'Evolução do Emprego por Nível Setorial – Brasil – Novembro/2017 – Evolução do Emprego por Setor de Atividade Econômica Brasil' (*MTE*, Cadastro Geral De Empregados E Desempregados Lei 4923/65, 2017) <<http://bi.mte.gov.br/eec/pages/consultas/evolucaoEmprego/consultaEvolucaoEmprego.xhtml#relatorioSetor>> accessed 25 June 2018.

217 MTE, 'Evolução do emprego por nível setorial – Brasil – Dezembro/2017 – Evolução do emprego por setor de atividade econômica Brasil' (*MTE*, Cadastro Geral De Empregados E Desempregados Lei 4923/65, 2017) <<http://bi.mte.gov.br/eec/pages/consultas/evolucaoEmprego/consultaEvolucaoEmprego.xhtml#relatorioSetor>> accessed 25 June 2018.

2017 in Brazil, and the number of precarious employment contracts grew 5,5% when compared to 2016²¹⁸.

Furthermore, according to research undertaken in November 2017, 54% of the intermittent workers hired were women, and 69% of them (more than 2,1 thousand) were under 29 years old. In addition, 86% of the workers had a high school degree, while 8% had a university degree and 7% had completed only basic studies²¹⁹. No data related to wages has yet been collected. This shows that the average profile of an intermittent worker in Brazil is a women under 29 with high school degree, working in sales, just as in Portugal.

In conclusion, the preliminary data research shows that, similar to what happened in Portugal, the introduction of intermittent flexible work in Brazil has affected mostly women, a process that will continue evolving over the coming years if corrective measures are not undertaken by the government. This is not only due to the similarities in the legal framework similarities between the two countries, but also due to the patriarchal culture of gender inequality present in the Brazilian labour market, and the impact of the economic crisis allied to pressure from enterprises helped by the state that are only interested in maintaining their profits during a period of recession.

218 Marcella Fernandes, ‘O Impacto da Reforma Trabalhista na Criação de Empregos até Agora’ *Huff Post* (08 February 2018) <https://www.huffpostbrasil.com/2018/02/08/o-impacto-da-reforma-trabalhista-na-criacao-de-empregos-ate-agora_a_23355807/?guccounter=1> accessed 22 June 2018.

219 Idiana Tomazelli, ‘Trabalhador Intermittente Tem Até 29 Anos, Ensino Médio Completo e é Mulher’ *O Estado de S. Paulo* (São Paulo, 27 December 2017) <<https://economia.estadao.com.br/noticias/geral,trabalhador-intermittente-tem-ate-29-anos-ate-ensino-medio-completo-e-e-principalmente-mulher,70002131975>> accessed 25 June 2018

José Roberto Castro, ‘O Que Dizem os Primeiros Dados Sobre o Trabalho Intermittente’, *Nexo Jornal LTDA* (01 January 2018) <<https://www.nexojornal.com.br/expresso/2018/01/01/O-que-dizem-os-primeiros-dados-sobre-o-trabalho-intermittente>> accessed 25 June 2018.

VI. How the Introduction of Intermittent Work in Brazil Will Affect Gender Equality and Human Rights Protection: Lessons to Be Learnt from Portugal, Legal Contradictions and Possible Solutions

As demonstrated over the past chapters of this work, through the analysis of the Portuguese experience of the legislative introduction of IWC in the PLC, such as the IWC, it can be observed that this process has resulted in a rise of precarious jobs particularly for women. Furthermore, as seen in the last section of the previous chapter, the preliminary data collected by national research shows that this phenomenon is being repeated in Brazil.

Hence, it is possible to foresee that legalizing IWC in Brazil will possibly bring the same or even worse effects for women in the labour market, considering the similarities of the legislative framework, political-economic and ideological background of both nations, which were already studied.

This process represents a violation of international and national legal standards concerning the intersection of gender equality protection and human labour rights force, a responsibility that Brazil has accepted on several occasions through the ratification of different principles and laws that were studied in the first chapter of this work. It demonstrates that the Brazilian political economic policies adopted in the post-crisis period are failing to progressively reduce social inequality, but instead have a specific focus on meeting the interests of the most powerful agents in society.

VI.i. Possible Impacts of Intermittent Work in Brazil Based on the Portuguese Experience: How May Gender Equality Within Labour Human Rights Be Affected by the CLT Reform

It is the moment to assess the possible impacts of intermittent work in Brazil while considering the consequences that the introduction of this type of work contract has had in Portugal, keeping in mind the differences between regulations and socio-economic background of the two countries.

a. *The Fallacy Behind Brazilian IWC*

As previously explained, economists and the Brazilian government have used the general pretext that intermittent work would create new employment opportunities in Brazil and also would represent an alternative for those unqualified or vulnerable workers, such as women, who have been experiencing barriers in accessing the labour market. That powerful agents have tried to convince society that IWC along with the innovations in the Labour Laws Reform would modernise labour relations, give power to workers to negotiate and establish contracts with many employers, bring increased juridical security and formalize work opportunities that before the reforms were considered informal and existed irregularly²²⁰. As seen in the last chapter, those were the same pretexts used to promote IWC in Portugal and introduce flexible work in the Labour laws.

However, the reality was different in that country, and Brazil should have learnt from it. The general rise in employment rates in Portugal caused by IWC and other flexible contracts after the economic crisis of 2008/2009 has happened at the expense of the increased precariousness of work relations, especially for women²²¹.

For this reason, it is likely that the Brazilian attempt to legitimize IWC and other flexible contracts will not encourage the creation of stable jobs with the capacity empower women and change their situation of vulnerability. Instead, they will generate a great amount of flexible jobs that will only contribute to the profit of companies and the propagation of undignified work conditions. However, the correct way to protect workers who are vulnerable to irregular labour conditions is not by legitimating it, but giving them the tools to progress and incentivising enterprises to contract people following the formal standards.

Intermittent work contracts and increased flexibility measures are just mechanisms for enterprises to move employment into the entrepreneurial post-crisis logic,

220 GT Reforma Trabalhista, 'Contribuição Crítica à Reforma Trabalhista' (2017) CESIT/UNICAMP Research Paper <<http://www.cesit.net.br/wp-content/uploads/2017/06/Dossie-14set2017.pdf>> accessed: 25 June 2018, 19, 31, 33. 31.

221 Marcella Fernandes, 'O Impacto da Reforma Trabalhista na Criação de Empregos até Agora' *Huff Post* (08 February 2018) <https://www.huffpostbrasil.com/2018/02/08/o-impacto-da-reforma-trabalhista-na-criacao-de-empregos-ate-agora_a_23355807/?guccounter=1> accessed 22 June 2018) 26.

through the reduction of costs that used to guarantee labour stability and security. They do not incentivise the creation of employment. By the contrary, they are tools used by employers to rationalize the use of time, which raises unemployment, insecurity and precariousness. They create a new paradigm of the “just in time worker” and guarantee their complete availability²²². They also increase and weaken the available workforce, something that especially affects women due to their social vulnerability.

Furthermore, the economists and governmental pretexts for introducing IWC in the CLT may reinforce the ideology of gender roles in Brazil, once the modernization of work relations means that women will have jobs that are compatible with their fallacious gender role of taking care of the house and family, as happened in Portugal.

Finally, the idea that the IWC gives more power to workers is completely deprived of any basis in reality. Contrary to the arguments of economists and the government, the work contract is not established between equal parties, but there is a subordinate relationship between the employee and the employer²²³. The existence of intermittent contracts can be negotiated directly between the employer and employee, even though they are in unbalanced positions, with the employer being much more powerful than the worker. In this way, the employees will always be forced to accept the unfair demands of the employer that remove their benefits or social rights.

The polarization effects will be high as workers need to keep their jobs, income or work, even if it results in precarious conditions for the employee, loss of rights and guarantees, and a reduction of trade union bargaining power. In this context, women are in a more vulnerable position compared to men, as they have fewer opportunities in the Portuguese market, and even less in the Brazilian market, as demonstrated in Chapter V.²²⁴ Moreover, in Brazil, more companies will be able to use IWCs as there is no legal restriction to the type of activity involved, which may have more catastrophic consequences for Brazilian women than there has been in Portugal.

222 GT Reforma Trabalhista, (n 220) 31, 32.

223 Ibid, 33-34.

224 DIEESE, 'Relações de Trabalho Sem Proteção: de Volta ao Período Anterior a 1930?' (2017) vol 179 Nota Técnica 2 <<https://www.dieese.org.br/notatecnica/2017/notaTec179ConjunturaReforma.pdf>> accessed: 25 June 2018, 17.

