

# Trabajadores de la Hacienda Brasil Verde v. Brazil

## ABSTRACT<sup>1</sup>

*This case is about slave labor used by a farm until the early 2000s in the State of Pará, in Brazil's poor North-East, and the State's repeated failure to stop the practice, punish those responsible and provide victims remedies. The Court found Brazil in violation of several articles of the American Convention, while it declined to exercise jurisdiction over some violations because the facts occurred before Brazil's acceptance of the Court's jurisdiction.*

## I. FACTS

### A. Chronology of Events

**December 21, 1988:** Two young men go missing from the town of Arapoema, in the Brazilian state of Pará: Mr. Ión Canuto da Silva and Mr. Luis Ferreira da Cruz.<sup>2</sup> Mr. Canuto da Silva's father, Mr. José Teodoro da Silva, and Mr. Ferreira da Cruz's brother, Mr. Miguel Ferreira da Cruz, file a report with the Federal Police stating that the two young men are missing.<sup>3</sup> The Pastoral Land Commission (la Comisión Pastoral de la Tierra, "CPT") and the Diocese of Conceição de Araguaia join them.<sup>4</sup> The parties also allege that Hacienda Brasil Verde practices slave labor.<sup>5</sup>

**December 27, 1988:** Ms. Maria Madalena Vindoura dos Santos, another resident of Arapoema, files a report alleging the similar disappearance of her husband, Mr. José Soriano da Costa.<sup>6</sup>

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1. Joshua Fruto, Author; Shira Diamant, Editor; Kimberly Barreto, Chief IACHR Editor; Cesare Romano, Faculty Advisor

2. *Trabajadores de la Hacienda Brasil Verde v. Brazil*, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C), ¶¶ 129-130 (Oct. 20, 2016).

3. *Id.*

4. *Id.*

5. *Id.* ¶ 129.

6. *Id.* ¶ 132.

**January 25, 1989:** The CPT mails a letter to the Council of Defense of the Rights of the Human Person (Consejo de Defensa de los Derechos de la Persona Humana, "CDDPH") alleging the use of slave labor in Hacienda Brasil Verde.<sup>7</sup> In its letter, the CPT requests oversight for the Hacienda, noting that this is not the first time the Hacienda has been reported for slave labor.<sup>8</sup>

**February 20, 1989:** The Federal Police visit Hacienda Brasil Verde.<sup>9</sup>

**February 24, 1989:** The Federal Police write a report about their visit indicating that: (1) young men, referred to as "cats," are contracted to perform most of the recruiting for Hacienda Brasil Verde; (2) they identified four "cats" working in Hacienda Brasil Verde; (3) one "cat" escaped when they heard the Federal Police were visiting and another went missing; (4) the workers wanted higher pay but kept the job because they could not find another, higher paying job.<sup>10</sup>

The report states that fifty-one workers were interviewed, and there was no sign of the use of slave labor during the visit.<sup>11</sup> The workers mention that many workers flee in order to escape the Hacienda.<sup>12</sup> Additionally, in the report, workers mention that Mr. Canuto da Silva and Mr. Ferreira da Cruz likely fled Hacienda Brasil Verde for Hacienda Belém to escape the debts they incurred at Hacienda Brasil Verde.<sup>13</sup>

**March 18, 1992:** The CPT submits a letter to the Office of the Attorney General of the Republic (la Procuraduría General de la República; "PGR") repeating the allegations of slave labor they submitted to the Federal Police.<sup>14</sup>

**June 4 and September 22, 1992:** The PGR requests the information from the Federal Police regarding Mr. Canuto da Silva and Mr. Ferreira da Cruz's disappearances and Hacienda Brasil Verde.<sup>15</sup>

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7. *Id.* ¶ 133.

8. *Trabajadores de la Hacienda Brasil Verde v. Brazil, Preliminary Objections, Merits, Reparations and Costs*, ¶ 133.

9. *Id.* ¶ 134.

10. *Id.*

11. *Id.* ¶ 135.

12. *Id.*

13. *Id.*

14. *Trabajadores de la Hacienda Brasil Verde v. Brazil, Preliminary Objections, Merits, Reparations and Costs*, ¶ 136.

15. *Id.*

**December 7, 1992:** The Central Coordinator of the Federal Police responds to the PGR's request, reporting that the use of slave labor was not apparent and that the investigation into Hacienda Brasil Verde is in the hands of the Superintendency of the State of Pará.<sup>16</sup>

**August 2, 1993:** The Regional Labor Delegation of Pará (la Delegación Regional de Trabajo; "Labor Delegation") reports to the PGR that it visited Hacienda Brasil Verde once sometime between June 26 and July 3, 1993.<sup>17</sup> The labor delegation reports that it found no use of slave labor, but forty-nine workers did not have proper work documents.<sup>18</sup> Additionally, the report states that some workers who were hired irregularly or wanted to leave the Hacienda were sent back to their place of origin.<sup>19</sup>

**March 29, 1994:** The Deputy Attorney General of the Republic writes a report about visits made to Hacienda Brasil Verde between 1989 and 1993.<sup>20</sup> The report states that the Federal Police's visit in 1989 was insufficient because it did not: (1) document the workers' statements; (2) interview the manager of the estate; (3) request workers' employment contracts; (4) search for the missing young men; or (5) search for weapons.<sup>21</sup> Additionally, the report states that a police investigation into the Hacienda's slave labor-like work conditions is justifiable because Hacienda Brasil Verde did not pay wages to its workers and the existing confusion regarding workers' ability to leave the Hacienda.<sup>22</sup> The 1993 Audit of the Hacienda, similarly confirms that the Hacienda practices slave labor.<sup>23</sup>

**April 25, 1994:** The Deputy Attorney General of the Republic submits the March 29, 1994 report to the CPT.<sup>24</sup>

**November 29, 1996:** The Mobile Group of the Ministry of Labor inspects Hacienda Brasil Verde and finds workers that are not registered and

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16. *Id.*

17. *Id.* ¶ 138.

18. *Id.*

19. *Id.*

20. *Trabajadores de la Hacienda Brasil Verde v. Brazil*, Preliminary Objections, Merits, Reparations and Costs, ¶ 139.

21. *Id.* ¶ 140.

22. *Id.* ¶ 141.

23. *Id.*

24. *Id.* ¶ 139.

conditions in the Hacienda that do not meet labor standards.<sup>25</sup> Although the inspection counts seventy-eight workers, there are only work documents for thirty-four of them.<sup>26</sup>

**March 10, 1997:** Mr. José da Costa Oliveira and Mr. José Ferreira dos Santos give statements to the Federal Police describing their experience working and escaping from Hacienda Brasil Verde.<sup>27</sup> Specifically, Mr. Costa Oliveira states that a “cat” named Raimundo recruited him to work at the Hacienda and, upon arrival, he incurred a debt to Raimundo for living expenses and tools provided.<sup>28</sup> Both workers state that if they were to denounce the “cat” or try to escape, the landowner would threaten them with death.<sup>29</sup> They also mention that the landowner hides workers when the Ministry of Labor performs audits.<sup>30</sup>

**April 23, 28, and 29, 1997:** The Mobile Group of the Ministry of Labor inspects Hacienda Brasil Verde again.<sup>31</sup> This time they find that: (1) the workers live in sheds lacking hygiene; (2) many workers have untreated skin diseases; (3) the workers’ water is unfit for consumption; (4) every worker has been threatened, sometimes at gunpoint; and (5) the workers state they cannot leave the Hacienda.<sup>32</sup> There are eighty-one workers, but only about forty-five have proper work documents.<sup>33</sup>

**June 30, 1997:** The Federal Public Ministry files a complaint describing the process by which workers are recruited to the Hacienda in criminal court against: Mr. Raimundo Alves de Rocha, a “cat” recruits for the Hacienda; Mr. Antônio Alves Vieira, manages the Treasury at the Hacienda; and Mr. João Luiz Quagliato Neto, owns of the Hacienda.<sup>34</sup>

The complaint articulates that, first, the “cat,” Mr. Alves de Rocha, recruits workers in batches and advances a salary to them before they relocate to the Hacienda.<sup>35</sup> Upon arrival, the workers live in sheds, their water is not drinkable, and the food is exposed to insects and delivered as

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25. *Id.* ¶ 142.

26. *Trabajadores de la Hacienda Brasil Verde v. Brazil*, Preliminary Objections, Merits, Reparations and Costs, ¶ 142.

27. *Id.* ¶ 143.

28. *Id.*

29. *Id.*

30. *Id.*

31. *Id.* ¶ 144.

32. *Trabajadores de la Hacienda Brasil Verde v. Brazil*, Preliminary Objections, Merits, Reparations and Costs, ¶ 144.

