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Institution: Inter-American Commission on Human Rights
File Number(s): Report No. 95/03; Petition 11.289
Session: Hundred and Eighteenth Regular Session (7 – 24 October 2003)
Title/Style of Cause: Jose Pereira v. Brazil
Doc. Type: Decision
Decided by: President: Jose Zalaquett;
First Vice-President: Clare K. Roberts;
Second Vice-President: Susana Villaran;
Commissioners: Robert K. Goldman, Julio Prado Vallejo.
Dated: 24 October 2003
Citation: Pereira v. Brazil, Petition 11.289, Inter-Am. C.H.R., Report No. 95/03,
OEA/Ser.L/V/II.118, doc. 5 rev. 2 (2003)
Represented by: APPLICANTS: the Human Rights Watch and the Center for Justice and
International Law
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I. SUMMARY

1. On December 16, 1994, the non-governmental organizations Human Rights Watch and the Center for Justice and International Law (CEJIL) presented a petition to the Inter-American Commission on Human Rights (hereinafter “the Commission” or “the Inter-American Commission”) against the Federative Republic of Brazil (hereinafter “the State,” “Brazil,” or “the Brazilian State”) in which facts were alleged related to a situation of “slave” labor, 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 I (the right to life, liberty, and personal security), XIV (the right to work and to fair remuneration), and XXV (the right of protection from arbitrary arrest) of the American Declaration of the Rights and Duties of Man (hereinafter “the Declaration”); 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 (hereinafter “the Convention”).

2. 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” estate, 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 labor reflected a lack of interest and were ineffective.

3. On September 18, 2003, the petitioners and the State signed a friendly settlement agreement in which the 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 labor, and measures to raise awareness to oppose slave labor.

4. The present friendly settlement report, in keeping with the provisions of Article 49 of the Convention and Article 41(5) of the Commission's Rules of Procedure, summarizes the facts alleged by the petitioners, spells out the terms of the friendly settlement achieved, and sets forth the decision to publish this report.

II. PROCESSING BEFORE THE COMMISSION

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

6. 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 Ministry with respect to the question of work in conditions analogous to slavery in general, and this case in particular.

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

8. On February 24, 1999, the Commission 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 State.

9. On March 24, 1999, said report was sent to the 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.

10. 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.

III. THE FACTS

11. 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 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 José Pereira, victim of those practices on the Espírito Santo estate, located in the southern part of the state of Pará.

12. 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 young 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 miraculously 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. 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” labor and of the lack of judicial guarantees and labor security, which make this practice widespread.

13. 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: Comissão Pastoral da Terra), a human rights organization of the Catholic Church, recorded 37 cases of estates where slave labor prevails, affecting 31,426 workers.

14. With respect to the general phenomenon, they mentioned that these labor 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 persons known as “sem terra,” or landless rural poor from the states of Northeast Brazil, where jobs are hard to come by.

15. 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 estate 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 estate for transportation costs, road and board, both on the trip and in their place of work. When they discover that they were deceived it's too late, for they cannot leave the estate or stop working until they pay their “debts”; they are threatened, told they'll 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 estates are far from any transportation, so it's not easy to flee.

16. 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 labor laws that establish minimum wage and minimal working conditions, there are laws that specifically prohibit labor 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.

17. 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 Labor or the Federal Police were taking the measures needed to adequately prevent, impede, or repress this situation.

18. They reported the impunity of the State as an aggravating factor, since even though the number of situations of slave labor 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.

19. They mentioned that the Federal Police, which had not investigated the reports filed since 1987 on the Espírito Santo estate, 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.

20. 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.

21. They noted on October 7, 1998, that the Public Ministry indicted five persons: Francisco de Assís Alencar, Augusto Pereira Alves, José Gómez de Melo and Carlos de Tal ("Carlão") for the crimes of attempted homicide and reduction to a condition analogous to slavery, and Arthur Benedito Costa Machado 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 Ministry before the court of first instance ("Vara Única") of Marabá until May and July 1997.

22. They reported that the trial was divided in two: one against Arthur Benedito Costa Machado, and another against the other four defendants. Costa Machado, administrator of the estate, 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.

23. 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 (Tribunal do Juri Federal), and it was ordered that they be held in pre-trial detention, but that order had not been executed.

IV. FRIENDLY SETTLEMENT AGREEMENT

24. 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 Center for Justice and International Law/Brazil 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 estate 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.

I. Recognition of Responsibility

4. 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 labor, nor of punishing the individual actors involved in the violations alleged.