Furthermore, the pretexts for introducing IWC in the CLT may reinforce the ideology of gender roles that still exist in Brazil, once the modernization of work relations is seen as a measure that will allow women to have jobs that are more compatible to irregular routines which are wrongly considered their responsibility, derived from duties with house and family+. This is a repetition of a process that has also happened in Portugal.

b. *Higher Poverty Rates for Women*

When it comes to the possible impacts of IWCs and flexible work contracts on gender inequality, the Brazilian regulations have a ‘special’ characteristic compared to the Portuguese model. It is remarkable that the Brazilian model is less regulated than the same type of work contract in Portugal. While Portugal has adopted intermittent work by minimally preserving the most important labour rights and following the national, regional and international principles of labour human rights, the same posture has not been taken in the Brazilian reforms.

The laws in Brazil are general and offer much less protection to workers, as seen in Chapter IV. This lack of regulation stimulates poverty amongst female workers, makes them economically dependent and vulnerable, and legitimises the irresponsibility of the enterprises over the contracted workers, transforming them in autonomous entrepreneurs who have to withstand the weight of the work plus the responsibility of finding other jobs during periods of inactivity in order to manage their subsistence and living costs. It makes them permanently available for work resulting in a loss of autonomy, which interferes deeply in their private routines, lives and health, weaken social the movements of representation and interferes in social security.

Moreover, as the Brazilian population is bigger and poorer than the Portuguese, and this poverty is even greater for women, which means that the impact of flexible work in Brazil may be worse for them. As mentioned before, this puts them in a more fragile and vulnerable position than the Portuguese, and obliges them to accept job opportunities that are poorly regulated, making them a more frequent victim to these kinds of work relations.

As a consequence, if the Portuguese IWC introduction has had negative consequences for women in work, as studied in Chapter V, with the erosion of rights for women who used to have stable full-time jobs, a reduction of wages, an increase in rates of poverty among women, especially those unemployed, it will probably result in even worse work and living conditions for women in Brazil. Instead of learning from another country's experience before changing labour protection, the Brazilian government has chosen to follow a worse path, offering less protection to their workers and thus clearly violating national and international norms and the human rights agenda. It is therefore possible to foresee via a legal and social-economic analysis that the Brazilian female population may suffer even more than the Portuguese women have suffered after the increased measures of flexibility in work and implementation of IWC in 2009.

In other words, if gender inequality rates have risen modestly in Portugal after the flexible work laws, it is very probable that in Brazil inequality will reach higher levels. Consequently, women will become a progressively vulnerable over time category to the risks of labour precariousness and have a higher chance of being fired in the future cyclical crisis, as they occupy cheaper posts in the market with contracts that can easily be undone²²⁵. This worrying development can already be noticed in the national sphere, according to the researches presented in Chapter V.

C. *Fragmentation of Payments and Wage Loss*

Based in the Portuguese experience, within the concrete consequences that may affect women in the market in Brazil a possible impact to be analysed is the loss of remuneration caused by the increased flexibility in the duration of work. As mentioned over this work, remuneration for periods of activity in the Brazilian IWC model will be variable and paid for the worker according to the effectively worked periods, every the time that the labour ends, which is economically useful for enterprises, but results in wage loss for the employees.

225 Sara Falcão Casca, 'Flexibilidade, Emprego e Relações de Género: A Situação de Portugal no Contexto da União Europeia' in Kovács, I. (coord.), *Flexibilidade de Emprego: Riscos e Oportunidades* (Oeiras, Celta Editora, 2005), 26-27.

As seen in chapter III, in n Portugal before 2003, the idea of intervals and duration of work was changed with the implementation of European Directives. However, in Brazil, there was no regional or international guiding law in the same sense that would be able to underpin such a change. The Brazilian government has, therefore, modified the concept of the duration of work without precedent, and differently to Portugal, it has wrongfully cut the possibility of a retributive compensation during period of intervals for Brazilian workers, in a flagrant violation of the principle of Human Dignity achieved through labour

In addition, the rhythm of production and number of hours that will be worked have become a decision from the Brazilian employers²²⁶. This situation broadens the legal areas in which it is allowed to split and fragment wages, something with potential to bring a negative impact for the worker's life²²⁷. Moreover, the Brazilian laws have not established a minimum period of time per year that the worker must be in an activity or created a retributive compensation for periods of inactivity as Portugal has done, which offers way less security for workers, that are unable to predict their minimal incomes obtained from activity and plan their lives.

Without a fixed monthly wage, retributive compensation, or prediction of how much will be minimally earned per year, Brazilian workers will be obliged to contribute directly to social security and pay the difference whenever they do not receive enough to cover the minimal monthly fee. What is even more absurd, and a 'feature' of the Brazilian IWC in comparison to the Portuguese, workers are subjected to monetary penalties if they give up on the notification previously accepted or do not come to work. In this case, they have to comply with a penalty of 50% of the predicted wage, which has to be paid to the employer²²⁸. As a result, not only will they receive lower income, but they also run the risk of having to pay extra fees because of a labour relationship, which represents another threat to worker's subsistence and a restriction of dignified work conditions.

226 Marcella Fernandes, (n 221) 33-34.

227 GT Reforma Trabalhista (n 220) 50,53.

228 Marcella Fernandes, (n 221) 33-34

These exact same negative impacts of flexible duration of work have already happened in Portugal and aggravated the gender inequality in the labour market there²²⁹. Consequently, Brazilian women will be more frequently hired under IWC contracts, as they are more likely to take employment with less benefits, something that also happens in Portugal. In addition, their wages, which were already lower, will decrease even more because they will depend on work hours and productivity controlled by the company's interests, exactly as happened in Portugal²³⁰. Those are the reasons why the IWCs will have an even worse impact for Brazilian women regarding fragmentation of wages, especially considering that gender inequality in Brazil is already greater than that in Portugal.

This situation demonstrates an attempt from the laws to overcome the idea of a set wage as a fixed compensation as stipulated in a work contract, which was a guarantee under the international and constitutional systems of human labour rights. As mentioned before, this change can lead to the inaccurate interpretation that the wage should be occasional and conditioned to the limits of the occasional activities that are effectively exercised.

d. Permanent Availability and the Aggravation of Women'S Economic Dependency

Another problem that IWC will bring for Brazilian women is that workers will have to be available 24/7 for employment without receiving anything for the period of wait. The employees under this condition have no control over their working day period, which can be reduced or extended according to the employer's will. This scenario represents a decrease in costs to the enterprise but also an evil loss of rights a budgetary reduction and loss of control for workers, presenting them with difficulties in predicting how much income they will have at the end of the month, which prevents the planning of their living costs²³¹.

229 Mauricio Godinho Delgado and Gabriela Neves Delgado '*A Reforma Trabalhista no Brasil: Com os Comentários à Lei n. 13.467/2017*' (1th edn, São Paulo, LTr, 2017), 73-76.

230 Sara Falcão Casca, (n 225) 26.

231 GT Reforma Trabalhista, (n 220), 31-33.

As the IWC creates a new paradigm of the ‘just in time’ worker and guarantees their complete availability, it deepens labour insecurities for women, who have lower chances of being hired or called for work compared to men. Even if such a contract seems to benefit women who personally choose to only be involved in eventual work as, it is in fact a vehicle to legally promote labour instability, lower the worker’s income as they are paid only for the effectively worked hours, which are according to the enterprise’s demands. It is a new logic of subordination, management and control of the workforce, which can reach the most diverse sectors of the economy and worsen work conditions for those who were already vulnerable to weak work relations²³².

As mentioned before, women who work under IWC start to economically depend more on each period of activity to a greater extent than those who have stable full time jobs. Their lives and routines start to be completely determined by the company’s short term demands. Instead of being subordinated only during the duration of work, they start to subordinate their entire lives to the enterprise’s will, assuming the risk of the business and not being able to plan their professional and personal lives while they wait for a call to work. In practice, these women remain available on an uninterrupted basis, as their precarious condition does not allow other alternatives other than accepting any available job. This interferes in the relationships of work and as a consequence employees become alienated²³³.