33. *Id.*

34. *Id.* ¶ 145.

35. *Id.*

ordered by the manager, Mr. Alves Vieira.<sup>36</sup> Then, the workers are threatened with death and told they cannot leave because of the debts they have incurred from expenses relating to brought to and living at the Hacienda.<sup>37</sup> Notably, the only exit from the Hacienda is near the manager's house, and he does not allow workers to leave.<sup>38</sup>

The Federal Police failed to investigate the Hacienda in 1989, and the findings from that visit are too old for the Federal Public Ministry to bring criminal action now.<sup>39</sup> The Public Prosecutor proposes to Mr. Quagliato Neto that instead of being imprisoned for what would be less than a year, the Public Prosecutor can suspend the process if Mr. Quagliato Neto cooperates with them for two years under conditions set by the federal judge.<sup>40</sup>

**June 1997–June 1999:** Mr. Quagliato Neto testifies several times against Mr. Alves da Rocha and Mr. Alves Vieira.<sup>41</sup>

**July 1997:** The federal judge issues subpoenas for Mr. Alves de Rocha and Mr. Alves Vieira.<sup>42</sup>

**August 12, 1997:** The Regional Labor Prosecutor's Office of the 8<sup>th</sup> district begins the administrative process requesting the PGR investigate possible trafficking of workers in the State of Pará.<sup>43</sup>

**September 17, 1997:** The federal judge conditions the suspension of the process on Mr. Quagliato Neto's acceptance and compliance with specified measures.<sup>44</sup>

**September 1997–June 1999:** Multiple subpoenas are sent to Mr. Quagliato Neto.<sup>45</sup>

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36. *Id.*

37. *Id.*

38. *Trabajadores de la Hacienda Brasil Verde v. Brazil*, Preliminary Objections, Merits, Reparations and Costs, ¶ 145.

39. *Id.*

40. *Id.* ¶ 146.

41. *Trabajadores de la Hacienda Brasil Verde v. Brazil*, Report on Merits, Report No. 169/11, Inter-Am. Comm'n H.R., Case No. 12.066, ¶ 89 (Nov. 3, 2011).

42. *Trabajadores de la Hacienda Brasil Verde v. Brazil*, Preliminary Objections, Merits, Reparations and Costs, ¶ 147.

43. *Id.* ¶ 149.

44. *Id.* ¶ 147.

45. *Id.* ¶ 148.

**January 13, 1998:** The Labor Prosecutor requests that Hacienda Brasil Verde be inspected again.<sup>46</sup>

**March 5, 1998:** The Labor Delegation reports that they have schedule the inspection.<sup>47</sup>

**May 31, 1998:** The newspaper, "O Liberal," publishes an article referring to labor violations at Hacienda Brasil Verde.<sup>48</sup>

**June 17, 1998:** Due to the implications in the "O Liberal" article, the Public Ministry of Labor requests an update on Hacienda Brasil Verde.<sup>49</sup>

**July 8, 1998:** The labor delegation reports that it inspected the Hacienda in October 1997 and that the Hacienda has made "considerable progress" regarding the faults in the previous audit.<sup>50</sup>

**October 13, 1998 and June 5, 1999:** The Public Ministry of Labor requests the labor delegation again inspect Hacienda Brasil Verde.<sup>51</sup>

**February 8, 1999:** The labor delegation reports that it cannot inspect Hacienda Brasil Verde due to financial issues.<sup>52</sup>

**September 13, 1999:** Mr. Quagliato Neto appears for the preliminary hearing of the case against him.<sup>53</sup>

**September 14, 1999:** Mr. Quagliato Neto accepts the federal judge's conditions for suspension of the proceedings against him.<sup>54</sup> The main condition is that Mr. Quagliato Neto send six baskets to a charitable organization in the city of Ourinhos in the State of São Paulo.<sup>55</sup>

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46. *Id.* ¶ 151.

47. *Id.*

48. *Trabajadores de la Hacienda Brasil Verde v. Brazil*, Report on Merits, ¶ 102.

49. *Trabajadores de la Hacienda Brasil Verde v. Brazil*, Preliminary Objections, Merits, Reparations and Costs, ¶ 152.

50. *Id.*

51. *Trabajadores de la Hacienda Brasil Verde v. Brazil*, Report on Merits, ¶103.

52. *Id.* ¶ 103.

53. *Trabajadores de la Hacienda Brasil Verde v. Brazil*, Preliminary Objections, Merits, Reparations and Costs, ¶ 153.

54. *Id.*

55. *Id.*

**September 23, 1999:** The federal judge authorizes the suspension of the proceedings against Mr. Quagliato Neto.<sup>56</sup>

**March 3–5, 2000:** Hacienda Brasil Verde workers, Mr. Gonçalo Luiz Furtado and Mr. Antônio Francisco da Silva, struggle to work due to a prosthetic leg and fever, respectively.<sup>57</sup> The surveillance officer strikes them for not working and takes them to the Hacienda’s central office.<sup>58</sup> There, the surveillance officer threatens them with death and repeatedly hits them.<sup>59</sup> When the officer steps out of the office, the young men escape.<sup>60</sup> Eventually, they come to a road, and a truck takes them to the city of Marabá.<sup>61</sup>

**March 7, 2000:** Mr. Luiz Furtado and Mr. Francisco da Silva report to the Federal Police what happened to them at Hacienda Brasil Verde.<sup>62</sup> The police forward the report to the Labor Delegation of Belém, who plan an inspection of the Hacienda accompanied by police.<sup>63</sup> The CPT supervise and care for the two young men.<sup>64</sup>

**March 15, 2000:** The labor delegation and the police inspect Hacienda Brasil Verde to find that workers are living “in very poor condition,” receiving “only the minimum salary,” and expressing their “unanimous decision to escape.”<sup>65</sup> The labor delegation confirms that Hacienda Brasil Verde practices slave labor.<sup>66</sup>

**May 30, 2000:** The Public Ministry of Labor brings a civil action Mr. Quagliato Neto alleging that: (1) the system of keeping workers at Hacienda Brasil Verde is a “private jail system”; (2) the system is characterized as a “regime of slavery”; and (3) rural, illiterate workers are

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56. *Id.*

57. *Id.* ¶ 174.

58. *Id.*

59. *Trabajadores de la Hacienda Brasil Verde v. Brazil*, Preliminary Objections, Merits, Reparations and Costs, ¶ 174.

60. *Id.*

61. *Id.* ¶ 175.

62. *Id.*

63. *Trabajadores de la Hacienda Brasil Verde v. Brazil*, Report on Merits, ¶ 108.

64. *Trabajadores de la Hacienda Brasil Verde v. Brazil*, Preliminary Objections, Merits, Reparations and Costs, ¶ 175.

65. *Trabajadores de la Hacienda Brasil Verde v. Brazil*, Report on Merits, ¶ 109.

66. *Id.*

subject to “conditions of degrading life.”<sup>67</sup> The Public Ministry of Labor finds that Mr. Quagliato Neto must stop practicing slave labor.<sup>68</sup>

**July 20, 2000:** The Public Ministry of Labor holds a conciliation hearing, and Mr. Quagliato Neto agrees to stop using slave labor and improve the working and living conditions at Hacienda Brasil Verde.<sup>69</sup>

**August 14, 2000:** The Public Ministry of Labor orders the labor delegation monitor Mr. Quagliato Neto’s compliance.<sup>70</sup>

**March 16, 2001:** The substitute federal judge hearing Mr. Quagliato Neto’s case declares the “absolute incompetence of the Federal Justice” system to judge the case because the crimes at hand are violations of individual rights, not crimes against the organization of work.<sup>71</sup> The Judge concludes that the case cannot continue in the federal court system due to a risk of nullification and forwards the case to the relevant state court in Xinguara, Pará.<sup>72</sup>

**June 21, 2001:** The Public Ministry of Labor submits a comprehensive report to the Deputy Attorney General of the Republic describing the terms agreed upon with Mr. Quagliato Neto regarding all the companies he owns, including Hacienda Brasil Verde.<sup>73</sup>

**May 12 - 18, 2002:** The Public Ministry of Labor inspects Hacienda Brasil Verde to monitor compliance with labor standards.<sup>74</sup>

**May 28, 2002:** The state judge declares his incompetence to hear the criminal action against Mr. Quagliato.<sup>75</sup>

**November 11, 2002:** Mr. Alves da Rocha and Mr. Alves Vieira present their defense brief.<sup>76</sup>

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67. *Trabajadores de la Hacienda Brasil Verde v. Brazil*, Preliminary Objections, Merits, Reparations and Costs, ¶ 179.

68. *Id.* ¶ 180.

69. *Id.* ¶ 181.

