

# CONTEMPORARY SLAVERY IN BRAZIL: THE CASE 11,289 (JOSÉ PEREIRA) IN THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

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## 1 INTRODUCTION

According to the Universal Declaration of Human Rights (Article 4), “No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.” This prohibition of all forms of slavery is reproduced in several human rights treaties, as the Slavery Convention signed at Geneva on 25 September 1926, the International Labour Convention (n° 29) concerning Forced Labour (1930), the International Labour Convention (n° 95) concerning the Protection of Wages (1949), the United Nations Supplementary Convention of the Abolition of Slavery (1956), the International Labour Convention (n° 105) concerning the Abolition of Forced Labour (1957), the International Covenant on Civil and Political Rights (1966), the American Declaration of the Rights and Duties of Man (1948) and the American Convention on Human Rights - “Pact Of San Jose, Costa Rica” (1969).

In Brazil, on 13 May 1888, the Imperial Regent Princess Isabel signed the “Golden Law” (Brazilian Law n° 3.353) declaring the institution of slavery to be extinct in Brazil.<sup>3</sup> In March 1993, however, in response to a report of the ILO (International Labour Organization) Committee on the Application of Standards, the Brazilian Minister of Labour stated: “We have to recognise that it [slavery] exists and take steps. It is the worst stain on Brazil’s history.”<sup>4</sup> This recognition is linked to the first batch of reports on contemporary slave labour in Brazil from the 1970s and 1980s, coinciding with a period of economic growth, and the expansion of the agricultural frontier from the south through Mato Grosso and Pará (Eastern Brazilian Amazon).

At that time, the Brazilian government announced that it would promote economic expansion and development in the Eastern Brazilian Amazon in two ways: first by encouraging “colonisation” by peasant farmers from the Northeast and South of the country; a second by stimulating large-scale investment through fiscal incentives. Large enterprises (national and multinational groups) took advantage to colonize, with industrial or agricultural projects, the Amazon at that time. It was in such enterprise, among others, that large numbers of workers were sub-contracted. Denunciations of coerced labour were received concerning some, although not all, of these enterprises.

The main complaint, indeed, presented to the Inter-American Commission on Human Rights (IACHR), refers to Brazilian citizen José Pereira, injured in 1989 by gunshot wounds inflicted by gunmen attempting to impede the flight of workers held in conditions analogous to slavery at the Espírito Santo Farm in the state of Pará.

The scope of this paper is to analyze the Case 11,289 (José Pereira) in the IACHR, checking the effects of the public recognition of the responsibility of the Brazilian State in relation

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<sup>3</sup> In the following year, 1889, Brazil became a republic.

<sup>4</sup> The Minister of Labour, Walter Barelli, interviewed in Folha de São Paulo, 10 March 1993.

to the violation of human rights and the commitments made by Brazil, contained in the National Plan for the Eradication of Slave Labour, to implement actions and legislative changes to monitor and repress slave labour and slavery prevention mechanisms.

## 2 METHODOLOGY

The paper identifies as the Case 11,289 (José Pereira) is developed in the Inter-American Commission on Human Rights (IACHR) and what consequences were generated from the public recognition of the responsibility of the Brazilian State in relation to the violation of human rights. It analyses the Case and the commitments made by Brazil, contained in the National Plan for the Eradication of Slave Labour, to implement actions and legislative changes to monitor and repress slave labour and slavery prevention mechanisms. The case study provides an analytical frame within which this case of contemporary slavery in Brazil, with its consequences on the Brazilians decisions, projects, policies and institutions, is illuminated and explained.

## 3 THE PETITION PRESENTED ON DECEMBER 16, 1994, TO THE IACHR

On December 16, 1994, the non-governmental organizations Human Rights Watch and the Centre for Justice and International Law (CEJIL) presented a petition to the IACHR against the Brazilian State in which facts were alleged related to a situation of slave labour, and attacks on the right to life and the right to justice in the Southern part of the state of Pará. Based on the facts alleged, the petitioners adduce that Brazil violated Articles 1 (the right to life, liberty, and personal security), 14 (the right to work and to fair remuneration) and 25 (the right of protection from arbitrary arrest) of the American Declaration of the Rights and Duties of Man, and Articles 6 (the prohibition on slavery and servitude), 8 (the right to a fair trial) and 25 (the right to judicial protection), in conjunction with Article 1(1), of the American Convention on Human Rights - “Pact Of San Jose, Costa Rica”.