Moreover, alienation and permanent availability causes individual discouragement, and a deterioration of the emotional, family and social ties, conducive to progressive social isolation, something that has potential to accentuate the asymmetry of power in gender relations and strengthen traditionalist patriarchal ideologies²³⁴. Increases in gender segregation and inequality are not limited to the work environment, but affect all spheres of private and public life. This process that is already taking place in Portugal will be repeated in Brazil if women continue to be the most frequent workers hired under IWCs.

232 Ibid, 32-33.

233 Ibid, 34-35.

234 Ibid, 26-27.

To make things worse, different to the Portuguese contract, the Brazilian law does not establish a minimum work duration, minimal activity time, or control of work agendas, as they can be called for work only three days in advance and have to answer for the call within two days²³⁵. As previously seen, in Portugal workers have a minimal activity period per year and need to be called at least 20 days before work starts, which means more security for them.

Consequently, the IWC has caused job insecurity for Portuguese women by creating a new cycle that accumulates disadvantages in the post-crisis context, with weakened employability and directly increased gender inequality in the market, as studied in the previous chapter²³⁶. These effects will possibly be worse in Brazil, once women are left in a more uncomfortably and uncertain position there.

e. *Loss of Autonomy, Private Family Life, Education and Health Issues for Women*

Another effect of the uncertain daily work length and precarious work relationship is the creation of instability in women's lives, which prevents them planning for the future, causing economic dependency, an inability to resist social risks from being unable to meet basic living costs, and changes in daily routines through variable work schedules, something that was already seen in the Portuguese labour market and may well occur in the Brazilian one.

IWCs may result in variable daily work patterns and routines, affecting women's health by causing physical and psychological distress and loss of interest in other aspects of life. It also stimulates presentism, the permanence of the worker in the labour environment even if the person is ill as they are afraid of losing their job and not finding another one, which can make their condition worse and increase the number of ill people²³⁷.

These are not only individual health issues, but also a public health problem that must be discussed by the entire society, as laws that promote work conditions which

235 Ibid, 33-34

236 Sara Falcão Casca, (n 225) 26.

237 GT Reforma Trabalhista (n 220), 42, 50,53 42.

affect people's health and make them more vulnerable are a clear violation of human labour rights principles but also a matter for the national budget²³⁸. After all, work deprivation is much more than the absence of wages, as it also includes the loss of social rights and benefits, the loss of autonomy to plan the private life, and a loss of social status that will undoubtedly contribute to the loss of self-esteem and disempowerment of Brazilian women, exactly as has happened in Portugal.

Through flexible labour relationships, workers will have more difficulty in achieving economic independence, for example to start a family, leave the parental house or quit an abusive relationship, especially for women²³⁹. Life rhythms are changed, and the relationship between work and unemployment also changes. This discouragement can affect familial, social and affective relationships, contributing to increased social segregation than that from which women already suffer.

Beyond the psychological and physical impacts caused by the anguish of uncertain work, women are subjected to irregular personal and professional routines, making it harder to obtain new professional qualifications²⁴⁰. The lack of control of the workers' social and family lives restrains the possibilities for professional growth and qualifications, as there is never enough money or time to study more or take additional courses, which is another impact that women are suffering from in Portugal that can be applicable to Brazil. As mentioned before, for women, these situations represent an increase in gender asymmetry and inequality and strengthen traditional patriarchal ideologies²⁴¹.

f. The Transference of the Risk of the Business to Female Workers

What is more, as demonstrated in Chapter IV, the Brazilian IWC cuts out protective work regulations by putting workers in more vulnerable positions in order to obtain a greater profitability for greater capitalisation of work. A special characteristic of the Brazilian IWC that does not exist in the Portuguese laws is that workers are left

238 Ibid 53 42.

239 Elsa Araújo Rodrigues, 'Afinal, o Que é Ser Precário?' *Observador* (30 April 2016) <<https://observador.pt/especiais/afinal-o-que-e-ser-precario/>> accessed 23 May 2018.

240 GT Reforma Trabalhista, (n 220) 35, 42.

241 Sara Falcão Casca, (n 225) 26-27

inactive to remain in the expectation for upcoming work without any financial or time guarantee that compensates them for the indefinite wait, which transfers the risks of the enterprises' activities to the workers, especially to women.

That is, they can be called for work at least three days in advance and they have one day to reply. If they accept the work and later give up on the acceptance or do not come to work, a penalty of 50% of the due remuneration will be applied, as studied mentioned before. This situation represents a real transference of the risks of the entrepreneurial activity to the labourer, which is completely against the protective principles and rules of human dignity within the labour human rights.

g. Weakening of Women's Social Representation

Increased precariousness creates a group of 'free' or unequal workers who are willing to accept any kind of job to support their living. This weakens the trade unions and other representative organizations, which lose their power of collective bargaining²⁴². As a result, it represents a countermeasure against gender equality, as women are even more disempowered by the increase of unequal conditions in work, instead of being empowered through more equal legislation.

As previously mentioned, in Portugal this situation has interfered with the strength of social movements and trade unions by causing a general social weakness and decreasing level of politicization and organization. This phenomenon will be easily repeated in Brazil. In this sense, the IWC represents a great move against the "fight" for feminine empowerment and promotion of gender equality. It is, therefore, a failing in a country's duty to progressively implement social rights.

h. Social (In)Security Risks

Finally, as happened in Portugal, the Brazilian IWC encourages all enterprises to contract seasonal workers whenever they consider it necessary, which may stimulate cheaper work that may in turn in lower contributions to and support for social security²⁴³. In other words, as women who receive lower wages, they pay lower taxes.

242 Raquel Varela et. al., 'Força de Trabalho em Portugal, 2008-2012' (2013) vol 17 n 3 Diálogos 970-971.
243 DIEESE (n 224) 7, 14.

Furthermore, the de capitalisation of social security funds comes from the substitution of stable contracts by precarious ones, which uses the same funds to pay for unemployment insurance for people who were fired from stable jobs to be hired under flexible contracts. Therefore, by introducing IWC, the Brazilian State will not meet its duty to reconcile the unequal relationship between workers and companies, but rather transfer social security funds to the private sector, as has happened in Portugal.

VI.ii. Legal Contradictions of the Labour Reform in Brazil: Violation of Human Rights Principles and Gender Equality Protection by the Introduction of IWC

By introducing IWC in the CLT without detailed regulations providing labour guarantees and mechanisms that promote gender equality or at least prevent women from being unequally subject to worse labour conditions, Brazil has failed to comply with international and national labour protective principles and rules of human labour rights.

Furthermore, the labour reform reaffirms the 1990s movement in Brazil of defragmenting social rights and labour relations, as it provides numerous mechanisms to suppress or reduce the social and legal protection offered to workers, such as through the introduction of an IWC lacking regulations compared to other countries that have also recently introduced it, such as Portugal²⁴⁴.

A close analysis of the existing legal framework proves that the gender neutrality of the recent changes has resulted in worse working conditions, particularly for women²⁴⁵. After all, the legal framework does not mention or offer any kind of special protection to them, even though they are workers in more socially vulnerable positions, who may accept any type of job regardless of the absence of guarantees or benefits, as demonstrated in the last chapter.

The poorly regulated IWCs in Brazil will not incentive gender equality in the labour market, and may have even worse social results than the moderately regulated IWCs in Portugal. In fact, they will be conducive to the higher economic dependence of women, as mentioned before, and raise the risks of increasing the social division of

244 Maurício Godinho Delgado and Gabriela Neves Delgado, (n 229) 73.

245 Sara Falcão Casca, (n 225) 26-27

gender roles, the precariousness of work and the labour insecurity, which will gradually weaken the employability of women and make them even more vulnerable to disadvantages in the market, including for the future economic crisis²⁴⁶.

This disarticulation of constitutional guarantees of labour protection and gender equality protection promoted by law number 13.467/2017, especially in the Brazilian IWC, represents an attack on the formal progression of international and national standards of human labour rights, and also on the practical mechanisms that aim to protect and promote these rights in the material sphere. In other words, there is a violation of the International Protection System of Human Rights that is in force in the national and international fields as the Brazilian IWC under Law 13.467/2017 completely rejects the fundamental principles that protect human labour in the Federal Constitution and international laws. In this sense, the labour code reform that introduces flexible working will not be able to fulfil human dignity and social justice due to its radical deregulating aspects²⁴⁷.

The process of extreme dismemberment of the protective guarantees and legal instruments promoted by the labour laws reform shows that Brazil is marching in the opposite direction to its international obligations to progressively implement social rights²⁴⁸. Moreover, it is a regression in the national and international legal framework that was established to fulfil human labour rights, particularly concerning the realisation of gender equality.