70. *Id.* ¶ 182.

71. *Id.* ¶ 155.

72. *Id.*

73. *Trabajadores de la Hacienda Brasil Verde v. Brazil*, Preliminary Objections, Merits, Reparations and Costs, ¶ 183.

74. *Id.* ¶ 184.

75. *Id.* ¶¶ 377, 397.

76. *Trabajadores de la Hacienda Brasil Verde v. Brazil*, Report on Merits, ¶ 91.



**November 21, 2003:** The Public Ministry of the State of Pará presents its final arguments requesting the claims against Mr. Alves da Rocha and Mr. Alves Vieira be considered inadmissible due to an alleged “lack of sufficient evidence.”<sup>77</sup>

**November 2004:** The judges in the state court of Pará declare that they too, do not have jurisdiction over this case.<sup>78</sup>

**September 27, 2007:** The Third Section of the Superior Court of Justice declares that the proper jurisdiction of the case is in federal court.<sup>79</sup>

**October 29, 2007:** The director of the Police of Pará requests the PTC send him a copy of the complaint alleging the disappearance of Mr. Canuto da Silva and Mr. Ferreira da Cruz so he can research the facts.<sup>80</sup>

**December 12, 2007:** The case is forwarded to the federal court in Marabá, Pará.<sup>81</sup>

**July 10, 2008:** The federal judge in Pará terminates the case against Mr. Alves da Rocha and Mr. Alves Vieira because more than ten years has passed since the complaint was filed.<sup>82</sup> Specifically, the maximum penalty at hand is eight years, the statute of limitations is twelve years, and the judge believes it is “very unlikely” that the eight-year penalty will be given.<sup>83</sup>

### *B. Other Relevant Facts*

Slave labor is found in institutions all throughout the State.<sup>84</sup> However, it is most prevalent along a heavily travelled route from the poverty-stricken northeastern states to the northern state of Pará, where large, isolated farms or plantations called “haciendas” reside.<sup>85</sup> Hacienda Brasil Verde is a large farm located in the State of Pará and is known for

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77. *Id.* ¶ 92.

78. *Id.* ¶ 93.

79. *Id.* ¶ 94.

80. *Id.* ¶ 95.

81. *Id.* ¶ 94.

82. *Trabajadores de la Hacienda Brasil Verde v. Brazil*, Report on Merits, ¶ 98.

83. *Id.*

84. Matt Sandy, *Heartache and Suffering: Slavery in Brazil*, AL JAZEERA (July 18, 2015), <http://projects.aljazeera.com/2015/07/slavery-brazil/>.

85. *Id.*

its use of slave labor.<sup>86</sup> In 1988, after return to a democratic government, the State officially recognizes the widespread problem of slave labor and the growing exploitation of the Amazon rainforest.<sup>87</sup> By 1993, Dr. Jose de Sousa Martins, a leading sociologist at the University of Sao Paulo, estimates that at least 60,000 people are subjected to forced labor and slavery in Brazil.<sup>88</sup>

In 1995, the Mobile Group of the Ministry of Labor is formed.<sup>89</sup> This unique inspection group under the State government consists of labor inspectors, police officers, and attorneys who specifically focus on conducting raids and exposing practices of forced labor.<sup>90</sup> Between 1995 and 2016, the State government reports that its Mobile Group of the Ministry of Labor freed approximately 50,000 people from slave labor.<sup>91</sup>

In 2003, Brazilian President Luiz Inácio Lula da Silva, enacted a strict, far-reaching initiative to eradicate slave labor.<sup>92</sup> This plan includes hiring more labor inspectors, conducting more police raids on farms, and increasing the penalties and fines for offenders.<sup>93</sup> The initiative is ambitious and productive, but struggles to address the wealth and political power accumulated by those who practice slave labor.<sup>94</sup> As part of this initiative, the Ministry of Labor publishes and continually updates what it calls the “Dirty List” of employers who practice slave labor.<sup>95</sup> On top of having public shaming effects, employers on this list must pay fines, cannot receive government loans, and have restrictions placed on the sale of their products.<sup>96</sup> The “Dirty List” is terminated in 2014.<sup>97</sup>

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Trabajadores de la Hacienda Brasil Verde v. Brazil, Preliminary Objections, Merits, Reparations and Costs, ¶¶ 128, 133.

87. Sandy, *supra* note 84.

88. Inter-Am. Comm'n H.R., Report on the Situation of Human Rights in Brazil VII, ¶ 19 (Org. of Am. St., 1997) (hereinafter *Fifth Report*).

89. Arthur Bice, *Government Fights Slave Labor in Brazil*, CNN (Jan. 9, 2009, 9:38 PM), <http://edition.cnn.com/2009/WORLD/americas/01/09/brazil.slavery/index.html>.

90. *Id.*

91. Anastasia Moloney, *More Than 300 Brazilian Companies Busted for Modern-Day Slavery - Campaigners*, REUTERS (Feb. 15, 2016, 9:45 AM), <https://www.reuters.com/article/brazil-slavery-idUSL8N15U3CD>.

92. Larry Rohter, *Brazilian Leader Introduces Program to End Slave Labor*, N.Y. TIMES (Mar. 14, 2003), <https://www.nytimes.com/2003/03/14/world/brazilian-leader-introduces-program-to-end-slave-labor.html>.

93. *Id.*

94. Arthur Bice, *supra* note 89.

95. Anastasia Moloney, *supra* note 91.

96. *Id.*

97. *Id.*

## II. PROCEDURAL HISTORY

A. *Before the Commission*

**November 12, 1998:** The CPT and the Center for Justice and International Law (CEJIL) present a petition on behalf of workers at Hacienda Brasil Verde to the Inter-American Commission of Human Rights (“Commission”) against Brazil (“State”).<sup>98</sup>

**November 3, 2011:** The Commission issues Admissibility and Merits Report No. 169/11 and finds the State violated violations of Articles 3 (Right to Juridical Personality), 4 (Right to Life), 5 (Right to Humane Treatment), 6 (Freedom from Slavery), 7 (Right to Personal Liberty), 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal), 19 (Rights of the Child), 22 (Freedom of Movement and Residence), and 25(1) (Right of Recourse Before a Competent Court) of the American Convention on Human Rights, in relation to Article 1(1) (Obligation to Respect Rights) of that same instrument.<sup>99</sup> Additionally, the Commission finds the State violated Articles I (Right to Life, Liberty and Personal Security), II (Right to Equality Before Law), VII (Right to Protection for Mothers and Children), VIII (Right to Residence and Movement), XIV (Right to Work and to Fair Remuneration), and XVIII (Right to a Fair Trial) of the American Declaration of the Rights and Duties of Man.<sup>100</sup>

In light of the above mentioned violations, the Commission recommends the State: (1) ensure that farm workers’ salaries are raised to a fair standard; (2) impartially and effectively investigate the facts surrounding the use of slave labor and identify those responsible; (3) conduct a similar investigation into the facts surrounding the disappearance of Mr. Canuto da Silva and Mr. Ferreira da Cruz; (4) remove all administrative, labor, or criminal procedures that contributed to the instances of denial of justice surrounding this case; (5) create a mechanism to identify and locate victims of slave labor so they may be properly compensated; (6) implement public policy and enact legislation to truly eradicate the use of slave labor; (7) tighten and strengthen the coordination between its criminal justice system and its legal system in order to properly manage offenses of servitude and forced labor; (8)

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98. *Trabajadores de la Hacienda Brasil Verde v. Brazil*, Report on Merits, ¶ 1.

99. *Trabajadores de la Hacienda Brasil Verde v. Brazil*, Petition to the Court, Inter-Am. Comm’n H.R., Case No. 12.066, ¶ 2 (Mar. 4, 2015).

100. *Id.*

implement measures to eradicate all racial discrimination, especially to raise awareness regarding servitude and forced labor.<sup>101</sup>

### *B. Before the Court*

**March 4, 2015:** The Commission submits the case to the Court, after the State failed to adopt its recommendations.<sup>102</sup>

**September 14, 2015:** The State raises nine preliminary objections.<sup>103</sup> The State's preliminary objections argue that: (1) the Commission did not properly publish the Merits Report;<sup>104</sup> (2) the Commission considered facts unrelated to the specific workers identified as represented in the case;<sup>105</sup> (3) the alleged violations are abstract and not concrete;<sup>106</sup> (4) the Court has no jurisdiction over events that occurred prior to the date of the State's accession to the American Convention;<sup>107</sup> (5) the Court does not have jurisdiction because it would essentially act as a domestic appellate court and violate the doctrine of subsidiarity;<sup>108</sup> (6) the Court does not have the authority to prosecute alleged violations of Brazil's international legal obligations in the context of individual petitions;<sup>109</sup> (7) the Court only has jurisdiction over employment rights cases dealing with unions and education rights, which this case does not include;<sup>110</sup> and, (8) domestic remedies have not been exhausted.<sup>111</sup>

#### 1. Violations Alleged by the Commission<sup>112</sup>

Article 1(2) (Definition of "Person")

Article 3 (Right to Juridical Personality)

Article 4 (Right to Life)

Article 5 (Right to Humane Treatment)

Article 6 (Freedom from Slavery)

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101. *Id.* ¶ 265.