The petitioners alleged in this regard that José Pereira was seriously injured, and that another rural worker was killed, when both attempted to escape, in 1989, from the “Espírito Santo” Farm, where they had been drawn with false promises concerning working conditions, and found that they had to work forcibly, without the freedom to leave and under inhumane and illegal conditions, which they suffered along with other 60 workers on that estate. The petitioners indicated that the facts alleged constituted an example of the lack of protection and guarantees by the Brazilian State, as it failed to respond adequately to the complaints regarding those practices, which were common in that region, and as it de facto allowed them to continue. It was also alleged that the investigations into and trials of the assassins and those responsible for such exploitation of labour reflected a lack of interest and were ineffective.

On September 18, 2003, the petitioners and the Brazilian State signed a friendly settlement agreement in which the Brazilian State recognized international responsibility and made a series of commitments related to the trial and punishment of the persons responsible, pecuniary measures of reparation, preventive measures, legislative changes, measures to monitor and punish slave labour, and measures to raise awareness to oppose slave labour.

## 4 THE CASE: PROCESSING BEFORE THE IACHR

The complaint was received by the IACHR on February 22, 1994, and transmitted to the Brazilian State on March 24, 1994; the Brazilian State responded on December 6, 1994, arguing that domestic remedies had not been exhausted. Both parties presented additional information on several occasions.

In the framework of an on-site visit by the Commission to Brazil in November 1995, a Commission delegation visited the Xinguara area and the city of Belém, accompanied by representatives of the Ministry of Justice and the Ministry of Foreign Affairs of Brazil. There they had the opportunity to receive testimony from attorneys, human rights defenders, rural workers, prosecutors, local judges, the state Supreme Court, and the representative of the federal Public Prosecutor's Office with respect to the question of work in conditions analogous to slavery in general and the case José Pereira in particular.

The IACHR convoked several hearings and working meetings on the instant case, which were held on various occasions at Commission headquarters.

On February 24, 1999, the IACHR approved a report on the admissibility and the merits of the instant case. In this respect, the Commission declared the case admissible, and as to the merits, it concluded that the Brazilian State was responsible for violations of the American Declaration of the Rights and Duties of Man and the American Convention on Human Rights. In that report the Commission made the relevant recommendations to the Brazilian State.

On March 24, 1999, said report was sent to the Brazilian State, which was given two months to carry out the respective recommendations made by the IACHR. Next, an effort to achieve a friendly settlement was initiated, with the impetus of the Commission, in the framework of which both parties provided additional information and working meetings and hearings were held before the IACHR, the last of which was held February 27, 2003, in the context of the 117th regular session of the Commission.

On October 14, 2003, a new working meeting was held, in the context of the 118th regular session of the Commission, in which the parties formally presented to the Commission the friendly settlement agreement that they signed in Brasília on September 18, 2003.

## 5 THE FACTS

The petitioners alleged in their complaint of February 1994 that the Brazilian State violated its obligations under the American Convention on Human Rights and the Declaration of the Rights and Duties of Man to persons within its jurisdiction who suffer conditions equivalent to slavery, imposed by other persons, and that it allowed that practice to continue by omission or complicity. They referred specifically to the case of the youth worker José Pereira, victim of those practices on the "Espírito Santo" Farm, located in the Southern part of the state of Pará.

In this respect, they noted that in September 1989 the victim, then 17 years of age, as well as 60 other workers, were held against their will and forced to work without remuneration, and in inhuman and illegal conditions. When they sought to escape from the estate, the worker José Pereira and another worker were fired upon by rifle-fire by the contractor and his armed aides, in retaliation for fleeing. They added that José Pereira suffered gunshot wounds, but miracu-

lously survived, his assailants leaving him for dead. They said that the other worker accompanying him, known only by his nickname “Paraná”, was hit by the gunfire and killed. Their bodies were dumped on a lot near where they were taken in a pick-up truck by the killers. José Pereira made his way to a near-by estate and received care, and was able to file his complaint. He argues that the case is illustrative of a more general practice of slave labour and of the lack of judicial guarantees and labour security, which make this practice widespread.