The result of this legal innovation may, therefore, be even more disastrous for the Brazilian female population than it has been in Portugal. Not only is the legal protection offered for intermittent workers in Brazil lower than in Portugal, but the social conditions of the female population in the first country are also worse. After all, as explained over this work, women are poorer and more vulnerable to unemployment or precarious work in Brazil than in Portugal.

246 Sara Falcão Casca, (n 225) 26-27.

247 Maurício Godinho Delgado and Gabriela Neves Delgado, (n 229) 73-74.

248 Ibid 73.

Above all, the deregulation and introduction of increased flexibility is clear in rejecting the principles of minimum salary, duration of work, decent conditions of work, gender equality, and social protection of the workers which are key instruments in the promotion of long-lasting international peace through guaranteeing human dignity and social justice²⁴⁹. Therefore, there is a flagrant violation of the related provisions in the Brazilian Constitution²⁵⁰, the guiding principles of the CLT²⁵¹, and the International System of Human Rights²⁵² within the International Labour Bill of Rights, which were already identified in Chapter II.i.b of this work.

The CLT innovations are not compatible to those values as they increase the barriers for women to access the labour market with dignified conditions and support their living costs²⁵³. The CLT reform distorts the concept of a fundamental right to decent work while preventing workers from regularly integrating into the market through stable, full-time and guaranteed jobs, a condition that may affect women more intensely, as seen in the last section of this chapter. It also incentivises human labour mercantilism, another flagrant violation of the principle that human labour cannot be seen as a commercial product.

249 Ibid 73-74.

250 More specifically, infringing the idea that social rights are among the most important fundamental rights, and violating the principle of equality, the obligation of the State to create positive discrimination measures in order to protect women in the labour market, the social rights such as right to work and leisure, social security, protection of women in the work environment, the prohibition of wage gaps, and the right to a minimum decent wage even for those who receive variable remuneration, to the irreducibility of the monthly wage, as well as the right to remunerated rest and leisure time.

251 Especially concerning the previously studied prohibition of gender discrimination, the obligation to protect women in work, right to a paid work day that meets the time spent effectively working and the time spent waiting for orders, the right to a minimum decent wage without distinctions for variable work days, the right to remunerated rest and limitation of the duration of work.

252 More specifically related to the UDHR (concerning rights to: access to fair, retributive and adequate wage, to paid rest and leisure time, including reasonable limitation on the number of the daily working hours, to the free choice of employment, to fair and favourable conditions of work and right to the protection against unemployment), ICESCR (related to rights to equal application of the rights enunciated in the Convention to all women and obligation of State-parties to ensure that, to fair wages without distinction, and to the protection of health in work), ICCPR (concerning the obligation of States to ensure that women have all their political and civil rights effectively respected and to the prohibition of all kinds of discrimination), CEDAW (regarding the obligation of States to guarantee equality in the field of employment in order to ensure the same employment opportunities, the free choice of profession and employment, the job security and all benefits, the right to equal remuneration, the right to social security, the right to protection of health and to safety in working conditions), as well as OAS's guiding principles of equality and non-discrimination.

253 Mauricio Godinho Delgado and Gabriela Neves Delgado, (n 229) 73.

Furthermore, the way IWC was introduced in the Brazilian Labour Code reform twists the idea of social justice, one of ILO's most important principles, and targets the promotion of access to labour rights that are based on the principles of protection, social progression, and prohibition of regression²⁵⁴. In the national sphere, there is also a violation of the principle of social justice, consecrated in the Federal Constitution²⁵⁵.

Additionally, the IWC represents an unconstitutional increased flexibility in the duration of work, which directly interferes in the amount paid to women at the end of the month, while creating insecurity concerning the number of hours that the person will work and the wage that will be earned, as it will depend on the productivity of the workers. This may have a negative impact on the workers' health and security, as they become unable to plan their personal and professional lives and are subjected to irregular and inconsistent routines, as previously explained.

Therefore, taken together, the violations of Brazilian Law number 13.467/2017 and the introduction of lowly regulated IWC in Brazil go beyond just the principles of human labour rights, affecting also the concrete fundamental rights, which will not be fully enjoyed by women who will have to work under precarious conditions in the market²⁵⁶. Moreover, the lack of regulation in the Brazilian IWC laws transcends the national field to affect the international human labour rights system, as it prevents workers fully enjoying gender equality in labour.

The strengthening of employers and weakening of vulnerable employees is a flagrant violation of the UDHR and Philadelphia Declaration, which determine that work must not be treated as a product. This characteristic of the IWC in Brazil also deforms the

254 Which are consecrated in ILO's Declaration of Philadelphia (Labour is not a commodity, dignity of the human being must be protected in work environment through rules that control the market imperatives; Poverty threatens prosperity, All human beings, irrespective of gender have the right to pursue material well-being and spiritual development in equal conditions), Declaration on Fundamental Principles and Rights at Work and Conventions 100 and 111 (regarding the right to the elimination of discrimination at work, equal remuneration for equal work, especially for women, and prohibition of gender-based discrimination or exclusion concerning employment and work, and supports equal opportunities for all women, including in placement, promotion, or conservation of employment and work placement, promotion, or conservation of employment and work conditions).

255 Mauricio Godinho Delgado and Gabriela Neves Delgado, (n 229) 74.

256 Ibid 75.

concept of social justice, by regressing social and work conditions²⁵⁷. As a member of the UN, Brazil is also infringing its duties to progressively implement the UN SDGs, which include the protection of labour rights²⁵⁸. Therefore, the increased flexibility represents a great backward step concerning the “fight” for feminine empowerment and the promotion of gender equality. It is a failing in the country’s duty to progressively implement social rights.

In summary, even if there are some common aspects between the laws in Brazil and Portugal concerning gender protection, general labour regulation and IWCs (which were created in both nations to answer the demands for a more flexible labour market), there is an evident difference that makes the Brazilian laws much less protective of the worker than the Portuguese ones. The laws are more decisive in Portugal than in Brazil when it comes to the IWC. What is more, if the introduction of intermittent work has had negative effects for women in the Portuguese labour market, legal analysis also leads to the conclusion that the negative impacts in Brazil may be even worse.

VI.iii. Viable Solutions for Gender Equality in Work

According to Maurício Godinho, all the possible consequences of the introduction of IWCs and flexible work in Brazil as well as the legal contradictions that they imply are strong enough to authorize the submission of law 13467/2017 to a judicial review at the national level to determine if it is extra-constitutional, potential, with a view towards the repeal or amendment of the CLT²⁵⁹. After all, the possible impacts of IWC over gender inequality in labour represent a clear violation of the International Protection System of Human Rights in force at the national and international level, creating the necessity for reviewing the constitutionality of the reform of the Brazilian labour laws to be reanalysed by the competent national organs.

257 Ibid 74.

258 Especially concerning the already studied targets of promotion of ‘...safe and secure working environments for all workers, including migrant workers, in particular women migrants, and those in precarious employment’ and well as the achievement by 2030 of ‘...full and productive employment and decent work for all women and men, including for young people and persons with disabilities, and equal pay for work of equal value’, UN, ‘Goal 8: Promote Inclusive and Sustainable Economic Growth, Employment and Decent Work for All’ (*UN Sustainable Development Goals Website*) <<https://www.un.org/sustainabledevelopment/economic-growth/>> accessed: 19 June 2018.

259 Maurício Godinho Delgado and Gabriela Neves Delgado, (n 229) 73.

A reanalysis would find legal basis in both the international and national framework. First, the international treaties of human rights in Brazil have a special hierarchical position when compared to the other national laws. Given that the international legislation that regulates women's individual and social labour rights undoubtedly have the nature of human rights, these must always prevail if there is a conflict with national law.

As the labour law reform flagrantly violates labour human rights and causes more gender inequality in labour, it must be repealed from the national legal framework. A new more protective system must be created or at least, more guarantees should be included in the laws for the benefit intermittent workers, following the Portuguese model. Women must be expressly protected from unequal conditions of work through empowering strategies and policies.

Moreover, since Brazil recognizes the competence of the UNHRC, of the OHCHR, of the ICJ, of the Third Committee of the General Assembly of the United Nations, which deals with social, humanitarian & cultural issues, of the special reporters and work groups, and finally, of the special procedures within the UN such as UPRs and the Human Rights Committees, these organisations are allowed to interfere in Brazil through their protective mechanisms to place pressure over the derogation.

