

# THE USE OF STATE PROTECTIVE DUTIES BY THE INTER-AMERICAN SYSTEM FOR THE PROTECTION OF HUMAN RIGHTS: ANALYSIS BY THE LIGHT OF SLAVERY IN BRAZIL

Douglas Matheus de Azevedo<sup>1</sup>  
Mônia Clarissa Hennig Leal<sup>2</sup>

## 1 INTRODUCTION

Slavery in its modern forms (such as debt bondage) remains a Brazilian structural problem, with new cases being noticed every year, both in the fields or in the industrial sector. The struggle against this harmful practice, however, is often covered by the public power in agreements with large businesses and landholders, so that the workers are in a situation of extreme vulnerability. This was the background of the Fazenda Brazil Verde case, denounced by the Inter-American Commission of Human Rights to the Inter-American Court of Human Rights in 2015, which may result in another condemnation to the country. If this occurs, Brazil, as part of the Inter-American System for the Protection of Human Rights, will have to ensure the Court determinations, in order to repair the damage done to the workers, victims of forced labour practise. Also, the Court has been adopting a jurisprudence that goes beyond the individual reparation, so that it's sentences reach the collectivity, and not just the involved processual parts, unleashing the necessity of structural changes. Thus, it is important to know which are the fundamentals used by the Inter-American System in its sentences, since they will have a direct effect into the country domestic law, and this research, more specifically, seeks to verify if the Inter-American System makes use of state protection duties notions, even if not in a express form, which might come connected to the collective aspect of these decisions.

## 2 METHODOLOGY

The paper analyses some of the fundamentals behind the acts of the Inter-American System for the Protection of Human Rights and it's instruments in the Fazenda Brazil Verde case, more precisely if state protection duties notions are used, even if not in a express form, in the reports and recommendations of the Inter-American Commission. Thus, the research will first verify the politic and economic situations of the region in which the violations of human rights occurred and also the historical context of the locations mentioned in the case - states with a heavy historical heritage that follows to modern days, implying in serious structural problems. After that, through bibliographical research, the notion of state protection duties will be introduced, in order that both topics converge for the final analysis.

## 3 MODERN FORMS OF SLAVERY, STRUCTURAL DEFICIENCIES AND THE INTER-AMERICAN SYSTEM FOR THE PROTECTION OF HUMAN RIGHTS

Slavery was a common practise in Brazil since the beginning of the Portuguese colonization - first with the Indians, who did not adapt very well to the activities, and later to the Africans,

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<sup>1</sup> doug.azevedo2@gmail.com

<sup>2</sup> moniah@unisc.br

brought from their homeland to work on sugar cane fields (HOLANDA, 1995). Only in 1888 slavery was forbidden (the last country in Latin-America to do so), but the abolition did not change much in the life of those workers, since the state did not elaborate any kind of public policies nor gave them any indenisation, making them embrace forced labour again or any kind of activity in order to live (FERNANDES, 1965).

The mentioned scenario goes on during the XX<sup>th</sup> Century, especially in “Nordeste” - region where slavery was more common, which resulted in several social problems regarding famine and poverty. That worked as background for the recruitment of new persons - mans mainly - to work on farm in the other states. The so called “gatos” recruited those desperate persons and transported them to the places where it has been promised them they would get paid for their labour, have a place to sleep and daily meals (OEA, 2011). However, when they reached their destination, they found themselves in debt with the landholders, since they had been charged for the ride, the food and the accommodations during the trip and the payments were not even close to what was promised (when it existed). As a result, those persons had to work to pay their debts, which only grew larger, being, also, instructed not to leave the farm by death threats (OEA, 2011).

Being those landholders very rich and often with political influences, it was quite common that the authorities fiscalizations resulted in nothing, with reports that appointed anything wrong in those places (OIT, 2010). Thus, the State, which was supposed to protect those workers, ended up being complicit with the human rights violation. Such kinds of structural deficiencies (corruption of public agents, for instance) justify the existence of the Inter-American System for the Protection of Human Rights, working as a subsidiary law in order to complete national law, seeking to overcome insufficiencies and omissions in human rights protection (PIOVESAN, 2010).

The Inter-American System has its genesis with the OAS Charter (1948), firmed seven months before the Universal Declaration made by ONU; in 1959 was created the Inter-American Commission; and finally, in 1969, the Inter-American Convention on Human Rights - it's main document - and also the Inter-American Court. The importance of the Convention, or Pacto de San José de Costa Rica, was to elaborate a specialized procedure in the protection of human rights, especially by creating an autonomous jurisdictional organ - the Court (COELHO, 2008).

Regarding its practical operation, Ramos (2012) mentions that the part whose human rights were violated makes a report to the Commission, which will verify the responsibility of the state in the violation. It is even possible that the process ends in this phase by an agreement between Commission and State, but, if some responsibility is verified and there is no agreement, the case will proceed to the Inter-American Court.

In this way, the Inter-American System is a fundamental tool in the concretization of human rights in Latin America, region where the heritage of colonialism still remains. According to the OAS reports (2011), around 40.000 workers have been released from forced work or modern forms of slavery in Brazil between 1995-2010, but the protection could be improved - which leads to the discussion of the Fazenda Brazil Verde case.