They argued that the case of José Pereira and his companions is not isolated; and that in 1992 and 1993, the years immediately prior to the complaint, the Pastoral Land Commission (CPT, Brazil), a human rights organization of the Catholic Church, recorded 37 cases of farms where slave labour prevails, affecting 31,426 workers.

With respect to the general phenomenon, they mentioned that these labour conditions generally affect seasonal agricultural workers recruited with fraudulent promises, transported to estates far from their places of residence, held against their will through violence and debt peonage, and forced to work in inhuman conditions. Many of these workers are poor and illiterate farmers, or landless rural poor from the states of Northeast Brazil, where jobs are hard to come by.

They alleged that the methods used to effectively deprive them of their liberty are violence pure and simple, and a scheme of indebtedness that is a genuine trap. Once they reach the farm, they realize that the promises with which they were hired, based on a price per hectare worked that has already been agreed upon are false, since the work in general is much more difficult than anticipated. In addition, on arriving they are informed that they are already in debt to the farm for transportation costs, road and board, both on the trip and in their place of work. When they discover that they were deceived it is too late, for they cannot leave the estate or stop working until they pay their “debts”; they are threatened, told they will be killed if they try to escape. In some cases, they must work in the sights of armed gunmen who keep watch over them. The farms are far from any transportation, so it is not easy to flee.

They indicated that such practices, which fall under the jurisdiction of the Federal Police when the workers are moved across state lines, are punished by Brazilian legislation. In addition to the labour laws that establish minimum wage and minimal working conditions, there are laws that specifically prohibit labour in conditions analogous to slavery, and they establish that one who promotes or organizes work in such conditions is committing a crime. Nonetheless, they alleged that as of the date of the complaint, no one in the state of Pará had been prosecuted or convicted in this particular case or in any of the many others that existed and had been reported.

They also alleged the complicity of agents of the state of Pará, given that in some cases state police detain and return workers who escape, and in others the police turn a blind eye and pretend not to see or realize what’s happening when private vigilantes try to trap escaped workers; and that neither the supervisory authorities of the Ministry of Labour or the Federal Police were taking the measures needed to adequately prevent, impede, or repress this situation.

They reported the impunity of the State as an aggravating factor, since even though the number of situations of slave labour and reports thereof were on the rise, no contractor, estate foreman, or landowner was convicted for such situations in any case, despite the extreme violence that characterized those violations. They argued that it was not unusual for workers who tried to escape to be murdered or attacked, citing several examples.

They mentioned that the Federal Police, which had not investigated the reports filed since 1987 on the “Espírito Santo” Farm, finally interviewed José Pereira in the state capital, Belém do Pará, several days after the failed execution, in September 1989. Yet it was not until one month later that it went to the estate to investigate, and only in response to the insistence of human rights activists” *vis-a-vis* the central government in Brasília.

They added that the investigations were then initiated, and as of the date the complaint was lodged, in February 1994, more than four years after the events, the two Federal Police investigations had just been taken by the prosecutor before the judge to institute criminal proceedings. On May 26, 1996, the petitioners noted that in addition to the continued ineffectiveness of domestic remedies, the evidence in the case was deteriorating six years after the events, without the criminal proceedings having culminated despite having been before the courts for two-and-a-half years, in addition to the previous four years of investigation and preliminary proceedings.

They noted on October 7, 1998, that the Public Prosecutor’s Office indicted five persons for the crimes of attempted homicide and reduction to a condition analogous to slavery, and one person for reduction to a condition analogous to slavery. They indicated in this respect that there was excessive delay, since the case was in the investigative phase for four years up until 1993, and the final arguments were not presented by the Public Prosecutor’s Office before the court of first instance of Marabá until May and July 1997.

They reported that the trial was divided in two: one against A. B. C. Machado, and another against the other four defendants. C. Machado, administrator of the farm, was convicted on April 29, 1998 to two years” imprisonment, which could be replaced by two years of community service. They note that in any event, it was not possible to enforce the sentence, due to the running of the statute of limitations.