Second, in the Brazilian Constitutional framework, the principles of the most favourable norm to the worker and the principle of prohibition of retrogression are mandatory parameters to fix the interpretation criteria and to the resolution of any conflict. Therefore, considering that the recent changes violate a wide list of human rights and gender equality principles that are in force in the national sphere, the Federal Superior Tribunal of Brazil may also exercise constitutional control over those laws to derogate them.

The way that the introduction of IWCs as flexible work contracts was conducted in Brazil demonstrates that the government's aim was not to reduce existing inequalities and progressively implement more social rights for women in vulnerable positions. On the contrary, the decision to approve the reform of labour laws was a

political strategy to favour the economic interests of private enterprises in the context of a crisis.

However, a path that follows the human rights standards would be, instead, the reduction of the negative economic impacts of the crisis without deepening inequality, ensuring that women are empowered, that social responsibility is shared between government, private agents and the community as a whole, that fundamental rights are not seen as monetary exchange for consumption incentives, and that solitary economy is fomented and fortified²⁶⁰.

The challenge to ensure economic independence in hegemonic capitalism is to guarantee wage access to all, while preventing market ideology from interfering in all aspects of life, including in human rights²⁶¹. Especially during post-crisis periods, governments and the private sector worry about national economic recovery, but this is only achievable if monetary wealth is seen as a product of human work that has to be equally distributed for all citizens.

After all, human work is one of the most important aspects of life, as it has the capacity to lead people towards independence, self-realisation and the fulfilment of a dignified life. A country's concerns in the post crisis should not be merely how to maintain profits during recession, but how to prevent the human population from suffering greater impacts, the vulnerable people from becoming greater victims of the situation, and how to minimize the impacts of the recession and guarantee that the minimal human rights are respected and equally enjoyed by the people.

In order to empower women in the Brazilian context, more attention has to be placed on how to achieve substantive equality through public policies that reconcile the legal structure of human rights with women's empowerment policies that bring concrete changes for their lives, avoid hegemonic economic market-oriented interference, and enable a life with freedom and equality for all²⁶². Gender equality is not only a human

260 Miriam Nobre, 'Igualdade Para Todas: Estratégias Para Políticas Públicas e Ações do Movimento' (2016) vol 24 n 2 Revista de Estudos Feministas 645 <http://www.scielo.br/scielo.php?script=sci_arttext&pid=S0104-026X2016000200645> accessed 29 June 2018.

261 Ibid.

262 Ibid.

right, but also a matter of social progress and development²⁶³. This is the only path to effectively repair the impacts of economic recession.

Even if reality is complex and the tools for achieving this aim go much further the existence of protective laws, these are the first steps to guarantee that substantive gender equality is implemented in the real world. Therefore, legislation must not be gender neutral and merely economically focused, as it has been in Brazil, but must effectively adopt a gender perspective that stimulates employment, decent work and foments human rights-oriented macro-economic plans of action²⁶⁴.

263 José Eustáquio Diniz Alves, 'Desafios da Equidade de Gênero' (2016) v 24 n 2 May-August *Revista de Estudos Feministas* <<http://dx.doi.org/10.1590/1805-9584-2016v24n2p629>> accessed 18 June 2016

264 Ibid.

8. Conclusion

In a world where human rights and gender equality at work increasingly gain importance, reversals that sacrifice all the social progress are unacceptable. However certain profit oriented agents sometimes manage to pressure governments to enact of laws that violate human rights and mislead society, especially during periods of economic crisis.

The recent introduction of IWC and flexible work legislation In Brazil is an example that risks fundamental labour rights and gender equality protections present in the international and national legislation that were in force. Economic concerns were behind such changes, while society was convinced that their results would be positive for gender representation in labour.,

A similar process has occurred in Portugal, and the results of IWC as a flexibility measure were the raise in precarity of work contracts, with more accentuated impacts over female workers. They involved, among others, a reduction of wages, an increase in rates of poverty among women, an erosion of rights for women who used to have stable full-time jobs, a loss of professional growth opportunities, less social benefits and higher risks of social exclusion.

The negative impacts for gender equality in labour come from the flexible work strategies having a false gender neutrality. They lack of efforts in the modernization of gender roles, while social ideologies maintain the weight of articulating professional and family life over women's shoulders. Furthermore, IWC appears to create opportunities, and reduce unemployment, supposedly raising women's symbolic economic independence, but, in fact it prevents them of having access to full time contracts in which more rights are reassured.

The data obtained in Portugal, which was exposed over this study, proves that there is a direct relation between the raise of feminine precarious employment from 2009 on and the introduction of IWC through a reform in the PLC. Moreover, it shows that women's precarious work relationships are mostly involuntary, and sometimes correspond to the only job alternative available.

Therefore, the Portuguese experience proves that intermittent work reinforces the invisible process of feminine underemployment and impoverishment that accentuates the logic of gender inequality. Therefore, the introduction of this innovation in Brazil must be target of criticism.

Moving forward, a comparison between the Portuguese IWC experience with the Brazilian system makes it possible to predict which and how negative will the impacts of flexible work relationships be for gender equality in Brazil. After all, both nations have similar legal frameworks, a common historical and cultural background and experienced analogous social-economic contexts of IWC implementation.

Concerning the legal similarities, in the international sphere, Brazil and Portugal have ratified mostly the same treaties and recognized the competence of international bodies that, among other values, aim to promote gender equality within the International Labour Charter. Nationally, both countries have enacted constitutional laws and labour codes that aim to protect gender equality in work, ensure a general minimum salary, and regulate the duration of work. Their provisions largely correspond to each other. In addition, both have introduced IWC in their laws.

Regarding a historical inheritance, Brazil has been a Portuguese colony for more than 300 years and their cultural relationship was maintained even after Brazilian independence. Moreover, their national laws derive from a common background. Portugal transmitted much of its juridical rationale and corpus to Brazil, and a large part of the Brazilian legislation was inspired by Portuguese juridical knowledge, even nowadays.

Related to the social-economic similarities, in both countries IWC emerged by taking advantage of the context of an economic crisis, that arrived few years later in Brazil. The pragmatic pretext of generating more job opportunities was strategically used to keep companies's profits high and reduce the cost of the workforce. Nevertheless, intermittent work as a flexibility measure has not led to a stabilization of economic growth, and women were the most negatively impacted. Moreover, both national governments has failed to comply with its duties to mitigate the crisis by offering more

protection to female workers. They, instead, acted as catering agents for enterprises' economic interests.

Given all those similarities, if the introduction of intermittent work has had perverse effects for Portuguese women in the labour market, the negative consequences will be repeated in Brazil. In fact, it is possible that IWC will have worse impacts with regard to Brazilian women's work. The differences between the Brazilian and Portuguese national and international legal frameworks, allied to other aspects of their social, political and economical contexts are reasons for the more accentuated impacts in Brazil.

Firstly, those countries are part of distinct regional groups, and the OAS's IASHR system is not as strong as the EU and CoE's systems of protection of gender equality within the scope of Human Labour Rights. Europe has a largest volume of competent organs and laws in force that specifically encompass gender equality and the International Labour Charter. Furthermore, the IACHR is not as powerful as the courts in Europe, due to a lack of support offered from OAS's member-states. This means that Brazilian workers, especially women, are more vulnerable to violations than the Portuguese, once they do not receive similar amount of protection in the regional sphere, which will possibly result in worse conditions of work for the former.

Concerning the contrasts within national legal frameworks, even if IWC was created in both nations to answer the demands of a more flexible labour market, it receives a different treatment from each country's laws. As demonstrated by this study, intermittent work is more minutely regulated and widely protected in Portugal, resulting in better conditions of work compared to Brazil. The lack of regulation in Brazil represents an advantage for enterprises seeking opportunities to explore cheap labour and, as a consequence, employees are obliged to accept worse circumstances for all workers, especially women.

Therefore, Brazilian IWC laws are much less protective of the worker than the Portuguese ones. In this context, it is important to remark that Brazilian IWC can be adopted unrestrainedly by any type of enterprise, regardless of the frequency or pattern of the activity developed. In addition, there is no obligation for the enterprise to pay any

amount to cover for workers basic needs of the workers during periods of inactivity. Differently from Portugal, Brazilian law has not set a minimum amount of time to be worked or minimal duration of activity periods. Workers therefore need unfairly support the risk of the business, contend with the consequences of a lack of demand for the companies' services or products, and live with the anguish of uncertain work and remuneration.