5. The public recognition of the responsibility of the Brazilian State in relation to the violation of human rights will take place with the solemn act of creating the National Commission for the Eradication of Slave Labor – CONATRAE (created by Presidential Decree of July 31, 2003), which will take place on September 18, 2003.

6. The parties assume the commitment to keep under reserve the identity of the victim at the moment of the solemn act recognizing State responsibility and in public declarations about the case.

II. Trial and punishment of the individuals responsible

7. 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.

III. Pecuniary reparation

8. 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 (copy attached), which was adopted urgently, and which provided for the payment of R\$ 52,000 (fifty-two thousands reais) to the victim. The amount was paid to José Pereira by a bank order (No. 030B000027) of August 25, 2003.

9. The payment of the compensation described in the previous paragraph releases the Brazilian State of any further duty of reparation for José Pereira.

IV. Preventive measures

IV.1 Legislative changes

10. In order to improve the National Legislation aimed at prohibiting the practice of slave labor 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 Labor, drawn up by the Special Commission of the Council for the Defense of Human Rights, and initiated by the Government of Brazil on March 11, 2003.

11. The Brazilian State undertakes to make every effort to secure the legislative approval (i) of Proposed Law No. 2130-A, of 1996, which includes among the violations of the economic order the use of “unlawful means of reducing production costs such as the non-payment of labor and social taxes, exploitation of child, slave, or semi-slave labor”; and (ii) the version presented by the Deputy Zulaiê Cobra to take the place of the proposed law No. 5,693 of Deputy Nelson Pellegrino, which amends Article 149 of the Brazilian Criminal Code.

12. 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.

IV.2 Measures to Monitor and Repress Slave Labor

13. 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 labor requires that immediate measures be taken, the State undertakes from this moment to: (i) strengthen the Public Ministry of Labor; (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 labor; (iii) strengthen the Mobile Group of the MTE; (iv) take steps along with the Judiciary and its representative entities to guarantee that the perpetrators of the crimes of slave labor are punished.

14. 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 Labor and Public Ministry of Labor, signed in February 2001, and which was denounced in this proceeding on February 28, 2001.

15. The Brazilian State undertakes to strengthen gradually the Division of Repression of Slave Labor and Security of Dignitaries (STESD), established under the Department of the Federal Police by means of Administrative ruling (Portaria)-MJ No. 1,016, 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 labor.

16. The Brazilian State undertakes to take initiatives vis-a-vis the Federal Public Ministry to highlight the importance of Federal Prosecutors according priority to participating in and accompanying the actions to perform inspections for slave labor.

IV.3 Measures to raise awareness of and opposition to slave labor

17. The Brazilian State will undertake a national campaign to raise awareness of and oppose slave labor, 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.

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

V. Monitoring Mechanism

19. 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.

V. DETERMINATION OF COMPATIBILITY AND COMPLIANCE

25. The Inter-American Commission reiterates that in keeping with Articles 48(1)(f) and 49 of the Convention, the purpose of this procedure is to reach “a friendly settlement of the matter on the basis of respect for the human rights recognized in the Convention.” Acceptance of this procedure is an expression of the good faith of the State to carry out the purposes and objectives

of the Convention in keeping with the principle of *pacta sunt servanda*, by which states must carry out in good faith the obligations they assume in treaties. In addition, it wishes to reiterate that the friendly settlement procedure provided for in the Convention makes it possible to conclude individual cases in a non-contentious manner, and has proven, in cases regarding several countries, to offer an important vehicle for settlement that can be used by both parties.

26. The Inter-American Commission has closely followed the development of the friendly settlement reached in this case. The Commission highly values the efforts made by both parties to reach this settlement, which is compatible with the object and purpose of the Convention.

VI. CONCLUSIONS

27. Based on the foregoing considerations, and by virtue of the procedure provided for in Articles 48(1)(f) and 49 of the American Convention, the Commission wishes to reiterate that it deeply appreciates the efforts made by the parties and is satisfied with the friendly settlement agreement in this case, based on the object and purpose of the American Convention.

28. By virtue of the considerations and conclusions set forth in this report,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To approve the terms of the friendly settlement agreement signed by the parties on September 18, 2003.
2. To continue to monitor and supervise the points of the friendly settlement agreement, which has yet to be implemented, and in this context to remind the parties of their commitment to keep the Inter-American Commission informed as to the implementation of this friendly settlement agreement.
3. To make this report public and to include it in its Annual Report to the OAS General Assembly.

Done and signed at the headquarters of the Inter-American Commission on Human Rights on October 24, 2003. (Signed): José Zalaquett, President; Clare K. Roberts, First Vice-President; Susana Villarán, Second Vice-President; Commissioners: Robert K. Goldman and Julio Prado Vallejo.