#### 4 ANALYSIS OF THE FAZENDA BRASIL VERDE CASE AND THE NOTIONS OF STATE PROTECTION DUTIES BY THE INTER-AMERICAN SYSTEM FOR THE PROTECTION OF HUMAN RIGHTS

As verified above, in Brazil there is a scenario in which: 1) the heritage of the colonial period still exists and practises such as slavery are still common in the poorest regions of the country, sometimes even sponsored by the local authorities and; 2) there is a regional system to enforce the protection of human rights, acting as a subsidiary law to fix insufficiencies of the domestic law order. The objective of this research is to verify the fundamentals used by the Inter-American System in its acts, more specifically if there is been made use of state protection duties notions, having as object of study the Fazenda Brazil Verde case.

As mentioned, the patterns are similar to the “traditional” *modus operandi* mentioned before: workers recruited by “gatos”, by the promise of payment, took to Pará to work on the fields, that ended up with huge debts which didn’t allowed them to leave - order enforced by death threats. The denunciation to the Commission took place in November 1998, moved by the “Comissão Pastoral da Terra (CPT)” and the “Centro Pela Justiça e Direito Internacional (CEJIL/Brasil)”, based in the omission of the Brazilian State in investigating the many reports of forced labour at Fazenda Brazil Verde, and also for the disappearance of two young boys.

Regarding these omissions, the first denunciation against Brazil occurred in 1989 - occasion in which the Federal Policy report concluded that there was no forced labour practise there, just low salaries (OAS, 2011). The second attempt occurred in 1992, but the police this time just concluded that the situation had not changed. Only in 1997 a criminal inquiry was opened, but the landowner received the benefits of Law 9.099 (which, shortly said, established the special civil and criminal courts, allowing the suspension or the conversion of the prosecution for crimes within a determined range of maximum imprisonment, resulting in its further extinction if the conditions are fulfilled) and answered for no charge, and both the janitor and the “gato” got the benefit of criminal prescription (OEA, 2011).

The Inter-American Commission, in its final report, concluded that Brazil was guilty for the human rights violations and also for the banishment of the two young workers. Among others, made the following recommendations: 1) due individual reparation (both material and moral); 2) criminal prosecution for the owners and managers of the farm; 3) opening of administrative inquiry to verify the omissions in the reports by the public agents; 4) proceed in the elaboration of public policies, legislative measures and others to eradicate slavery; strengthen of the legal system and development of tools to increase the coordination between the criminal and labour jurisdiction [...] and other measures to eradicate slavery (OEA, 2011).

By its turn, the Inter-American Court, in its annual report, declared that it operates with five kinds of restitution measures in its sentences; 1) individual restitution; 2) ensure the rehabilitation of the victims; 3) moral or immaterial reparation; 4) warranties of no repetition seeking; 5) obligation to investigate and judge cases involving human rights violations (INFORME ANUAL DE LA CORTE INTERAMERICANA, 2011).

In the moment that the reparation goes beyond the person of the victim, it is clear the use of state protection duties notions, working with the logic of protection through the state (LEAL, 2007). That because, if human and fundamental right seek, by one side, the protection

of the person against the State, by the other the protection duties aim to protect the person not only from violations by the State, but also from private acts, social forces or even public agents (STRECK, 2008). In other words, the state is no longer a simple violator or destinatary of the prohibitions imposed by those rights, but responsible for protecting and assuring the conditions to their guarantee (LEAL, 2015).

Once acting to prevent further violations regarding slavery, the Inter-American System is a powerful tool to enforce human rights protection in such countries with a heavy past and several structural disabilities. By declaring the State responsibility to prevent, judge and sanction the cases involving slavery, the Inter-American system aims to protect the community as a whole, reinforcing the democratic values built on modern constitutions.

## 5 CONCLUSIONS

Slavery and its modern forms (such as debt bondage) remain a structural problem in Brazil, with new cases being noticed in the media every year. The struggle against this practise is, however, often covered by the public power in agreements between landholders and public agents, so that the reports of fiscalization organs or any kind of actions frequently end up in archives or with no practical results, leaving those workers in an extremely vulnerable situation.

In face of the insufficiencies of the Brazilian law and public agents in the Fazenda Brazil Verde case, with the consequent denunciation to the Inter-American Commission and with no agreements set with the country, the case has now reached the Inter-American Court of Human Rights. In case of a condemnation, Brazil, as a member of the Inter-American System and having ratified the submission to its competency, will have to honour the dispositions imposed by the sentence, making the structural amendments in all spheres of public power to cease future violations of that nature.

Thus, the Inter-American System for the Protection of Human Rights is not only another instance for a victim to have its right implemented, but an important tool that seeks to deal with structural problems in countries deeply affected by a heavy historical heritage. By the use of notions such as the state protection duties theory, the Inter-American System aims to prevent new violations of human rights, fulfilling and ensuring that the human and fundamental rights of people affected by severe poverty are guaranteed, granting them dignity in future labours.

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