Moreover, in Brazilian IWC model, employees must be notified for work only three days before the initial term, a much shorter period than the one set in Portuguese *on call* model, which prevents employees to organize their personal and professional lives. Finally, if the worker in Brazil accepts the notification for work and later gives up without justification, a penalty of 50% of the due remuneration will be applied in thirty days, something that does not exist in the Portuguese IWC.

Regarding the social-economical differences between Brazil and Portugal, they can highly interfere on the impacts of IWC to gender inequality in labour, and as a result, they will probably be worse in Brazil. As exposed in this work, Brazilian population is much bigger and way poorer than the Portuguese. Those numbers are higher when it comes to working women.

Therefore, based on the Portuguese experience it is possible to predict that there will be the similar impacts from introducing IWC and other forms of flexible working in the legislation for a raise of gender inequality in Brazil. Furthermore, as seen on this study, the preliminary data yet collected in Brazil already confirms that the same effects are being repeated there. Nevertheless, the existent contrasts between these countries lead to the conclusion that there will be even worse work and living conditions for Brazilian female employees than for the Portuguese.

To point out, the consequences of all the studied modifications include higher gender inequality and poverty rates, which can affect the social security funds. Moreover, the fragmentation of payments and wage loss as significant factors for women, will generate their permanent availability and an aggravation of their economic dependency, causing a loss of autonomy, the incapability to organize their private family life,

education and professional training, and health issues. Additionally, a process of disempowering women will lead to their under representation by trade unions.

Finally, the reform of labour laws represents an attempt to overcome the idea of a set wage as a fixed compensation stipulated in work contract. This change can even lead to the wrong interpretation that the wage may exist only occasionally, if the worker is called for work, once payments started to be conditioned to the limits of the occasional chores.

In conclusion, given the lessons learnt from Portugal, the introduction of IWC in the Brazilian system will not guarantee decent and equal conditions of working living for women. Intermittent contracts represent merely palliative measures for unemployment and a failed attempt to include women in work, without effective respect for equality, but instead, a lack of social benefits, lower income and worse working conditions than men.

However, labour rights are necessary to guarantee a life with dignity to individuals, and the absence of them causes a deficiency of women's control over the available resources, which prevents them to participate politically or to improve their living circumstances. As a result, society becomes step by step more individualistic, making it easier for opportunists to gain force.

The intermittent work arrangement as a flexibility measure introduced by the reform of labour laws in Brazil represents a violation of the international and national legal standards of gender equality protection in labour within the scope of Human Labour Rights, responsibilities that Brazil accepted in several occasions over the past decades through the ratification and enactment of related principles and laws. Therefore, the Brazilian political economical policies adopted in the post-crisis period are been failing to progressively reduce social inequalities and promote human rights.

A viable solution for this issue would be a judicial review at the national level to repeal or amend of the IWC model introduced in the CLT. Minimally, more guarantees should be included in the laws for the benefit intermittent workers, following the Portuguese model, and women must be expressly protected in the big picture from

unequal conditions of work through empowering strategies and policies. A reanalysis would find legal basis in both the international and national framework.

Subsequently, an alternative path for dealing with the economic crisis that still follows human rights standards and progressively increases gender equality in labour market would be, instead, investing in strategies that ensure that women are empowered, that social responsibility is shared between government, private agents and the community as a whole, that fundamental rights are not seen as monetary exchange for consumption incentives, and that solitary economy is fomented and fortified.

Economic recovery from moments of crisis, is only achievable if monetary wealth is seen as a product of human work that has to be equally distributed for all citizens. The current challenge for the Brazilian government is to reconcile a new structure of labour rights with empowerment policies for women that ensure their economic independence in a hegemonic capitalist model, guarantee their access to wage, prevent market ideology from seeing their work as a merchandise, and enable a life with freedom and equality.

9. Bibliography

Ahad, C. A., 'Reforma Trabalhista e Seus Impactos no Trabalho da Mulher' *Migalhas* (05 December 2017) < <http://www.migalhas.com.br/dePeso/16,MI270553,71043-Reforma+Trabalhista+e+seus+impactos+no+trabalho+da+mulher>> accessed 19 November 2009

Alves, J. E. D., 'Desafios da Equidade de Gênero' (2016) vol 24 n 2 *Revista de Estudos Feministas* 629 <<http://dx.doi.org/10.1590/1805-9584-2016v24n2p629>> accessed 18 June 2016

Amado, J. L., '*Contrato de Trabalho: À Luz do Novo Código do Trabalho*', (1th edn, Coimbra Editora 2009)

— '*Contrato de Trabalho: Noções Básicas*' (2nd edn, Wolters Kluwer/Coimbra Editora, Coimbra, 2010)

— and Vicente, J. N., 'Contrato de Trabalho Intermitente', in António Moreira (coord.), *XI – XII Congresso Nacional de Direito do Trabalho - Memórias* (1th edn, Almedina, 2009)

Bicudo, H., 'Defesa dos Direitos Humanos: Sistemas Regionais' (2003) vol 17 n 47 *Estudos Avançados* 225 <<https://dx.doi.org/10.1590/S0103-40142003000100014>> accessed 22 June 2018

Brazil, 'Consolidação das Leis do Trabalho – Decreto-Lei nº 5.452, de 1º de Maio de 1943' (Brasilia, 1943) <http://www.planalto.gov.br/ccivil_03/decreto-lei/Del5452.htm> accessed 17 May 2018

— ‘Constituição da República Federativa do Brasil de 1988 (CFRB)’ (Brasília, 1988) <http://www.planalto.gov.br/ccivil_03/constituicao/constituicao.htm> accessed 17 May 2018

— ‘Lei Nº 13.467, de 13 de Julho de 2017’ (Brasília, 2017) <http://www.planalto.gov.br/ccivil_03/_ato2015-2018/2017/lei/113467.htm> accessed 17 May 2018

Brito P. M., ‘*Código do Trabalho Anotado*’ (7th edn, Almedina, Coimbra, 2009)

Carneiro, J., ‘O Contrato de Trabalho Intermitente: A Relação Laboral Cimentada na Segurança do Emprego Através do Trabalho Descontínuo’, (2016) Associação de Jovens Juslaboralistas 1 <<https://www.ajj.pt/publicacoes/9>> accessed 24 May 2018

Carta Forense, ‘A origem das Faculdades de Direito no Brasil’ *Jornal Carta Forense* (03 August 2009) <<http://www.cartaforense.com.br/conteudo/artigos/a-origem-das-faculdades-de-direito-no-brasil/4485>> accessed 06 July 2018.

Carvalho, C. O., ‘A Desarticulação do Regime Legal do Tempo de Trabalho’, In *Direito do Trabalho + Crise = Crise do Direito Do Trabalho?* (Coimbra Editora, 2011)

Casca, S. F., ‘Flexibilidade, Emprego e Relações de Género: A Situação de Portugal no Contexto da União Europeia’ in Kovács, I. (coord.), *Flexibilidade de Emprego: Riscos e Oportunidades* (Oeiras, Celta Editora 2005)

— ‘As Novas Dinâmicas Laborais e os Desafios da Articulação Com a Vida Familiar’ (2013) vol 72 *Sociologia, Problemas e Práticas* 31 <<http://sociologiapp.iscte-iul.pt/pdfs/10340/10481.pdf>> accessed 22 May 2018

Castro, J. R., 'O Que Dizem os Primeiros Dados Sobre o Trabalho Intermitente', *Nexo Jornal LTDA* (01 January 2018) <<https://www.nexojornal.com.br/expresso/2018/01/01/O-que-dizem-os-primeiros-dados-sobre-o-trabalho-intermitente>> accessed 25 June 2018.

Comissão Europeia, 'O Orçamento da UE no Meu País: Portugal' (*Sítio da Comissão Europeia*, 07 February 2014) <http://ec.europa.eu/budget/mycountry/PT/index_pt.cfm> accessed 22 June 2018

Comissão Interamericana de Direitos Humanos (CIDH), 'B-32: Convenção Americana Sobre Direitos Humanos (Pacto de San José de Costa Rica)' <https://www.cidh.oas.org/basicos/portugues/d.Convencao_Americana_Ratif..htm> accessed: 22 June 2018

Comissão para a Cidadania e a Igualdade de Género (CIG), '*Igualdade de Género em Portugal: Indicadores-Chave 2017*' (Divisão de Documentação e Informação, CIG 2017)

Comissão Para a Igualdade no Trabalho e no Emprego (CITE) et. al., 'A Igualdade de Género na Legislação Nacional, Internacional e na União Europeia' (2009) Fascículo VI: Caderno Prático Para a Integração da Igualdade de Género na Cáritas em Portugal 2 <http://cite.gov.pt/asstscite/downloads/caritas/cadernocaritas_fasciculo_vi.pdf> accessed 25 may 2018

— '*Código Do Trabalho (Versão Atualizada – 20 de Março de 2018)*' (CITE, 2018) <<http://cite.gov.pt/asstscite/downloads/legislacao/CT20032018.pdf>> accessed 02 June 2018.