102. *Id.* ¶ 1.

103. *Trabajadores de la Hacienda Brasil Verde v. Brazil, Preliminary Objections, Merits, Reparations and Costs*, ¶¶ 7, 16.

104. *Id.* ¶ 20.

105. *Id.* ¶ 30.

106. *Id.* ¶ 51.

107. *Id.* ¶¶ 55-58.

108. *Id.* ¶ 66.

109. *Trabajadores de la Hacienda Brasil Verde v. Brazil, Preliminary Objections, Merits, Reparations and Costs*, ¶ 75.

110. *Id.* ¶ 81.

111. *Id.* ¶ 85.

112. *Id.* ¶ 2.

Article 7 (Right to Personal Liberty)  
Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal)  
Article 19 (Rights of the Child)  
Article 22 (Freedom of Movement and Residence)  
Article 25(1) (Right of Recourse Before a Competent Court) of the American Convention  
*in relation to*  
Article 1(1) (Obligation to Respect Rights)  
Article 2 (Obligation to Give Domestic Legal Effect to Rights) of the American Convention.

Article I (Right to Life, Liberty and Personal Security)  
Article II (Right to Equality Before Law)  
Article VII (Right to Protection for Mothers and Children)  
Article VIII (Right to Residence and Movement)  
Article XIV (Right to Work and to Fair Remuneration)  
Article XVIII (Right to Fair Trial) of the American Declaration.

## 2. Violations Alleged by Representatives of the Victims<sup>113</sup>

Same violations alleged by the Commission, plus:

Article XI (Right to the Preservation of Health and to Well-Being) of the American Declaration.

Article 1 of the Supplemental Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery.

**April 2015–February 2016:** The Court receives five *amicus curiae* briefs: (1) Valena Jacob Chaves Mesquita, Cristina Figueiredo Terezo Ribeiro, Manoel Maurício Ramos Neto, Caio César Dias Santos, Raysa Antonia Alves Alves and Tamirez da Silva Lima on behalf of the Human Rights Clinic of Amazonia, Federal University of Pará; (2) Sharan Burrow of the International Trade Union Confederation; (3) Hellen Duffy of the Human Rights in Practice Organization; (4) Tara Melish, Associate Professor of the State University of New York; and (5) Sheldon Leader

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113. *Trabajadores de la Hacienda Brasil Verde v. Brazil*, Report on Merits, ¶ 1. The organizations served as representatives of Mr. Canuto da Silva, Mr. Ferreira da Cruz, and workers at Hacienda Brasil Verde.

and Anil Yilmaz-Vastardis of the Business and Human Rights Project of the University of Essex.<sup>114</sup>

**February 18–19, 2016:** A public hearing is held during the Court's 113<sup>th</sup> Regular Session.<sup>115</sup>

**February 23, 2016:** The President of the Court orders a Court delegation make an on-site visit to obtain specific evidence necessary for the deliberation of the case.<sup>116</sup>

**March 14, 2016:** Cindy Hawkins Rada, Maira Kleber Sierra, Shirley Llain Arenilla, and Andrea Alejandra Ariza Lascarro submit an *amicus curiae* brief on behalf of the Universidad del Norte de Colombia, but it is disregarded by the Court as it was filed past the due date.<sup>117</sup>

**March 17, 2016:** Elizabeth Salmón Gárate, Cristina Blanco Vizarrata, Alessandra Enrico Headrinton and Adrián Lengua Parra submit an *amicus curiae* brief on behalf of the Institute of Democracy and Human Rights of the Pontificia Universidad Católica del Perú, but it is disregarded by the Court as it was filed past the due date.<sup>118</sup>

**June 6-7, 2016:** A Court delegation, consisting of Judge Eduardo Ferrer Mac-Gregor Poisot, Judge Eugenio Raul Zaffaroni, Judge Patricio Pazmiño Freire, Secretary of the Court Pablo Saavedra Alessandri, and Lawyer of the Secretariat of the Court Carlos E. Gaio, makes an on-site visit in the State and collects the statements of five alleged victims and five State officials actively combatting slavery in the State.<sup>119</sup>

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114. *Trabajadores de la Hacienda Brasil Verde v. Brazil*, Preliminary Objections, Merits, Reparations and Costs, ¶ 10, n. 10, 12, 14-15.

115. *Id.* ¶ 9.

116. *Id.* ¶ 11. *Trabajadores de la Hacienda Brasil Verde v. Brazil*, On-site Procedure, Provisional Measures, Order of the President, Inter-Am. Ct. H.R. (ser. E) "Resolves," ¶ 3 (Feb. 23, 2016).

117. *Trabajadores de la Hacienda Brasil Verde v. Brazil*, Preliminary Objections, Merits, Reparations and Costs, ¶ 10 n. 9, 13.

118. *Id.* ¶ 10, n. 9, 11.

119. *Id.* ¶ 11, n. 17.

### III. MERITS

#### A. *Composition of the Court*<sup>120</sup>

Eduardo Ferrer Mac-Gregor Poisot, President  
Eduardo Vio Grossi, Vice President  
Humberto Antônio Sierra Porto, Judge  
Elizabeth Odio Benito, Judge  
Eugenio Raúl Zaffaroni, Judge  
L. Patricio Pazmiño Freire, Judge

Pablo Saavedra Alessandri, Secretary  
Emilia Segares Rodríguez, Deputy Secretary

#### B. *Decision on the Merits*

**October 20, 2016:** The Court issues its Judgment on Preliminary Objections, Merits, Reparations, and Costs.<sup>121</sup>

The Court found unanimously:

To dismiss eight of Brazil's preliminary objections,<sup>122</sup> because:

*First, the State argued that the Commission could either publish a Report on Merits or submit the case to the Court, and it already published a Report on Merits.*<sup>123</sup> *The Court rejected this objection because the Commission submitted to the Court before publishing the Report on Merits, which is a procedure allowed under Articles 50 and 51 of the American Convention.*<sup>124</sup>

*Second, the State argued that the Court can only hear the case with respect to the specified thirty-three victims found at the Hacienda, who are related to the facts of the case, mentioned in the Report on Merits, and have proper representation in the case.*<sup>125</sup> *The Court rejected this because it ruled that it could apply Article 35.2 of the Court's Rules of*

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120. Judge Roberto F. Caldas did not participate in the deliberation of the Judgment because he is a Brazilian national.

121. *Trabajadores de la Hacienda Brasil Verde v. Brazil*, Preliminary Objections, Merits, Reparations and Costs, ¶ 2.

122. *Id.* "Decides," ¶ 1.

123. *Id.* ¶ 20.

124. *Id.* ¶¶ 26-28.

125. *Id.* ¶ 29.

*Procedure, giving the Court discretion in deciding the victims in the case.*<sup>126</sup>

*Third, the State argued that the Court can only hear claims that allege actual injury, particularly when the reparation sought counteracts State legislation fighting against the use of slave labor.*<sup>127</sup> *The Court rejected this because the objection is impossible to address preliminarily, without first analyzing the merits of the case.*<sup>128</sup>

*Fourth, the State argued that the Court's acceptance of jurisdiction violated the doctrine of subsidiarity, with the Court interfering in the domestic judicial process and acting as a national court.*<sup>129</sup> *The Court rejected this because it is not acting as a national court reviewing a domestic judicial decision related to assessing facts, evidence or applying domestic law.*<sup>130</sup> *The Court is simply analyzing the State's conformity with international human rights obligations, which requires evaluating if domestic judicial remedies were suitable and effective.*<sup>131</sup>

*Fifth, the State argued that the Court did not have jurisdiction over the allegations of human trafficking because Article 6 (Freedom from Slavery) of the American Convention only applies to women and children, which was not alleged here.*<sup>132</sup> *The Court rejected this because the Vienna Convention on the Law of Treaties and Article 29(b) of the American Convention gives the Court flexibility in deciding the scope of Article 6 (Freedom from Slavery), which then requires analyzing the merits of the case.*<sup>133</sup>

*Sixth, the State argued that the Court does not have jurisdiction over the alleged violations of workers' rights because individual petitions such as in this case fall under the Protocol of San Salvador, not the American Convention.*<sup>134</sup> *The Court rejected this because the Protocol of San Salvador does not govern litigating possible violations of provisions, and*

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126. *Id.* ¶¶ 49-50.