With respect to the other four defendants, who were fugitives, they indicated that on October 21, 1997, a decision was handed down against them, for them to be tried by the federal criminal court for crimes against life (jury trial), and it was ordered that they be held in pre-trial detention, but that order had not been executed.

The main mechanism of enslavement in Brazil is through debt - the physical immobilisation of workers on estates until they can pay off debts, which are often incurred through fraud, and are provoked by their working conditions. Thus workers from areas hit by recession or drought are enticed into verbal contracts, and then loaded into trucks which transport them thousands of miles to work in dangerous conditions. On arrival, the attractive wage rates promised to them are reduced, and them forfeited in order to pay for transport costs, food and even working tools. Workers often do not have access to calculations of the charges chalked up against their names, and do not receive cash in hand. As time passes, the workers” debts become greater and greater so that they have no possibility of leaving. Frequently the identity and working papers of the workers are retained to stop them from escaping. Intimidation and physical force are often used to prevent them from doing so.

## 6 FRIENDLY SETTLEMENT AGREEMENT

The friendly settlement agreement signed between the parties on September 18, 2003, provides as follows:

1. The Brazilian State, represented by the Special Secretariat for Human Rights of the Presidency of the Republic and the petitioners represented by the Centre for Justice and International Law and by the Pastoral Land Commission enter into this Friendly Settlement Agreement in the context of case 11,289.

2. Case 11,289 refers to Brazilian citizen José Pereira, injured in 1989 by gunshot wounds inflicted by gunmen attempting to impede the flight of workers held in conditions analogous to slavery at the “Espírito Santo” Farm in the state of Pará. José Pereira was 17 years of age at that time, and was grievously injured, suffering permanent injuries in the right eye and right hand.

3. The purpose of the present friendly settlement agreement is to make reparation for the damage caused to José Pereira for the violations suffered; Case 11,289 shall be considered closed once there is compliance with the terms agreed upon.

## **7 RECOGNITION OF RESPONSIBILITY**

The Brazilian State recognizes its international responsibility in relation to case 11,289, even though the perpetration of the violations is not attributed to state agents, since the state organs were not capable of preventing the occurrence of the grave practice of slave labour, nor of punishing the individual actors involved in the violations alleged.

The public recognition of the responsibility of the Brazilian State in relation to the violation of human rights took place with the solemn act of creating the National Commission for the Eradication of Slave Labour (CONATRAE), which took place on September 18, 2003.

## **8 TRIAL AND PUNISHMENT OF THE INDIVIDUALS RESPONSIBLE**

The Brazilian State assumes the commitment to continue with the efforts to carry out the judicial arrest warrants against the persons accused of the crimes committed against José Pereira. To this end, the Friendly Settlement Agreement will be forwarded to the Director-General of the Department of the Federal Police.

## **9 PECUNIARY REPARATION**

In order to compensate José Pereira for the material and moral damages suffered, the Brazilian State forwarded draft legislation to the National Congress Law nº 10,706 of July 30, 2003, which was adopted urgently, and which provided for the payment of R\$ 52,000 (fifty-two thousand reais) to the victim.

## **10 PREVENTIVE MEASURES: LEGISLATIVE CHANGES**

In order to improve the National Legislation aimed at prohibiting the practice of slave labour in Brazil, the Brazilian State undertakes to implement the actions and proposals for legislative changes contained in the National Plan for the Eradication of Slave Labour, drawn up by the Special Commission of the Council for the Defence of Human Rights, and initiated by the Government of Brazil on March 11, 2003.

The Brazilian State undertakes to make every effort to secure the legislative approval (i) of proposed Law which includes among the violations of the economic order the use of “unlawful means of reducing production costs such as the non-payment of labour and social taxes, exploitation of child, slave, or semi-slave labour”; and (ii) of proposed Law which amends Article 149 of the Brazilian Criminal Code.

Finally, the Brazilian State undertook to defend the establishment of federal jurisdiction over the crime of reduction to conditions analogous to slavery, for the purpose of preventing impunity.