Council of Europe (CoE), ‘Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR)’ [1953]

— ‘European Social Charter (Revised)’ [1996] ETS 163.

— ‘The Council of Europe and the European Union: Partners in Promoting Human Rights and Democracy’ (*Council of Europe Portal*) <<https://edoc.coe.int/en/different-roles-shared-values/6332-leaflet-the-council-of-europe-and-the-european-union-partners-in-promoting-human-rights-and-democracy.html>> accessed: 20 June 2018

— ‘The Council of Europe in Brief: Budget’ (*Council of Europe Portal*) <<https://www.coe.int/en/web/about-us/budget?desktop=true>> accessed 22 June 2018

— ‘The Council of Europe in Brief: Who We Are’ (*Council of Europe Portal*) <<https://www.coe.int/en/web/about-us/who-we-are>> accessed: 20 June 2018

Council of the European Union, ‘Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding (tenth individual Directive within the meaning of Article 16 (1) of Directive 89/391/EEC)’ [1992] OJ L 348/1

— ‘Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation’ [2000] OJ L 303/16

— and European Parliament, ‘Decision No 1554/2005/EC of the European Parliament and of the Council of 7 September 2005 amending Council Decision 2001/51/EC establishing a programme relating to the Community framework strategy on gender equality and Decision No 848/2004/EC establishing a Community action programme to promote organisations active at European level in the field of equality between men and women’ [2005] OJ L 255/9

— and European Parliament, ‘Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time’ [2003] OJ L 233/9

— and European Parliament, ‘Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast)’ [2006] OJ L 204/23

Delgado, Mauricio Godinho and Delgado, Gabriela Neves, *‘A Reforma Trabalhista no Brasil: Com os Comentários à Lei n. 13.467/2017’* (1th edn, São Paulo, LTr, 2017)

Departamento Inersindical de Estatísticas e Estudos Socioeconômicos (DIEESE), ‘Relações de Trabalho Sem Proteção: de Volta ao Período Anterior a 1930?’ (2017) vol 179 Nota Técnica 2
<<https://www.dieese.org.br/notatecnica/2017/notaTec179ConjunturaReforma.pdf>>
accessed: 25 June 2018.

Estevez, M. F. R. A., ‘A Evolução Legislativa Sobre o Tempo de Trabalho em Portugal – de 1990 à Actualidade’ (LLM Thesis, Universidade Autónoma de Lisboa, September 2013)

European Commission, ‘Commission Decision of 16 June 2008 relating to the setting up of an Advisory Committee on Equal Opportunities for Women and Men (Codified version)2008/590/EC’ [2008] OJ L 190/17

— ‘Commission Recommendation of 7 March 2014 on strengthening the principle of equal pay between men and women through transparency Text with EEA relevance 2014/124/EU’ [2014] OJ L 69/112

European Parliament, ‘Resolution of 13 March 2007 on a Roadmap for Equality Between Women and Men (2006-2010) (2006/2132(INI))’ [2007] OJ E 301/13

— ‘Resolution of 12 March 2013 on the Impact of the Economic Crisis on Gender Equality and Women’s Rights (2012/2301(INI))’ [2013] OJ C 36/6

— ‘Resolution of 9 June 2015 on the EU Strategy For Equality Between Women and Men Post 2015 (2014/2152(INI))’ [2016] OJ C 407/2

— ‘Resolution of 3 February 2016 on the New Strategy for Women’s Rights and Gender Equality in Europe post-2015 (2016/2526(RSP))’ [2018] OJ C 35/35

European Union (EU), ‘Treaty of Amsterdam Amending the Treaty on European Union’ OJ C 340/115

— ‘Charter of Fundamental Rights of the European Union (CFREU)’ [2000] OJ C 364/01

Eurostat, ‘Involuntary Part-Time Employment As Percentage Of The Total Part-Time Employment, By Sex And Age (%)’, (*Eurostat*, 31 of May 2018) <http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=lfsa_eppgai&lang=en> accessed 25 June 2018

Fernandes M., ‘O Impacto da Reforma Trabalhista na Criação de Empregos até Agora’ *Huff Post* (08 February 2018) <https://www.huffpostbrasil.com/2018/02/08/o-impacto-da-reforma-trabalhista-na-criacao-de-empregos-ate-agora_a_23355807/?guccounter=1> accessed 22 June 2018

Filho, H. L. L., ‘O Trabalho da Mulher e os Mecanismos Internacionais de Proteção Normativa: um Estudo sob o Viés da Isonomia Material’ (Anais do II Congresso Nacional

da Federação de Pós-Graduandos em Direito (FEPODI), Pontifícia Universidade Católica de São Paulo, São Paulo, September 2013)

Gomes, R. L., 'Recursos Sociais e Acadêmicos dos Licenciados: Implicações com a Precariedade no Trabalho', (Master of Sociology Thesis, Law Faculty of NOVA University of Lisbon, June 2013)

Grinspan M C. et. al., '*Yogyakarta Principles Plus 10 – Yogyakartaprinciples.Org*' (Yogyakartaprinciples.org, 2017) <<http://www.yogyakartaprinciples.org/principles-en/yp10/>> accessed 14 May 2017

GT Reforma Trabalhista, 'Contribuição Crítica à Reforma Trabalhista' (2017) CESIT/UNICAMP Research Paper <<http://www.cesit.net.br/wp-content/uploads/2017/06/Dossie-14set2017.pdf>> accessed: 25 June 2018

Index Mundi, 'Força laboral – Mundo' (*Index Mundi*, data source CIA World, 1 January 2018) <<https://www.indexmundi.com/map/?t=0&v=72&r=xx&l=pt>> accessed 25 June 2018

— 'População – Mundo' (*Index Mundi*, data source CIA World, 1 January 2018) <<https://www.indexmundi.com/map/?v=21&r=xx&l=pt>> accessed 25 June 2018.

— 'Produto Interno Bruto (PIB) Per Capita – Mundo' (*Index Mundi*, data source CIA World, 1 January 2018) <<https://www.indexmundi.com/map/?t=0&v=67&r=xx&l=pt>> accessed 25 June 2018.

Instituto Brasileiro de Geografia e Estatística (IBGE), 'Estatísticas de Gênero – Indicadores Sociais das Mulheres no Brasil, Estruturas Econômicas, Participação em

Atividades Produtivas e Acesso a Recursos, Tabela 9 – Proporção de Pessoas de 14 Anos ou Mais de Idade Ocupadas na Semana de Referência em Trabalhos Informais, em Relação ao Total de Pessoas Ocupadas em Atividades Não Agrícolas, por Sexo, com Indicação do Coeficiente de Variação, Segundo Cor ou Raça e as Grandes Regiões – 2016' (IBGE, Coordenação de População e Indicadores Sociais, 2016) <<https://www.ibge.gov.br/estatisticas-novoportal/multidominio/genero/20163-estatisticas-de-genero-indicadores-sociais-das-mulheres-no-brasil.html?=&t=resultados>> accessed 17 May 2018

— 'Estatísticas de Gênero: Indicadores Sociais Das Mulheres no Brasil' (IBGE, Coordenação de População e Indicadores Sociais, 2018) <<https://biblioteca.ibge.gov.br/index.php/biblioteca-catalogo?view=detalhes&id=2101551>> accessed 17 May 2018

— '*Síntese de Indicadores Sociais: Uma Análise das Condições de Vida da População Brasileira: 2017*' (Rio de Janeiro, Coordenação de População e Indicadores Sociais IBGE 2017)

International Labour Organisation (ILO), 'Declaration of Philadelphia: Declaration Concerning the Aims and Purposes of the International Labour Organisation' (26th International Labour Conference (ILC) session, Philadelphia, 10 May 1944)