127. *Trabajadores de la Hacienda Brasil Verde v. Brazil, Preliminary Objections, Merits, Reparations and Costs*, ¶ 51.

128. *Id.* ¶ 54.

129. *Id.* ¶ 66.

130. *Id.* ¶ 74.

131. *Id.*

132. *Id.* ¶ 75.

133. *Trabajadores de la Hacienda Brasil Verde v. Brazil, Preliminary Objections, Merits, Reparations and Costs*, ¶¶ 79-80.

134. *Id.* ¶ 81.



*the decision whether Article 6 (Freedom from Slavery) of the American Convention was violated requires analyzing the merits of the case.*<sup>135</sup>

*Seventh, the State argued not all domestic remedies were exhausted.*<sup>136</sup> *The Court rejected this because the State did not meet the standards necessary to argue lack of exhaustion of domestic remedies, such as stating what remedies were exhausted or in progress and why those remedies are effective.*<sup>137</sup>

*Finally, the State argued for the prescription of the petition requesting reparation of moral and material damages.*<sup>138</sup> *The Court rejected this because it was not filed timely before the Commission.*<sup>139</sup>

To partially accept Brazil's preliminary objections regarding the Court's *ratione temporis* jurisdiction over facts that occurred before the State accepted the jurisdiction of the Court and before the State acceded to the American Convention,<sup>140</sup> because:

*The continuous and permanent nature of forced disappearances required consideration of all facts surrounding Mr. Canuto da Silva and Mr. Ferreira da Cruz's alleged forced disappearances, without temporal limitation.*<sup>141</sup> *The Court noted, however, that for all other alleged violations it can only examine events that occurred after the State accepted the Court's jurisdiction on December 10, 1998.*<sup>142</sup>

The Court found unanimously that Brazil had violated:

Article 6(1) (Prohibition of Slavery, Slave-Trade, Traffic in Women and Involuntary Servitude), in relation to Articles 1(1) (Obligation of Non-Discrimination), 3 (Right to Juridical Personality), 5 (Right to Humane Treatment), 7 (Right to Personal Liberty), 11 (Right to Privacy), and 22 (Freedom of Movement and Residence) of the American Convention, to the detriment of the eighty-five workers rescued on March 15, 2000, as well as in relation to Article 19 (Rights of the Child) of the

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135. *Id.* ¶ 84.

136. *Id.* ¶ 85.

137. *Id.* ¶ 93.

138. *Id.* ¶ 94.

139. *Trabajadores de la Hacienda Brasil Verde v. Brazil, Preliminary Objections, Merits, Reparations and Costs*, ¶ 98.

140. *Id.* "Decides," ¶ 2.

141. *Id.* ¶ 64.

142. *Id.* ¶ 65.

American Convention, to the detriment of Mr. Francisco da Silva,<sup>143</sup> because:

*The State did not adopt measures to prevent the practice of slave labor at Hacienda Brasil Verde, even after receiving previous reports.<sup>144</sup> Additionally, once Mr. Francisco da Silva reported his experience working and escaping from Hacienda Brasil Verde to the Federal Police, the State acted slowly and unnecessarily took days to plan the inspection of Hacienda Brasil Verde.<sup>145</sup> Furthermore, the State used the Federal Police ineffectively in the inspection, only utilizing them to protect the Ministry of Labor team.<sup>146</sup> This all demonstrates the State's lack of due diligence in preventing and terminating the practice of slave labor.<sup>147</sup>*

*The Court reasoned that the State's breach of its duty to prevent and terminate such practice, was made all the more serious given the State's knowledge of the practice and the jus cogens character of the prohibition of slave labor.<sup>148</sup> As such, the Court found a violation of Article 19 (Rights of the Child) of the American Convention, to the detriment of Mr. Francisco da Silva, because he was still a child when he worked and escaped from Hacienda Brasil Verde.<sup>149</sup> Therefore, the Court concluded that the State violated Article 6(1) (Prohibition of Slavery, Slave-Trade, Traffic in Women and Involuntary Servitude), in relation to Articles 1(1) (Obligation of Non-Discrimination), 3 (Right to Juridical Personality), 5 (Right to Humane Treatment), 7 (Right to Personal Liberty), 11 (Right to Privacy), and 22 (Freedom of Movement and Residence) of the American Convention, to the detriment of the eighty-five workers rescued on March 15, 2000, as well as in relation to Article 19 (Rights of the Child) of the American Convention, to the detriment of Mr. Francisco da Silva.<sup>150</sup>*

Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal), in relation to Article 1(1) (Obligation of Non-Discrimination) of the American Convention, to the

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143. *Id.* "Declares," ¶ 3.

144. *Id.* ¶ 342.

145. *Trabajadores de la Hacienda Brasil Verde v. Brazil*, Preliminary Objections, Merits, Reparations and Costs, ¶ 342.

146. *Id.*

147. *Id.*

148. *Id.*

149. *Id.* ¶ 343.

150. *Id.* "Declares," ¶ 3.

detriment of the forty-three workers found during the April 23, 1997 audit,<sup>151</sup> because:

*With regard to the judicial proceedings that occurred prior to December 10, 1998, the Court concluded that it did not have subject matter jurisdiction.<sup>152</sup> The Court noted that its subject matter jurisdiction only covered judicial proceedings after the State's December 10, 1998 acceptance of the Court's jurisdiction.<sup>153</sup> For subsequent violations, however, the Court concluded that the State acted too slowly and ineffectively in responding to the representatives' complaint.<sup>154</sup>*

*The Court reasoned that the gravity of slavery in international human rights law, as an obligation erga omnes, and the particular vulnerability of the Hacienda workers, heightened the State's duty of due diligence in responding to the reports of slave labor usage at Hacienda Brasil Verde.<sup>155</sup> For example, the State does not need to require a formal complaint before launching an investigation, as any receipt of notice would suffice to trigger the State's duty.<sup>156</sup>*

*The Court stated that the State had too many jurisdictional and administrative issues that unnecessarily delayed the criminal proceedings.<sup>157</sup> This was especially true considering the personal integrity of the workers at stake, the urgency of correcting the alleged substandard work conditions, and the gravity of slave labor usage and giving reparations to the workers.<sup>158</sup>*

*The Court further explained that the State acted too slowly in its judicial guarantee of reparations to the workers at Hacienda Brasil Verde.<sup>159</sup> Specifically, Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) embodies the aspect of the right to a fair trial that a delay in judicial remedies can ultimately constitute a violation of such a right.<sup>160</sup> The right to judicial remedies "within a*

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151. *Trabajadores de la Hacienda Brasil Verde v. Brazil*, Preliminary Objections, Merits, Reparations and Costs, "Declares," ¶ 5.

152. *Id.* ¶ 361.

153. *Id.*

154. *Id.* ¶¶ 367-68.

155. *Id.* ¶¶ 363-64.

156. *Id.* ¶ 364.

157. *Trabajadores de la Hacienda Brasil Verde v. Brazil*, Preliminary Objections, Merits, Reparations and Costs, ¶ 367.

158. *Id.* ¶ 368.

159. *Id.* ¶ 382.

160. *Id.* ¶ 369.

reasonable time” must be evaluated based on the duration of the judicial proceedings up until the final sentence is handed down.<sup>161</sup> This right has four elements that must be analyzed: (1) the case’s complexity; (2) the representatives’ procedural activity; (3) actions of the judicial authorities; and (4) the duration’s legal effect on the victims.<sup>162</sup> In such circumstances, the burden is on the State to prove why it needed the amount of time it used to address the case.<sup>163</sup> The Court clarified that the evaluated duration was eleven years: from the filing of the representatives’ complaint to the Federal Police in 1997 to the declaration of prescription issued in 2008.<sup>164</sup> Accordingly, the Court then evaluated each of the following elements as follows:<sup>165</sup>

*(1) the case’s complexity*

The Court considered the complexity of the claim, the number of victims, and the time elapsed since the initial complain to find that nothing in the case constituted a complexity that would have caused the duration of the proceedings to last more than ten years.<sup>166</sup> The Court articulated that here, the Public Ministry of Labor had enough information to file the complaint and the number of victims was already limited and specific.<sup>167</sup>

*(2) the representatives’ procedural activity*

The Court held that the representatives did nothing that constituted an interference with the judicial proceedings.<sup>168</sup> In fact, the workers reported that they could not participate in the judicial proceedings in 1997.<sup>169</sup> The judicial guarantees under Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) require that all conditions be met to “ensure adequate representation or management of the interests” of those whose rights were violated.<sup>170</sup> This necessarily includes the State’s obligation to allow victims or their families to

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161. *Id.*

162. *Id.* ¶ 370.

