

Case Comment: Inter-American Court Issues its First Decision on Modern Day Slavery: Case of Hacienda Brasil Verde

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The Inter-American Court of Human Rights issued its first decision on the right not to be subjected to slavery and trafficking. The case concerned the working conditions of labourers at Hacienda Brasil Verde, a privately-owned cattle ranch in Brazil. The Inter-American Court explored the meaning of modern-day slavery – a notion that originates from, but no longer mimics directly the historical practice of ownership of persons as property.

Introduction

The Inter-American Court of Human Rights, in its first decision on the right not to be subjected to slavery and trafficking, found a breach by Brazil based on the working conditions of labourers at Hacienda Brasil Verde, a privately-owned cattle ranch.[1] The Inter-American Court explored the meaning of modern-day slavery – a notion that originates from, but no longer mimics directly the historical practice of ownership of persons as property. In the present-day context, domestic and international legal bodies have focused on labour conditions and behaviours so abhorrent as to warrant a finding of “slavery” and the moral turpitude associated with that term.

The Facts of the Hacienda Brasil Verde Case

Hundreds of workers, men mostly between the ages of 15 and 40 and from low-income communities, were recruited to work at Hacienda Brasil Verde for what they believed would be good salaries. Upon arrival at the Hacienda, workers were forced to hand over their work certificates to the manager and to sign blank documents. They were subjected to excessive working hours, threats and violence, deplorable living conditions and constant vigilance by armed guards.[2] These circumstances, along with the withholding of wages and the isolated location of the ranch effectively prevented labourers from returning to their homes.[3]

Complaints from workers able to escape from the Hacienda led to various administrative inspections and police investigations from 1989 to 2000, and approximately 340 men were removed from the ranch during this period. However, overall efforts to alter conditions permanently at the Hacienda were ineffective, including court proceedings which failed on procedural grounds.[4]

As a result, two NGOs – the Brazilian Pastoral Land Commission and the Center for Justice and International Law – initiated international proceedings in 2013 within the Organization of American States. Consistent with the Organization's procedures, the Hacienda Brasil Verde case was first examined by the Inter-American Commission on Human Rights. In its Merits Report, the Commission found Brazil responsible for a situation of forced labor and servitude for debt analogous to slavery, and made a number of corresponding recommendations. Unsatisfied with Brazil's response, the Commission brought the case to the Inter-American Court of Human Rights in March 2015.[5] The case was heard on February 19, 2016 and judgment was issued on October 20, 2016.

Decision of the Inter-American Court of Human Rights

The key provision at issue in this case was article 6 of the *American Convention on Human Rights*, which provides in sub-article 1 that: "No one shall be subject to slavery or to involuntary servitude, which are prohibited in all their forms, as are the slave trade and traffic in women." Sub-article 2 provides, in part, that: "No one shall be required to perform forced or compulsory labor."

The Court found that the interpretation of slavery has evolved such that it is no longer confined to exercising a right of "ownership" over an individual. Rather, the Court adopted an approach consistent with other international tribunals,[6] which focuses on control exercised over a person that significantly restricts or deprives them of their individual freedom, with the intent to exploit them through the use, management, benefit, transfer or divestment of their person. The Court referred to a degree of control that annuls the integrity or personality of the victim, and is generally supported or obtained through violence, deception and/or coercion.[7]

The Court stated that "servitude" in sub-article 6.1 of the *American Convention* is an analogous form of slavery, underpinned by explicit and subtle forms of coercion.[8] Additionally, the Court concluded that the term "trafficking in slaves and women" must be interpreted broadly to refer to "trafficking in persons".[9]

Applying the law to the facts of the case, the Court found that the workers at Hacienda Brasil Verde were not only in a situation of servitude, but that the specific characteristics of the case met the elements of the definition of slavery, particularly the degree of control and loss of liberty experienced by the workers.[10] Additionally, the Court concluded that the workers were victims of human trafficking.[11]

In addition, the Court confirmed that the prohibition of slavery constitutes a jus cogens norm of international law and therefore, statues of limitation do no apply to the investigation and prosecution of such crimes. This was in response to domestic criminal proceedings which had failed, in part, because the limitation period for prosecuting under the relevant article of Brazil's penal code had expired.