— 'Convention C100: Equal Remuneration Convention (1951) No. 100' (34th ILC session, Geneva, 29 Jun 1951)

— 'Convention C111: Convention concerning Discrimination in Respect of Employment and Occupation No. 111' (42nd ILC session, Geneva, 25 Jun 1958)

— 'Declaration on Fundamental Principles and Rights at Work and its Follow-up' (86th ILC Session, Geneva, 18 June 1998)

Leitão L. M., '*Direito do Trabalho*' (2nd edn, Almedina, Coimbra, 2010)

Maeda, P., *'A Era dos Zero Direitos: Trabalho Decente, Terceirização e Contrato Zero-Hora'* (São Paulo, LTr, 2017)

Martines F., 'Influência para o Brasil, Constituição portuguesa chega aos 40 menos ideológica' *Consultor Jurídico* (07 April 2016) <<https://www.conjur.com.br/2016-abr-07/constituicao-portuguesa-chega-aos-40-anos-ideologica>> accessed 06 July 2018

Martinez, P. R. et. al. *'Código do Trabalho Anotado'* (8 edn, Coimbra,, Almedina 2003)

Mello M. C., *'Law Dictionary Portuguese – English, English – Portuguese'*, (São Paulo, 10th edn, Editora Método 2012)

Ministério do Emprego e do Trabalho (MTE) 'Evolução do Emprego por Nível Setorial – Brasil – Novembro/2017 – Evolução do Emprego por Setor de Atividade Econômica Brasil' (*MTE, Cadastro Geral De Empregados E Desempregados Lei 4923/65, 2017*) <<http://bi.mte.gov.br/eec/pages/consultas/evolucaoEmprego/consultaEvolucaoEmprego.xhtml#relatorioSetor>> accessed 25 June 2018.

— 'Evolução do emprego por nível setorial – Brasil – Dezembro/2017 – Evolução do emprego por setor de atividade econômica Brasil' (*MTE, Cadastro Geral De Empregados E Desempregados Lei 4923/65, 2017*) <<http://bi.mte.gov.br/eec/pages/consultas/evolucaoEmprego/consultaEvolucaoEmprego.xhtml#relatorioSetor>> accessed 25 June 2018.

Nobre M., 'Igualdade Para Todas: Estratégias Para Políticas Públicas e Ações do Movimento' (2016) vol 24 n 2 *Revista de Estudos Feministas* 645 <http://www.scielo.br/scielo.php?script=sci_arttext&pid=S0104-026X2016000200645> accessed 29 June 2018

Pacheco F. et. al., ‘Análise Comparativa Normativa: Trabalho Intermitente no Brasil e em Diplomas Estrangeiros’ (2017) vol 2 n 3 Revista Científica Faculdades do Saber 204

Peixoto, M. and Silva, C. O., ‘O Desemprego Está a Baixar Em Portugal. E a Precariedade No Trabalho?’ *Economia Online* (12 February 2018) <<https://eco.pt/2018/02/12/o-desemprego-esta-a-baixar-e-a-precariedade-no-trabalho/>> accessed 04 June 2018

— ‘Duração Média Semanal do Trabalho Efectivo dos Trabalhadores do Sexo Feminino por Conta de Outrem: Total e por Sector de Actividade Económica’ (*Pordata*, data source Inquérito ao Emprego (INE), 2018) <<https://www.pordata.pt/Portugal/Dura%C3%A7%C3%A3o+m%C3%A9dia+semanal+do+trabalho+efectivo+dos+trabalhadores+do+sexo+feminino+por+conta+de+outrem+total+e+por+sector+de+actividade+econ%C3%B3mica-362>> accessed: 25 June 2018

— ‘Duração Média Semanal do Trabalho Efectivo dos Trabalhadores do Sexo Masculino por Conta de Outrem: Total e por Sector de Actividade Económica’, (*Pordata*, data source INE, 2018) <<https://www.pordata.pt/Portugal/Dura%C3%A7%C3%A3o+m%C3%A9dia+semanal+do+trabalho+efectivo+dos+trabalhadores+do+sexo+masculino+por+conta+de+outrem+total+e+por+sector+de+actividade+econ%C3%B3mica-820>> accessed: 25 June 2018. accessed: 25 June 2018

— ‘População Activa: Total e por Sexo’ (*Pordata*, data source INE, 2018) <<https://www.pordata.pt/Portugal/Popula%C3%A7%C3%A3o+activa+total+e+por+sexo-28>> accessed: 25 June 2018.

— ‘População do Sexo Feminino Empregada em % da População Empregada’ (*Pordata*, data source (INE), 2018) <<https://www.pordata.pt/Portugal/Popula%C3%A7%C3%A3o+do+sexo+feminino+empregada+em+percentagem+da+popula%C3%A7%C3%A3o+empregada+-638>> accessed: 25 June 2018

— ‘Remuneração Base Média Mensal dos Trabalhadores por Conta de Outrem: Total e Por Sexo’ (*Pordata*, data source GEP/MSESS/MTSSS, 2018) <<https://www.pordata.pt/Portugal/Remunera%C3%A7%C3%A3o+base+m%C3%A9dia+mensal+dos+trabalhadores+por+conta+de+outrem+total+e+por+sexo-367>> accessed: 25 June 2018.

— ‘Salário Médio Mensal dos Trabalhadores por Conta de Outrem: Remuneração Base e Ganho Por Sexo’ (*Pordata*, data source Quadros de Pessoal GEP/MTSSS until 2009, GEE/MEc from 2010 to 2012, GEP/MSESS, MTSSS from 2013 on 2018) <<https://www.pordata.pt/Portugal/Sal%C3%A1rio+m%C3%A9dio+mensal+dos+trabalhadores+por+conta+de+outrem+remunera%C3%A7%C3%A3o+base+e+ganho+por+sexo-894-7301>> accessed: 25 June 2018.

Portugal, ‘Constitution of the Portuguese Republic – Official Consolidated Translation of the Constitutional Law No. 1/1997 of 20 September 1997 – The Fourth Revision of the Constitution’ (*Diário da República*, I A 218, 25 April 1976)

Rodrigues, E. A., ‘Afiml, o Que é Ser Precário?’ *Observador* (30 April 2016) <<https://observador.pt/especiais/afiml-o-que-e-ser-precario/>> accessed 23 May 2018

Sá T., ‘”Precariedade” e “Trabalho Precário”: Consequências Sociais da Precarização Laboral’ (2010) vol 10 n 7 *Configurações Revista de Sociologia Trabalho e Não Trabalho: Valor e (In)visibilidade* 91 <<https://journals.openedition.org/configuracoes/203>> accessed 22 May 2018

Tomazelli I., ‘Trabalhador Intermitente Tem Até 29 Anos, Ensino Médio Completo e é Mulher’ *O Estado de S. Paulo* (São Paulo, 27 December 2017) <<https://economia.estadao.com.br/noticias/geral,trabalhador-intermitente-tem-ate-29->

anos-ate-ensino-medio-completo-e-e-principalmente-mulher,70002131975> accessed 25
June 2018

UN Women, *'Economic Empowerment Of Women'* (UN Women 2013)
<http://www.unwomen.org/-/media/headquarters/attachments/sections/library/publications/2013/12/un%20women_ee-thematic-brief_us-web%20pdf.pdf?la=en> accessed 17 May
2018

United Nations (UN), 'Universal Declaration of Human Rights(UDHR)' [1948] UNGA
Res 217 A(III)

— 'International Covenant on Civil and Political Rights (ICCPR)' [1966] UNTC 999/171

— 'International Covenant on Economic, Social and Cultural Rights(ICESCR)' [1966]
UNTC 999/3

— 'Convention on the Elimination of All Forms of Discrimination Against Women
(CEDAW)' [1979] UNTC 1249/3

— 'Goal 8: Promote Inclusive and Sustainable Economic Growth, Employment and
Decent Work for All' (*UN Sustainable Development Goals Website*)
<<https://www.un.org/sustainabledevelopment/economic-growth/>> accessed 19 June 2018

Varela, R. et. al., 'Força de Trabalho em Portugal, 2008-2012' (2013) vol 17 n 3 Diálogos
947 <

https://run.unl.pt/bitstream/10362/23118/1/IHC_Raquel_Valera_Ana_Raado_Ant_nio_Si_m_es_do_Pa_o_Maria_Jo_o_Berhan_Renato_Guedes_For_a_de_trabalho_em_Portugal_2008_2012.pdf> accessed 23 May 2018