163. *Trabajadores de la Hacienda Brasil Verde v. Brazil*, Preliminary Objections, Merits, Reparations and Costs, ¶ 370.

164. *Id.* ¶ 371.

165. *Id.*

166. *Id.* ¶¶ 372-73.

167. *Id.* ¶ 373.

168. *Id.* ¶ 374.

169. *Trabajadores de la Hacienda Brasil Verde v. Brazil*, Preliminary Objections, Merits, Reparations and Costs, ¶ 374.

170. *Id.* ¶ 375.

participate in all proceedings and assert their rights.<sup>171</sup> The final burden of investigation and providing judicial remedies ultimately falls on the State.<sup>172</sup>

(3) actions of the judicial authorities

The Court declared that the State's judicial authorities did not justify the delays in the proceedings nor did they provide judicial remedies "within a reasonable time."<sup>173</sup> The authorities had several jurisdictional issues that delayed the case for years and prevented it from settling in a court.<sup>174</sup> The Court further held that the proceedings only resulted in prescription because the judicial authorities practiced inaction and slowness with the case, instead of trying to ensure that judicial remedies be provided "within a reasonable time."<sup>175</sup>

(4) the duration's legal effect on the victims

The Court found that the duration of the proceedings without judicial remedy to the workers violated their right to reparations.<sup>176</sup> To evaluate whether the "reasonable time" right was upheld, the Court analyzed whether the passage of time without judicial remedy affected the victims' rights.<sup>177</sup> Here, the passage of time directly prevented the workers from receiving reparations.<sup>178</sup> Specifically, the workers did not receive any kind of compensation for the conditions they were subjected to at Hacienda Brasil Verde because the proceedings were delayed.<sup>179</sup> Therefore, the Court concluded that the State violated the judicial guarantee of remedy "within a reasonable time" provided for in Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal), in relation to Article 1(1) (Obligation of Non-Discrimination) of the American Convention, to the detriment of the 43 workers found during the April 23, 1997 audit.<sup>180</sup>

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171. *Id.* ¶ 376.

172. *Id.*

173. *Id.* ¶ 378.

174. *Id.* ¶¶ 377-78.

175. *Trabajadores de la Hacienda Brasil Verde v. Brazil*, Preliminary Objections, Merits, Reparations and Costs, ¶ 379.

176. *Id.* ¶¶ 381-82.

177. *Id.* ¶ 380.

178. *Id.* ¶ 381.

179. *Id.*

180. *Id.* ¶ 382.

*Overall, the Court held that the State's ineffective actions and slowness constituted a violation of Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal), in relation to Article 1(1) (Obligation of Non-Discrimination) of the American Convention, to the detriment of the 43 workers found during the April 23, 1997 audit.*<sup>181</sup>

The Court found by five votes to one that Brazil had violated:

Article 6(1) (Prohibition of Slavery, Slave-Trade, Traffic in Women and Involuntary Servitude), in relation to Article 1(1) (Obligation of Non-Discrimination) of the American Convention, to the detriment of the 85 workers rescued on March 15, 2000,<sup>182</sup> because:

*The State lacked due diligence in preventing and terminating the practice of slave labor at Hacienda Brasil Verde.*<sup>183</sup> *This failure was made graver by the history of economic discrimination and victimization of the people recruited to work at Hacienda Brasil Verde.*<sup>184</sup> *The workers' poverty, lack of job prospects, and lack of education, made them particularly vulnerable to deception and recruitment into slave labor.*<sup>185</sup> *Therefore, the Court concluded that the State's lack of preventing and terminating slave labor usage violated Article 6(1) (Prohibition of Slavery, Slave-Trade, Traffic in Women and Involuntary Servitude), in relation to Article 1(1) (Obligation of Non-Discrimination) of the American Convention, to the detriment of the 85 workers rescued on March 15, 2000.*<sup>186</sup>

Article 25 (Right to Judicial Protection), in relation to Article 1(1) (Obligation of Non-Discrimination) and 2 (Obligation to Give Domestic Legal Effect to Rights) of the American Convention, to the detriment of the 85 workers rescued on March 15, 2000 and the 43 workers found during the April 23, 1997 audit, as well as in relation to Article 19 (Rights of the Child) of the American Convention, to the detriment of Mr. Francisco da Silva,<sup>187</sup> because:

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181. *Trabajadores de la Hacienda Brasil Verde v. Brazil, Preliminary Objections, Merits, Reparations and Costs*, ¶¶ 367-68.

182. *Id.* "Declares," ¶ 4.

183. *Id.* ¶ 342.

184. *Id.* ¶ 343.

185. *Id.* ¶¶ 339-40.

186. *Id.* "Declares," ¶ 4.

187. *Trabajadores de la Hacienda Brasil Verde v. Brazil, Preliminary Objections, Merits, Reparations and Costs*, "Declares," ¶ 6.

*The State's proceedings did not comply with its international human rights obligations.*<sup>188</sup> *Specifically, they violated Article 25(1) (Right of Recourse Before a Competent Court), which enforces the State's obligation to provide effective judicial remedies to people whose human rights were violated.*<sup>189</sup> *The Court emphasized that the essential language of the right is that the remedies are effective, directly address the violation, and not "merely illusory."*<sup>190</sup> *The Court analyzed this right by splitting it into two specific State obligations: (1) to protect individual human rights by ensuring that the proper authorities provide effective remedies and (2) to guarantee that the remedies can be properly administered.*<sup>191</sup> *Additionally, the State's obligations were heightened in accordance with Article 19 (Rights of the Child) of the Convention due to the age and education levels of the minor victims.*<sup>192</sup> *The Court stated that none of the State's judicial proceedings met the proper standards for its obligations.*<sup>193</sup> *In fact, the State's proceedings never: (1) analyzed the merits of the case; (2) determined who or punished those individuals responsible for the violations; (3) presented any method of reparations to the victims; or (4) ensured that the victims' rights would be protected moving forward.*<sup>194</sup>

*The Court further established that the State's termination of proceedings did not abide by its international human rights obligations.*<sup>195</sup> *Pursuant to Article 2 (Obligation to Give Domestic Legal Effect to Rights) of the Convention, States have a duty to modify their domestic law as necessary to ensure that the treaties they accede to have effect domestically.*<sup>196</sup> *This obligation, with respect to the Convention, consists of adopting domestic measures in two ways: (1) modifying or repealing any rules and practices that violate the protections in the Convention and (2) creating rules and practices to properly give effect to the protections in the Convention.*<sup>197</sup>

*As such, the Court held that the State's termination of the proceedings solely due to the expiration of the statute of limitations, was erroneous.*<sup>198</sup>

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188. *Id.* ¶ 406.

189. *Id.* ¶ 391.

190. *Id.* ¶ 392.

191. *Id.* ¶ 393.

192. *Id.* ¶ 407.

193. *Trabajadores de la Hacienda Brasil Verde v. Brazil*, Preliminary Objections, Merits, Reparations and Costs, ¶ 406.

194. *Id.* ¶ 406.

195. *Id.* ¶ 413.

196. *Id.* ¶ 409.

197. *Id.* ¶ 410.

198. *Id.* ¶¶ 411-12.

*Although the termination abided by domestic rules, it did not satisfy the State's international human rights obligations.<sup>199</sup> Slave labor usage is an international crime and its prohibition is a jus cogens norm, thus international law does not allow the termination of proceedings here solely on procedural grounds.<sup>200</sup> Therefore, the Court found that the State's incorrect termination of proceedings solely on procedural grounds breached their duty to adopt measures to meet their international human rights obligations.<sup>201</sup> This termination resulted in obstructing a proper investigation and preventing the victims from receiving the reparations they were entitled to under the American Convention.<sup>202</sup>*

*Moreover, the Court recognized that the State's lack of due diligence resulted in discrimination against the victims.<sup>203</sup> Article 1(1) (Obligation of Non-Discrimination) establishes that States must respect all rights protected under the American Convention and cannot discriminate in doing so.<sup>204</sup> The principles of equality and non-discrimination are so prevalent in international human rights that they are jus cogens norms.<sup>205</sup> Here, the workers at Hacienda Brasil Verde shared characteristics of marginalization, poverty, and lack of education.<sup>206</sup> The Court found that the State did not take such a marginalization of these workers seriously and failed to properly protect their rights.<sup>207</sup> The Court noted that the State's ignorance was most evident in its inaction and the lack of severity its conclusions had against the perpetrators at Hacienda Brasil Verde.<sup>208</sup> The Court further explained that by acting this way, the State normalized the view that this was the proper treatment of Hacienda workers, who were marginalized and from the poorest regions of Brazil.<sup>209</sup> The State's mindset resulted in discrimination against the victims, and obstructed a proper investigation.<sup>210</sup>*

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199. *Trabajadores de la Hacienda Brasil Verde v. Brazil*, Preliminary Objections, Merits, Reparations and Costs, ¶ 412.