## 11 MEASURES TO MONITOR AND REPRESS SLAVE LABOUR

Considering that the legislative proposals will demand considerable time to be implemented insofar as they depend on the action of the National Congress, and that the gravity of the problem of the practice of slave labour requires that immediate measures be taken, the Brazilian State undertakes to: (i) strengthen the Public Prosecutor’s Office; (ii) ensure immediate compliance with the existing legislation, by collecting administrative and judicial fines, investigating and pressing charges against the perpetrators of the practice of slave labour; (iii) strengthen the Mobile Group of the Ministry of Labour; (iv) take steps along with the Judiciary and its representative entities to guarantee that the perpetrators of the crimes of slave labour are punished.

The Government undertakes to revoke, by the end of the year, by means of the appropriate administrative acts, the Cooperation Agreement signed between the owners of estates and authorities of the Ministry of Labour and Public Prosecutor’s Office, signed in February 2001, and which was denounced in this proceeding on February 28, 2001.

The Brazilian State undertakes to strengthen gradually the Division of Repression of Slave Labour and Security of Dignitaries (STESD), established under the Department of the Federal Police by means of an administrative ruling of September 4, 2002, so as to give the Division adequate funds and human resources for the proper performance of the functions of the Federal Police in the actions to investigate reports of slave labour.

The Brazilian State undertakes to take initiatives *vis-a-vis* the Federal Public Prosecutor’s Office to highlight the importance of Federal Prosecutors according priority to participating in and accompanying the actions to perform inspections for slave labour.

## 12 MEASURES TO RAISE AWARENESS OF AND OPPOSITION TO SLAVE LABOUR

The Brazilian State will undertake a national campaign to raise awareness of and oppose slave labour, in October 2003, with a particular focus on the state of Pará. On this occasion, through the presence of the petitioners, publicity will be given to the terms of this Friendly Settlement Agreement. The campaign will be based on a communication plan that will include the preparation of informational materials geared to workers, inserting the issue in the media through the written press, and through radio and TV spots. In addition, various authorities are to make visits to the targeted areas.

The Brazilian State undertakes to evaluate the possibility of holding seminars on the eradication of slave labour in the state of Pará no later than the first half of 2004, with the presence of the Federal Public Prosecutor’s Office, ensuring that the petitioners are invited to participate.

## 13 MONITORING MECHANISM

In order to monitor compliance with this agreement until the effective implementation of all of its clauses, the parties shall send annual reports on the progress made to the IACHR, that will hold hearings to receive information, and requests for on-site visits will be facilitated, if necessary.

## 14 CONCLUSION

The mechanisms of modern-day enslavement rely on a chain of factors involving massive poverty, rapid and destabilising expansion of the agricultural frontier, generalised disrespect for human rights, and chronic weaknesses in the administration of justice. Workers' susceptibility to exploitation in Brazil must be situated within Brazil's skewed form of development, with vast inequalities of wealth and massive poverty.

Slavery has been illegal for over a century. Freedom from slavery is an international norm, well established in international law. Yet, it is still not implemented worldwide. Contemporary forms of slavery exist in all regions of world, in the form of dangerous and exploitative types of child labour, trafficking, bonded labour and chattel slavery.

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The public recognition of the responsibility of the Brazilian State in relation to the violation of human rights took place with the solemn act of creating the National Commission for the Eradication of Slave Labour (CONATRAE), which took place on September 18, 2003.

In order to improve the National Legislation aimed at prohibiting the practice of slave labour in Brazil, the Brazilian State undertakes to implement the actions and proposals for legislative changes contained in the National Plan for the Eradication of Slave Labour, drawn up by the Special Commission of the Council for the Defence of Human Rights, and initiated by the Government of Brazil on March 11, 2003.

Just as the actions of various public authorities can be measured by their implementation of the National Plans for the Eradication of Slave Labour, the actions of the private sector can be monitored with reference to the National Pact. Signed on 19 May 2005, in a ceremony at the Office of the Attorney General of the Republic in Brasilia, the National Pact is a voluntary commitment undertaken by some 200 enterprises with the aim of dignifying and modernizing labour relations in production chains (See Annex). In other words, the National Pact has placed efforts to dignify, formalize and modernize labour relations in all economic sectors on the agenda of entrepreneurs and Brazilian society as a whole.

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