The Court also found Brazil guilty of violating the right to due judicial protection as required by the right to a fair trial (article 8.1) and the right of access to legal recourse (article 25) in the *American Convention on Human Rights*.[12] The Court seems to have suggested that the operation of Brazilian rules of criminal procedure, combined with local politics, led to a situation in which most employers could act with impunity, knowing the risk of criminal conviction was slim to zero.[13]

Interestingly, the Court also noted that the poverty and economic circumstances of the workers made them more prone to recruitment into slavery. Brazil was aware of these circumstances and its failure to address the workers' vulnerability amounted to discrimination, contrary to the Convention.[14]

In summary, with respect to States' obligations in relation to private actors' abuses, the Court indicated that in cases of servitude, slavery, human trafficking and forced work, states have an enhanced due diligence obligation to prevent and end such crimes. They must adopt comprehensive and specific measures to address potential and actual risk factors, provide an adequate legal framework and implement it effectively, strengthen institutions, immediately investigate any evidence or complaint of slavery, punish perpetrators and prevent impunity, and put in place mechanisms to protect and assist the victims, especially at-risk groups.[15]

Conclusion

The Inter-American ruling comes amid debate and growing concerns over addressing Brazil's serious and pervasive labour problems, including conditions of slavery. While there have been positive legal and public efforts to end such practices, there have also been contrasting attempts to narrow the domestic legal definition of slavery and restrict State efforts to punish and stigmatize perpetrators of slavery.[16]

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Irit Weiser has spent most of her career with the federal Department of Justice. She was Senior General Counsel and Head of Legal Services for Health Canada and the Public Health Agency of Canada. She provided legal, policy and strategic advice to senior levels of government in regard to various health-related matters, including the Canada Health Act, food and drug regulation, quarantine, and tobacco. Prior to heading up Health Legal Services, Irit was General Counsel and Director of the Human Rights Law Section of the Department of Justice. She provided legal and policy advice, and litigation support on the Canadian Charter of Rights and Freedoms, the Canadian Human Rights Act and international human rights law. Before joining the Department of Justice, Irit worked for the Lawyers Committee for Human Rights in New York. She has also taught International Human Rights at the Faculty of Law of the University of Ottawa. Finally, she has written articles and presented papers on international human rights matters, the Canadian Charter of Rights and Freedoms, and health law. Since retiring, Irit has become involved in a number of pro bono activities, including providing legal assistance to private sponsors through the Refugee Sponsorship Support Program. She is also a member of the Research Ethics Board of the Ottawa Health Science Network, the Strategic Governance Committee of the Royal Ottawa Hospital, and the Council of the Royal College of Physicians and Surgeons of Canada.

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1. Caso Trabajadores de la Hacienda Brazil Verde vs. Brasil, Sentencia de 20 Octubre de 2016, Inter-Am. Ct. H.R. (Oct. 20, 2016), http://www.corteidh.or.cr/docs/casos/articulos/seriec_318_esp.pdf.
2. Paras. 164-171.
3. Para. 173.
4. Prior to 2003, article 149 of the Brazilian Criminal Code stated it was a crime to reduce a person to a condition analogous to that of a slave. The article was subsequently amended to identify circumstances that amounted to such a condition, including degrading labour conditions or debilitating workdays, even in the absence of curtailing workers' freedom of movement. For more information on Brazilian law in this regard, see: Scott, Barbosa, Haddad, "How Does the Law Put a Historical Analogy to Work: Defining the Imposition of 'A Condition Analogous to That of a Slave' in Modern Brazil" (2017) 13 Duke Journal of Constitutional Law and Public Policy 1. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3058191.
5. *IACHR Takes Case involving Brazil to the Inter-American Court*, May 7, 2015, http://www.oas.org/en/iachr/media_center/PReleases/2015/045.asp.
6. See for example the following decisions of the European Court of Human Rights: *Siliadin v. France*, no. 73316/01, 26 July 2005; *C.N. v. The United Kingdom*, no. 4239/08, 13 November 2012; *Rantsev v. Cyprus and Russia*, no. 25965/04, 7 January 2010.
7. Paras. 268-272.

8. Para. 279.
9. Paras. 288-289.
10. Para. 304.
11. Para. 305.
12. Para. 342.
13. Scott, Barbosa, Haddad, “How Does the Law Put a Historical Analogy to Work: Defining the Imposition of ‘A Condition Analogous to That of a Slave’ in Modern Brazil” (2017) 13 Duke Journal of Constitutional Law and Public Policy 1 at 39. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3058191.
14. Para. 341.
15. *Inter-American Court finds slavery in Brazil: Fazenda Brazil v. Brazil*, http://rightsinpractice.org/new_detail2.php?new_id=45.
16. See footnote 5.