200. *Id.* ¶ 413.

201. *Id.*

202. *Id.*

203. *Id.* ¶ 419.

204. *Id.* ¶ 415.

205. *Trabajadores de la Hacienda Brasil Verde v. Brazil*, Preliminary Objections, Merits, Reparations and Costs, ¶ 416.

206. *Id.* ¶ 417.

207. *Id.* ¶ 418.

208. *Id.*

209. *Id.*

210. *Id.* ¶ 419.



*Therefore, the Court concluded that the State violated Article 25 (Right to Judicial Protection), in relation to Article 1(1) (Obligation of Non-Discrimination) and 2 (Obligation to Give Domestic Legal Effect to Rights) of the American Convention, to the detriment of the eighty-five workers rescued on March 15, 2000 and the forty-three workers found during the April 23, 1997 audit, as well as in relation to Article 19 (Rights of the Child) of the American Convention, to the detriment of Mr. Francisco da Silva.*<sup>211</sup>

The Court found unanimously that Brazil did not violate

Articles 3 (Right to Juridical Personality), 4 (Right to Life), 5 (Right to Humane Treatment), 7 (Right to Personal Liberty), 8 (Right to a Fair Trial), and 25 (Right to Judicial Protection), in relation to Articles 1(1) (Obligation of Non-Discrimination) and 19 (Rights of the Child) of the American Convention, to the detriment of Mr. Ferreira da Cruz and Mr. Canuto da Silva and his family members,<sup>212</sup> because:

*As discussed above, the Court did not have jurisdiction over the events pertaining to Mr. Canuto da Silva and Mr. Ferreira da Cruz's recruitment and alleged forced disappearance, as they occurred before the State accepted the Court's jurisdiction.*<sup>213</sup> *The Court could not evaluate the adequacy of the State's later investigations with respect to violations of the American Convention.*<sup>214</sup>

*Additionally, the Court held that Mr. Canuto da Silva was not, in fact, a victim of forced disappearance because the State's reopening of his investigation in 2007 found that he escaped Hacienda Brasil Verde to the town of Floresta do Araguaia.*<sup>215</sup> *There, he married Mrs. Raimunda Márcia Azevedo da Silva and started a family, as she reported to the Federal Police.*<sup>216</sup> *He died in 2007 of gunshot wounds unrelated to the facts of this case.*<sup>217</sup>

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211. *Trabajadores de la Hacienda Brasil Verde v. Brazil*, Preliminary Objections, Merits, Reparations and Costs, "Declares," ¶ 6.

212. *Id.* "Declares," ¶ 7.

213. *Id.* ¶ 429.

214. *Id.*

215. *Id.* ¶ 430.

216. *Id.*

217. *Trabajadores de la Hacienda Brasil Verde v. Brazil*, Preliminary Objections, Merits, Reparations and Costs, ¶ 430.

Regarding Mr. Ferreira da Cruz, the Court noted that the State reopened his investigation in 2007 and 2015 and was not able to confirm or establish his whereabouts.<sup>218</sup> Thus, the Court could not find that Mr. Ferreira da Cruz was a victim of forced disappearance or that the State lacked subsequent investigation.<sup>219</sup> Therefore, the Court concluded that the State did not violate Articles 3 (Right to Juridical Personality), 4 (Right to Life), 5 (Right to Humane Treatment), 7 (Right to Personal Liberty), 8 (Right to a Fair Trial), and 25 (Right to Judicial Protection), in relation to Articles 1(1) (Obligation of Non-Discrimination) and 19 (Rights of the Child) of the American Convention, to the detriment of Mr. Ferreira da Cruz and Mr. Canuto da Silva and his family members.<sup>220</sup>

### C. Dissenting and Concurring Opinions

#### 1. Concurring Opinion of Judge Eduardo Vio Grossi

In a separate opinion, Judge Eduardo Vio Grossi clarified one part of the Judgment.<sup>221</sup> Judge Vio Grossi emphasized that historical structural discrimination did not determine the State's liability, rather it laid out relevant context within which recruitment into Hacienda Brasil Verde took place.<sup>222</sup>

#### 2. Separate Opinion of Judge Ferrer Mac-Gregor Poisot

In a separate opinion, Judge Mac-Gregor Poisot further elaborated on six concepts mentioned in the Judgment, while agreeing with its conclusions.<sup>223</sup> First, he discussed the inclusion of other poverty-related elements as aspects of discrimination due to economic status.<sup>224</sup> Second, he explained the Court's jurisprudence surrounding poverty and economic status.<sup>225</sup> Third, he described that poverty was an essential part of the workers' economic status in this case.<sup>226</sup> Fourth, he outlined the

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218. *Id.* ¶ 433.

219. *Id.*

220. *Id.* "Declares," ¶ 7.

221. *Trabajadores de la Hacienda Brasil Verde v. Brazil*, Preliminary Objections, Merits, Reparations and Costs, Concurring Opinion of Judge Eduardo Vio Grossi, Inter-Am. Ct. H.R. (ser. C), ¶ 1 (Oct. 20, 2016).

222. *Id.* ¶¶ 1, 4.

223. *Trabajadores de la Hacienda Brasil Verde v. Brazil*, Preliminary Objections, Merits, Reparations and Costs, Separate Opinion of Judge Eduardo Ferrer Mac-Gregor Poisot, Inter-Am. Ct. H.R. (ser. C), ¶ 3 (Oct. 20, 2016).

224. *Id.* ¶ 3.

225. *Id.*

226. *Id.*

progress in international human rights of recognizing structural discrimination.<sup>227</sup> Fifth, he pointed out that the Court's jurisprudence supports the power to consider structural, indirect, and *de facto* discrimination.<sup>228</sup> Lastly, he described how historical structural discrimination applied to this case.<sup>229</sup> He believed the Court's recognition of poverty as an aspect of structural discrimination was significant and progressive, and he wanted to delve into these concepts more deeply.<sup>230</sup>

### 3. Partially Dissenting Opinion of Judge Humberto Antônio Sierra Porto

In a separate opinion, Judge Sierra Porto disagreed in part with the Court's holding that the workers had faced historical structural discrimination.<sup>231</sup> First, he stated that the Court needed a more in-depth analysis and proof of actual discrimination against the specified workers in the case to conclude that there was historical structural discrimination against them.<sup>232</sup> Second, he stated that just because the workers shared characteristics does not establish they were discriminated against in a historical and structural way.<sup>233</sup> Third, he stated that the Court did not take seriously enough the State's measures taken to prevent and punish the practice of slave labor.<sup>234</sup>

Additionally, Judge Sierra Porto disagreed with the Court's holding that the State violated the right to judicial protection, provided for in Article 8 (Right to a Fair Trial), and 25 (Right to Judicial Protection) of the American Convention.<sup>235</sup> He stated that the analysis of the Articles should have been done separately and differently because they articulate two different rights.<sup>236</sup>

## IV. REPARATIONS

The Court ruled unanimously that Brazil had the following obligations:

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227. *Id.* ¶ 56.

228. *Id.* ¶ 72.

229. *Trabajadores de la Hacienda Brasil Verde v. Brazil*, Preliminary Objections, Merits, Reparations and Costs, Separate Opinion of Judge Eduardo Ferrer Mac-Gregor Poisot, ¶¶ 84, 96.

230. *Id.* ¶¶ 2-3.

231. *Trabajadores de la Hacienda Brasil Verde v. Brazil*, Preliminary Objections, Merits, Reparations and Costs, Partially Dissenting Opinion of Judge Humberto Antonio Sierra Porto, Inter-Am. Ct. H.R. (ser. C), ¶¶ 1-2, 7 (Oct. 20, 2016).

232. *Id.* ¶¶ 7-9.

233. *Id.* ¶ 10.

234. *Id.* ¶ 11.

235. *Id.* ¶¶ 13-14.

236. *Id.* ¶¶ 14-15.

*A. Specific Performance (Measures of Satisfaction and Non-Repetition Guarantee)*

1. Investigate, Prosecute, and Punish Those Responsible

The Court ordered the State to reopen the investigation surrounding the facts of the March 2000 violations, including identifying and punishing those responsible within a reasonable time.<sup>237</sup> The State must ensure that the victims and their families have full access to all stages of the investigation.<sup>238</sup> Due to the gravity of practicing slave labor in international law, the State must never pardon those who perpetrate the practice.<sup>239</sup> The State must ensure that all facts and investigations of this case are maintained in the federal system and that all progress is publicized for the public to follow.<sup>240</sup> The State must restart the criminal proceedings that were initiated in state court in 2001.<sup>241</sup>

2. Publish the Judgment

The Court ordered the State to publish the Judgment in the Official Gazette and in a widely circulated national newspaper.<sup>242</sup> The State must also publish the Judgment on an official State website, making it accessible for at least one year.<sup>243</sup> The State must report to the Court immediately upon starting to prepare the publications.<sup>244</sup>

3. Reform Domestic Legislation

The Court ordered the State to ensure that a statute of limitations is never applied to cases about the practice of slave labor.<sup>245</sup>

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237. *Trabajadores de la Hacienda Brasil Verde v. Brazil*, Preliminary Objections, Merits, Reparations and Costs, ¶ 445.

238. *Id.*

239. *Id.*

240. *Id.*

241. *Id.*

242. *Id.* ¶ 450.

243. *Trabajadores de la Hacienda Brasil Verde v. Brazil*, Preliminary Objections, Merits, Reparations and Costs, ¶ 450.

244. *Id.* ¶ 451.

245. *Id.* ¶ 455.

*B. Compensation*

The Court awarded the following amounts:

1. Pecuniary Damages

[None]

2. Non-Pecuniary Damages

The Court awarded \$30,000 for each of the forty-three workers at Hacienda Brasil Verde during the April 23, 1997 audit and identified by the Court in this case.<sup>246</sup> The Court further awarded \$40,000 for each of the eighty-five workers at Hacienda Brasil Verde during the March 15, 2000 audit and identified by the Court in this case.<sup>247</sup>

3. Costs and Expenses

The Court awarded \$5,000 to the CPT and \$50,000 to CEJIL.<sup>248</sup>

4. Total Compensation (including Costs and Expenses ordered)

\$4,745,000

*C. Deadlines*

The State must publish the Judgment in a national newspaper within six months of notification of the Judgment.<sup>249</sup> Additionally, the State must report to the Court within one year of notification of the Judgment updating the Court on the measures the State adopted to comply with the Judgment.<sup>250</sup> Finally, the State must pay the costs and expenses within one year of notification of the Judgment.<sup>251</sup>

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246. *Id.* ¶ 487.

247. *Id.*

248. *Id.* ¶ 495.

249. *Trabajadores de la Hacienda Brasil Verde v. Brazil*, Preliminary Objections, Merits, Reparations and Costs, ¶ 450.

250. *Id.* ¶ 451.

251. *Id.* ¶ 496.

## V. INTERPRETATION AND REVISION OF JUDGMENT

**March 15, 2017:** The State requested an interpretation of the Court's Judgment of October 20, 2016.<sup>252</sup>

A. *Composition of the Court*<sup>253</sup>

Eduardo Ferrer Mac-Gregor Poisot, President  
Eduardo Vio Grossi, Vice President  
Humberto Antonio Sierra Porto, Judge  
Elizabeth Odio Benito, Judge  
Eugenio Raúl Zaffaroni, Judge  
L. Patricio Pazmiño Freire, Judge

Pablo Saavedra Alessandri, Secretary

B. *Merits*

The State requested clarification as to how the amounts awarded to the victims and the representatives were to be calculated.<sup>254</sup> The Court denied this request because the calculations were clearly explained in the Judgment, the methods of calculation were well established in case law, and the Court found no need to further clarify the calculations.<sup>255</sup>

The State also requested clarification as to the procedures it must follow if it could not identify and locate each party it owes awards to, especially within the one year deadline set by the Court.<sup>256</sup> The Court explained that if the party cannot be identified within the deadline of one year from notification of the Judgment, the State must officially commit to paying the award.<sup>257</sup> Then, the State must later deliver the award with accrued interest as soon as it identifies the party.<sup>258</sup>

Next, the State requested clarification as to which currency it can use to pay the awards.<sup>259</sup> The Court clarified that the State can compensate

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252. *Trabajadores de la Hacienda Brasil Verde v. Brazil*, Interpretation of the Judgment on Preliminary Objections, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. ¶ 2 (Aug. 22, 2017).

253. Judge Roberto F. Caldas did not participate in the deliberation of the Judgment because he is a Brazilian national. Deputy Secretary Emilia Segares Rodríguez did not participate in the deliberation of the Judgment because of "higher forces."

254. *Id.* ¶ 14.

255. *Id.* ¶¶ 19-20.

256. *Trabajadores de la Hacienda Brasil Verde v. Brazil*, Interpretation of the Judgment, ¶¶ 22, 24.

257. *Id.* ¶ 33.

258. *Id.*

259. *Id.* ¶ 34.

in Brazilian currency but using the New York Stock Exchange's exchange rate of the day before the payment.<sup>260</sup>

Last, the State requested clarification regarding the interest rate it must pay, especially if it defaults in paying the awards.<sup>261</sup> The Court stated that the interest rate must be calculated based on Brazilian currency, after the values of the awards are converted from U.S. dollars to Brazilian reals.<sup>262</sup> Regarding a default, the Court refused to address the interest rate because such issue is addressed in a later report monitoring the State's compliance.<sup>263</sup>

## VI. COMPLIANCE AND FOLLOW-UP

[None]

## VII. LIST OF DOCUMENTS

### A. *Inter-American Court*

#### 1. Preliminary Objections

[None]

#### 2. Decision on Preliminary Objections, Merits, Reparations and Costs

[Trabajadores de la Hacienda Brasil Verde v. Brazil, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. \(ser. C\) \(Oct. 20, 2016\).](#)

#### 3. Provisional Measures

[Trabajadores de la Hacienda Brasil Verde v. Brazil, On-site Procedure, Provisional Measures, Order of the President, Inter-Am. Ct. H.R. \(ser. E\) \(Feb. 23, 2016\).](#)

[Trabajadores de la Hacienda Brasil Verde v. Brazil, Provisional Measures, Order of the Court, Inter-Am. Ct. H.R. \(ser. E\) \(Feb. 15, 2016\).](#)

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260. *Id.* ¶ 39.

261. *Id.* ¶¶ 40-41.

262. *Trabajadores de la Hacienda Brasil Verde v. Brazil, Interpretation of the Judgment*, ¶ 44.

263. *Id.* ¶ 45.

[Trabajadores de la Hacienda Brasil Verde v. Brazil, Provisional Measures, Order of the Court, Inter-Am. Ct. H.R. \(ser. E\) \(Dec. 11, 2015\).](#)

4. Compliance Monitoring

[None]

5. Review and Interpretation of Judgment

[Trabajadores de la Hacienda Brasil Verde v. Brazil, Interpretation of the Judgment on Preliminary Objections, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. \(Aug. 22, 2017\).](#)

*B. Inter-American Commission*

1. Petition to the Commission

[Not Available]

2. Report on Admissibility

[Trabajadores de la Hacienda Brasil Verde v. Brazil, Admissibility and Merits Report, Report No. 169/11, Inter-Am. Comm'n H.R., Case No. 12.066, \(Nov. 3, 2011\).](#)

3. Provisional Measures

[None]

4. Report on Merits

[Trabajadores de la Hacienda Brasil Verde v. Brazil, Admissibility and Merits Report, Report No. 169/11, Inter-Am. Comm'n H.R., Case No. 12.066, \(Nov. 3, 2011\).](#)

5. Application to the Court

[Trabajadores de la Hacienda Brasil Verde v. Brazil, Petition to the Court, Inter-Am. Comm'n H.R., Case No. 12.066, \(Mar. 4, 2015\).](#)



VIII. BIBLIOGRAPHY

[Inter-Am. Comm'n H.R., \*Report on the Situation of Human Rights in Brazil\* \(Org. of Am. St., 1997\).](#)

[Arthur Bice, \*Government Fights Slave Labor in Brazil\*, CNN \(Jan. 9, 2009, 9:38 PM\), <http://edition.cnn.com/2009/WORLD/americas/01/09/brazil.slavery/index.html>.](#)

[Larry Rohter, \*Brazilian Leader Introduces Program to End Slave Labor\*, N.Y. TIMES \(Mar. 14, 2003\), <https://www.nytimes.com/2003/03/14/world/brazilian-leader-introduces-program-to-end-slave-labor.html>.](#)

[Matt Sandy, \*Heartache and Suffering: Slavery in Brazil\*, AL JAZEERA \(July 18, 2015\), <http://projects.aljazeera.com/2015/07/slavery-brazil/>.](#)

[Anastasia Moloney, \*More Than 300 Brazilian Companies Busted for Modern-Day Slavery - Campaigners\*, REUTERS \(Feb. 15, 2016, 9:45 AM\), <https://www.reuters.com/article/brazil-slavery-idUSL8N15U3CD>.](#)